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Belgium and the Global Compact for Migration: Taking stock after two years

Input for the First Regional Review of the Global Compact for Safe, Orderly and Regular Migration in the UNECE Region, October 2020

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Executive summary

This contribution identifies some advances and challenges in the implementation of the Global Compact for Migration (GCM) in Belgium and Flanders. Key issues are:

- Policy context:
  The previous federal government in Belgium fell over public endorsement of the GCM. The new federal coalition agreement of 2020 holds **potential for a more GCM-compliant migration policy**, e.g. by explicitly recognising the importance of the GCM. Much will depend, however, on the actual implementation of the announced policy changes. The GCM does not seem to have influenced case law in Belgium.

- Objective 1:
  Whereas some interesting monitoring tools have been developed, challenges remain regarding the **accessibility of data** to feed into research and policy debates.

- Objective 2:
  The **indicators** for official development assistance (in general and to least developed countries) are developing unfavourably. Although the federal coalition agreement separates development cooperation from the migration agenda, the former is still perceived as contributing to the tackling of the root causes of irregular migration.

- Objective 3:
  The Flemish coalition agreement aims to exclude private persons from obtaining **legal information** from the helpdesk of the Agency for Integration and Civic Integration.

- Objective 4:
  Recognized **stateless** persons in Belgium do not automatically obtain a residence right.

- Objective 5:
  Flemish **labour migration** policies are mainly oriented towards *medium and higher-skilled* labour migrants, which stands in contrast with the GCM's aim of facilitating migration *at all skills levels*.

  Various obstacles to **family reunification** persist. It is currently unclear how family reunification policies will develop, beyond more control on respect of the conditions and an emphasis on integration.

  More transparency as to the issuing of **humanitarian visas** is envisaged.

- Objective 7:
  The federal coalition agreement announces to find a solution for **persons who cannot be returned** to their country of origin, beyond their will.

- Objective 13:
  The new federal government aims to fully develop **alternatives to detention** and will **refrain from detaining minors** in closed centres. Nevertheless, the capacity of closed centres will be further increased.

- Objective 15:
  Whereas irregular migrants have in principle **access to health care and education** up to the age of 18, implementation challenges remain.

- Objective 16:
  Belgian's migration policy is characterised by a **tension** between increased expectations towards migrants to "integrate", on the one hand, and greater insecurity of their residence rights, on the other.

- Objective 19:
  Diaspora organisations are not recognized as full-fledged partners in development cooperation policies.

- Objective 20:
  Remittance costs in Belgium remain substantially higher than the target of 3%.

- Objective 21:
  Belgium's recent condemnation by the European Court of Human Rights highlights the **absence of an effective procedure** to assess a risk of inhuman and degrading treatment prior to removal.

  The new Belgian orientation on **return policy** appears less restrictive. The intention to present migrants with a range of options going beyond only return coexists, however, with the plan to upscale forced repatriations.

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Policy context

During its drafting and negotiation process, the Global Compact for Migration (GCM) did not attract any substantive public or political attention in Belgium. In September 2018, then first minister Charles Michel expressed Belgium's support for the Global Compact in the UN General Assembly. During autumn, however, the right-wing nationalist political party N-VA started to raise critical concerns about the Compact, arguing that endorsing the Compact would imply relinquishing national sovereignty over migration policy, and that lawyers would try to enforce the provisions of the Compact via litigation.[1] In a parliamentary hearing on 4 December 2018, the Belgian Special Envoy for Migration and Asylum Mr. Jean-Luc Bodson, who had negotiated the Compact on behalf of Belgium, emphasized that the text had been amended – and weakened from a migrant rights' perspective – on all the issues requested by the cabinet and the Immigration Office.[2] Ultimately, **the previous federal government fell** over public endorsement of a non-binding international legal instrument – a unique event in Belgian constitutional history.[3]

On 30 September 2020, a new federal government was formed by a coalition of liberal, socialist, Christian-democratic and green parties. The tone of the federal coalition agreement with respect to migration remarkably differs from the previous General Policy Note on Asylum and Migration.[4] The agreement's first paragraph states that Belgian asylum and migration policy is "based on human rights" and that "**Belgium recognises the importance of** multilateral cooperation on migration, such as for instance **the UN Global Compact for Safe, Orderly and Regular Migration**". Priorities of the new government include a new asylum and migration code and a "humane and firm return policy". The coalition agreement announces various measures that would contribute to a more GCM-compliant migration policy in Belgium. Much will depend, however, on the actual implementation of the announced policy measures.

Asylum and migration is a federal competence in Belgium, whereas integration is regionalised. On 30 September 2019, the coalition agreement of the Flemish goverment for the next five years was adopted, by a coalition of Flemish-nationalist, Christian democratic and liberal political parties. This agreement does not refer to the GCM and envisages, among others, to make the civic integration trajectory stricter.

The GCM has **not influenced the migration case law** in Belgium. Until 1 June 2020, only two applicants invoked the GCM in proceedings before the Council for Alien Law Litigation (CALL).[5] This did not substantively impact on the reasoning or outcome of the judgments.[6] One year after the adoption of the GCM, a coalition of NGOs launched an **Action Plan** with proposals on how Belgium could implement the GCM.[7]

[1] N-VA, "Waarom de N-VA zich verzet tegen het migratiepact van Marrakesh", 4 December 2018, www.n-va.be/migratiepact.
[2] For instance on family reunification and immigration detention of children. See *Parl. St.* CRIV 54 COM 1006, 3-12.
[3] See generally Toon Moonen, Ellen Desmet and Tom Ruys (eds), *Het Migratiepact: kroniek van een crisis. Actuele vragen uit internationaal recht, grondwettelijk recht en migratierecht* (die Keure 2020).
[4] The priorities in this note were to combat "illegal transit migration", to further increase the return capacity and to reduce secondary asylum flows to Belgium. See *Parl. St.* Chamber 2018-19, no. 54-3296/021, 3.
[5] The Council for Alien Law Litigation (*Raad voor Vreemdelingenbetwistingen – Conseil du contentieux des étrangers*) handles appeals against individual decisions on asylum and migration. Its judgments are publicly available on www.rvv-cce.be/nl/arr.
[6] CALL 16 May 2019, no. 221303; CALL 17 February 2020, no. 232741.
[7] 11.11.11, CNCD-11.11.11, ABVV-FGTB, ACV-CSC, ACLVB-CGSLB, Caritas International, Centre Avec, Ciré, Dokters van de Wereld, Jesuit Refugee Service Belgium, Fairwork Belgium, Le Monde Selon les Femmes, Ligue des Droits Humains, Minderhedenforum, MOC, Orbit vzw, Oxfam-Solidariteit, Platform kinderen op de Vlucht, Samenlevingsopbouw Brussel, Vluchtelingenwerk Vlaanderen, Wereldsolidariteit, *Global Compact for Safe, Orderly and Regular Migration: Actieplan België* (hereinafter: 11.11.11 et al., *Global Compact for Safe, Orderly and Regular Migration, Actieplan België*).

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Some advances and challenges in the implementation of the GCM

This contribution presents a non-exhaustive[8] overview of some advances and challenges in the implementation of the Global Compact for Migration (GCM) in Belgium and Flanders.[9]

(1) Collect and utilize accurate and disaggregated data as a basis for evidence-based policies

The Federal Migration Centre Myria, an independent public institution, is legally charged with providing information on the nature and size of migration streams to policy makers. Myria has reported some good practices regarding the collection of migration data in Belgium during the past years. For instance, various **monitoring tools** have been developed:

1. The Flemish Migration and Integration Monitor collects administrative and other statistical data on migration and integration processes of non-Belgians and persons with a migration background.
2. The Socioeconomic Monitoring of Unia (the Interfederal Centre of Equal Opportunities) and the Federal Public Service for Employment, Labour and Social Dialogue assesses the situation of persons on the labour market in function of their migration background.

Nevertheless, there is also still room for improvement in Belgium with regard to **accessibility and transparency of data**. Some examples include:

1. Databases such as the Crossroads Bank for Social Security and the National Register contain a wealth of information, but there is "a lack of political will" to make these data sufficiently accessible to researchers.[10]
2. There is a lack of data on detention and alternatives to detention, among others on the profiles of persons detained in closed centers, the grounds for detention and the total duration of the detention.[11]
3. There is equally a lack of data on return. The federal coalition agreement explicitly charges the Immigration Office with an "extensive and transparent reporting of, among others, return figures".

Myria has called on policymakers to launch a "major national survey" to deepen and broaden knowledge about migration, "conceived and carried out in collaboration between university actors, government agencies and actors in the field".[12] This call reflects the 'whole-of-society approach' enshrined in the GCM.

(2) Minimize the adverse drivers and structural factors that compel people to leave their country of origin

Objective 2 promotes the implementation of the 2030 Agenda for Sustainable Development. Both the federal and the Flemish coalition agreement reaffirm their commitment to realizing the sustainable development goals (SDGs). The indicators for official development assistance (ODA) and official development assistance to least developed countries, are **developing unfavourably** though: the objectives will not be reached if current trends continue. In 2018, Belgian ODA amounted to 0,44% of the gross national income (GNI), whereas this should

[8] The non-inclusion of certain objectives does not indicate an absence of challenges or progress. In view of the limited space available, preference was given to discuss fewer objectives, but somewhat more in depth.

[9] This contribution partly builds on Ellen Desmet, "Het Migratiepact: aanleidingen voor de crisis en beleidsuitdagingen voor België", in Toon Moonen, Ellen Desmet and Tom Ruys (eds), *Het Migratiepact: kroniek van een crisis. Actuele vragen uit internationaal recht, grondwettelijk recht en migratierecht* (die Keure 2020).

[10] Myria, *Migratie in cijfers en in rechten*, 2019, 7.

[11] Myria, *Myriatics #11*, 2020, 17.

[12] Myria, *Migratie in cijfers en in rechten*, 2019, 14.

increase to 0,7% by 2030 to achieve the SDGs. In the same year, Belgium spent 37,1% of ODA to least developed countries, which should be 50% by 2030. The federal coalition agreement foresees a "binding growth path" as from 2021 to achieve the norm of 0,7% by 2030.

The federal coalition agreement acknowledges that development cooperation **cannot be subordinated to the migration agenda,** but still sees it under the lens of the struggle against the root causes of irregular migration as well as the quest for durable solutions for refugees. Furthermore, the new federal government wants to "attract talent from abroad through economic and academic migration, without causing a brain drain". It is not stipulated how this brain drain will be avoided.

(3) Provide accurate and timely information at all stages of migration

The Belgian Immigration Office hosts a centralized and publicly accessible website with legal and practical information on regular migration. This website is mainly in French and Dutch, with limited information available in English. Moreover, the website is not always clearly structured, which impedes the easy retrieving of information. Information on more atypical migrant profiles (e.g., cross-border workers and posted workers) is not included.

The Flemish Agency for Integration and Civic Integration (AGII) offers a very comprehensive website with information on immigration rules and procedures, albeit only in Dutch. The Agency also provides legal information via its helpdesk – an important information channel for private persons. However, the 2019 Flemish coalition agreement **proposes to limit the accessibility of the Agency**, by focusing its tasks on second line support. Private persons would no longer be able to obtain information from the Agency. This seems at odds with Objective 3 of the GCM of providing information on legislation and procedures at every stage of migration.

A coalition of NGOs has recommended to establish **open "Reception and Orientation centers" for 'transit' migrants**, that would, among others, provide objective information in their own language on their rights and duties.[13]

(4) Ensure that all migrants have proof of legal identity and adequate documentation

Recognised **stateless** persons in Belgium do not automatically obtain a residence right, but must apply for a humanitarian regularisation – which is a discretionary competence of the Secretary of State for Asylum and Migration. The new federal government aims to find a "solution" for people who cannot return to their country of origin beyond their will, such as "certain stateless persons". It is unclear whether this implies granting a residence right to (all) recognised stateless persons.

(5) Enhance availability and flexibility of pathways for regular migration

Regarding the facilitation of regular migration pathways in Belgium, some progress has been made as regards **labour migration policy**. In 2019, the federal and regional authorities transposed the provisions on the single permit – more than five years after the deadline though.[14] The Flemish government has relaxed the conditions

[13] 11.11.11, et al., *Global Compact for Safe, Orderly and Regular Migration, Actieplan België*, 4.

[14] Art. 16 of Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

for obtaining a work permit for (some) foreign employees as from 1 January 2019, in order to attract (especially higher qualified) foreign personnel. Flanders aims, among others, to tackle structural shortages in the labour market through simplifying access for "medium-skilled" migrant workers. Access to the labour market for "low-skilled" labour migrants is only possible in exceptional cases (in case of specific shortages).[15] In conclusion, whereas the GCM aims to provide labour mobility schemes for migrants *at all skills levels*, the Flemish government mainly focuses on *medium and higher-skilled* labour migrants. A coalition of NGOs has recommended to "investigate the possibilities for irregular migrants working in the informal sector, to enter the new system of labour migration".[16]

Under the previous legislature, various bills were tabled to make the rules on **family reunification** more restrictive, also *after* Belgium had expressed its support for the GCM in the UN General Assembly.[17] None of these were adopted. Many obstacles to family reunification persist in Belgium, such as:

1. Family members are defined narrowly, excluding for instance adult dependent children, and – in case of unaccompanied minors with refugee status or subsidiary protection status – siblings. They must then apply for a humanitarian visa.[18]
2. Family members must submit the application for family reunification with the competent Belgian diplomatic post. To that end, they must often undertake dangerous, expensive and long journeys, especially when there is no Belgian embassy in the country where they live.[19] This would be avoided by always allowing the sponsor in Belgium to submit the application, or at least allowing electronic or postal submission.[20]
3. Refugees and subsidiary protection holders[21] are only exempted during the first year after the granting of international protection of the requirements of sufficient resources, sickness insurance and housing. This timing often proves too short to submit the application with all the required documents.[22]
4. For family reunification with EEA-nationals and Belgians, the current indicative amount of resources is set at 120% of the living wage.[23] Given that the objective of the income requirement is to prevent persons from having resource to the social assistance system of the host country, an income of 100% of the living wage should suffice.[24] This prevents the poorest migrants from living together with their family.

According to the new federal coalition agreement, the conditions on family reunification will be reviewed and possibly revised "in the light of the legislation of the neighbouring countries (…) in order to make them more consistent." It is thus **currently unclear** how family reunification policies will evolve, beyond a more uniform and efficient control on the conditions of family reunification, and an emphasis on integration (infra).

[15] Besluit van de Vlaamse Regering van 7 december 2018 houdende uitvoering van de wet van 30 april 1999 betreffende de tewerkstelling van buitenlandse werknemers, *B.S.* 21 december 2018.
[16] 11.11.11, et al., *Global Compact for Safe, Orderly and Regular Migration, Actieplan België,* 6 (Under Objective 7).
[17] See, e.g., *Parl. St.* Doc 55 0574/001.
[18] Art. 10 Immigration Act.
[19] This is the case, for instance, for Afghan, Syrians, Eritreans and Guineans. CARITAS, *Ons Gemeenschappelijk Huis,* 2019, 38.
[20] UNHCR and Myria, *Gezinshereniging van begunstigden van internationale bescherming in België. Vaststellingen en aanbevelingen*, June 2018, 5.
[21] It is positive that Belgium extends the more lenient rules of the Family Reunification Directive regarding refugees, towards holders of subsidiary protection.
[22] UNHCR and Myria, *Gezinshereniging van begunstigden van internationale bescherming in België. Vaststellingen en aanbevelingen*, June 2018, 6.
[23] In principle, a contextualised individual needs assessment must be carried out. See CJEU, *Chakroun*, 4 March 2010, case C-578/08.
[24] Council of State, Legislative Section, 18 December 2018, advice no. 66.741/4, § 1.3, referring to Christine Flamand and Sylvie Sarolea, "Trajet migratoire et regroupement familial : obstacles et perspectives", in Sylvie Saroléa (ed.), *Immigrations et droits. Questions d'actualité*, Larcier, 2018, 57.

Finally, there is a lack of transparency on the issuing of **humanitarian visa**, which is a discretionary competence of the Secretary of State for Asylum and Migration. This does not prevent, however, to provide clarity about a number of criteria used in the assessment of files.[25] Early 2019, a 'scandal' burst out in relation to practices unveiled in parallel by a judicial investigation and a TV documentary.[26] Some of the intermediaries with whom the then Secretary of State had worked, had accepted money (arguably thousands of euros) from persons who wanted to be put on the list to qualify for a humanitarian visa. This led to the inclusion of a new provision[27] in the Immigration Act: the Immigration Office now has to draft an annual activity report in order "to control, but not limit, the discretionary power".[28] The federal coalition agreement confirms that "[t]he issuing of humanitarian visas remains a discretion of the government, but is based on a transparent policy. This policy will be discussed in parliament."[29]

(7) Address and reduce vulnerabilities in migration

The granting of a humanitarian regularization is a discretionary competence of the Secretary of State for Asylum and Migration.[30] There are no clear criteria on the basis of which such a regularization is granted. People who cannot be forcibly removed, for example because their removal would be a violation of Article 3 ECHR (prohibition of inhuman and degrading treatment), therefore risk finding themselves in a **legal limbo**. The 2020 federal coalition agreement does not mention a possibility of collective regularisation,[31] but does announce to "seek a solution for the very limited group of persons who, beyond their will (…) cannot return to their country of origin, such as certain stateless persons".

(12) Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral

The current Immigration Act of 1980 is complex and inaccessible, due to numerous amendments over the past 40 years. One of the priorities of the new federal government is the development of an **Asylum and Migration Code** – an unrealised intention of the 2014 coalition agreement. Whereas preparations under the previous government did not involve civil society, the new government envisions "a broadly supported debate with experts and stakeholders". Even though a new code is much needed, there is a risk that a harmonization and simplification of procedures leads to a reduced legal protection of migrants, as exemplified by previous legislative changes (e.g. retaining the shortest of two appeal periods). The federal coalition agreement also envisages an external **audit** of the asylum and migration authorities.

One of the actions under Objective 12 calls upon states to ensure that "anyone legitimately claiming to be a child is treated as such unless otherwise determined through a multi-disciplinary, independent and child-sensitive **age assessment**." The UN Committee on the Rights of the Child has issued a similar recommendation to Belgium.[32]

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[25] MYRIA, *Myriadoc 4. Humanitaire visa,* 2017, 30.
[26] Pano, "Zijn humanitaire visa te koop?", 15 January 2019.
[27] Art. 94/1 Act of 15 December 1980 on the entry, residence, settlement and removal of foreigners (hereinafter: Immigration Act).
[28] Amendement (N. LANJIRI e.a.) op het wetsvoorstel tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, teneinde de toekenning van de humanitaire visa transparant te maken, *Parl. St.* Chamber 2018-2019, no. 3496/004
[29] Federal coalition agreement, 30 September 2020, 81.
[30] Article 9bis Immigration Act.
[31] The previous federal coalition agreement of 2014 explicitly excluded the possibility of collective regularisation.
[32] UN Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth reports of Belgium*, 1 February 2019, *UN Doc.* CRC/C/BEL/CO/5-6, § 42 (a).

Currently, however, unaccompanied minors very often have to undergo medical age testing, a procedure that is contested and not in line with the recommendations above.[33]

(13) Use migration detention only as a measure of last resort and work towards alternatives

Currently, the only 'alternative to detention' – which is actually an alternative *form of* detention, because persons receive a detention title – are the so-called 'return homes' (*terugkeerhuizen*) for families with minor children. The federal coalition agreement announces that **alternatives to detention** (regular administrative and/or police checks, bail, electronic supervision etc.) will be fully developed and systematically evaluated. Moreover, detention with a view to forced return should be limited to the shortest possible duration. Nevertheless, the 'master plan' which aims to increase the capacity of the closed centres, will be further implemented.

The coalition agreement states that "**minors cannot be detained in closed centers**", in line with the GCM action of "working to end the practice" of child immigration detention. This is important because in August 2018, Belgium started to detain again families with children in "family units" in a closed centre near Brussels airport, despite extensive international and national mobilisation to refrain from this measure.[34] Following an application of fifteen civil society organisations, the Council of State suspended in April 2019 a number of provisions of the royal decree establishing the detention regime.[35] On 1 October 2020, the Council of State declared the royal decree partly illegal.[36] Moreover, until today, unaccompanied minors at the border can be detained with adults in a closed center during the age determination period (of 3 working days, which can be extended with another 3 days).[37]

(15) Provide access to basic services for migrants

Under Objective 15, Belgium has committed to ensure that "all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services". Irregular migrants in Belgium have **access to health care** through the procedure "urgent medical assistance".[38] Effective access is frustrated, however, by the complexity of the procedure and variations in the health services that are covered.[39]

Whereas **access to education** is generally guaranteed for undocumented children up to the age of 18,[40] this is not the case for children in 'return homes'.[41] Under certain conditions, irregular migrants are entitled to **legal**

[33] See Jinske Verhellen, "De persoonlijke staat van niet-begeleide minderjarige vreemdelingen: enkele vraagstukken van internationaal privaatrecht" in Ellen Desmet, Jinske Verhellen en Steven Bouckaert, *Rechten van niet-begeleide minderjarige vreemdelingen in België* (die Keure 2020).
[34] See, e.g., *Nils Muižnieks* (letter of 12 December 2016, CommHR/NM/sf 047-2016) and Dunja Mijatović (letter of 5 June 2018, CommHR/DM/sf 062-2018), http://www.youdontlockupachild.be/.
[35] Council of State, Administrative Litigation Section, 4 April 2919, no. 244.190.
[36] Insofar as the staff have unconditional access to the unit where the family is staying between 6 a.m. and 10 p.m., it is possible to give the children access to the outdoor areas for only two hours a day, and a young person of at least 16 years old can be isolated for a maximum of 24 hours if his behavior endangers his own safety, the safety of other family members or that of staff members. Council of State, Administrative Litigation Section, 1 October 2020, no. 248.424.
[37] Art. 41 Act of 12 January 2017 on the reception of asylum seekers and certain other categories of foreigners.
[38] Art. 57 § 2, 1° Act of 8 July 1976 betreffende de openbare centra voor maatschappelijk welzijn.
[39] Belgian Health Care Knowledge Centre, "*Welke gezondheidszorg voor personen zonder wettig verblijf?*", 2015.
[40] Irregular stay is not a ground on the basis of which a school can refuse to register a pupil. See, e.g., art. 37octies Flemish Decree of Basic Education of 25 February 1977.
[41] Unia and Myria, *Universeel periodiek onderzoek 38ste sessie, Mei 2021,* 2020, 17.

assistance.[42] Undocumented migrant families who cannot provide for their minor children can receive **material assistance** from a public welfare centre.[43]

(16) Empower migrants and societies to realize full inclusion and social cohesion

Belgian migration policy has been characterised by an increased emphasis on "**integration**", in various ways. First, newcomers will be obliged in the future to sign a "newcomers' declaration", in which they commit to integrate and actively participate in Belgian society and to respect its laws and fundamental values, such as the equality between men and women and the equivalence of same-sex relationships.[44] This document ignores, for instance, the relatively recent legal recognition of same-sex relationships and the persisting cases of homophobia in Belgium. The newcomers' declaration is not implemented yet, as it depends on a collaboration agreement to be concluded with the three (Flemish, French-speaking, and German-speaking) Communities.

Second, a 2016 law inserted **integration as a residence condition**, in that the Immigration Office can end a residence right when the person has not made "a reasonable effort to integrate".[45] The following criteria are listed as to assess a person's efforts to integrate: integration courses, work, studies, vocational training, language knowledge, active participation in social life ('club life') and criminal history. The criterion of criminal history has been annulled by the Constitutional Court as being too broad and not proportionate to the goal of integration.[46] The Court also nuanced that a lack of (sufficient) proof of efforts to integrate cannot suffice to not prolong or revoke a residence right; there must be other reasons as well.[47]

Moreover, the Flemish coalition agreement envisages various measures making the **civic integration trajectory** ('*inburgeringstraject*') **stricter**, including a fee of minimum 360 euros and a tightening of the language requirements.[48] Finally, pursuant to the new federal coalition agreement, "the integration of persons who settle in Belgium in the context of family reunification will be intensified, inter alia by learning one of the languages of the region of residence and by intensifying their vocational training."[49]

On the other hand, the **temporariness of various residence rights has been extended**. In cases of family reunification with a third country national, for instance, the temporariness and conditionality of residence rights were prolonged from 3 to 5 years in 2016.[50]

This creates a **tension**: whereas migrants are expected to integrate as fast and as good as possible, they are faced with a greater insecurity as to the permanency of their residence rights. These measures also point to the inclination to only look at migration from the perspective of the host society, and seem based on wrongful assumptions of what is needed to realize full inclusion and social cohesion.

[42] Art. 668 e) Judicial code.
[43] Art. 57 § 2, 2° of the Act of 8 July 1976 betreffende de openbare centra voor maatschappelijk welzijn.
[44] Art. 1/2 Immigration Act.
[45] Art. 1/2 Immigration Act.
[46] Constitutional Court 4 October 2018, no. 126/2018, B.40.8 – B.41.
[47] Constitutional Court 4 October 2018, no. 126/2018, B.19.2.
[48] Applicants for international protection would be excluded from the civic integration trajectory during their asylum procedure.
[49] Federal coalition agreement, 30 September 2020, 80.
[50] Art. 11 § 2 Immigration Act.

(19) Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries

Diaspora organisations in Belgium often lack the resources and experience to respond to public calls for development projects.[51] Moreover, there is no specific policy at the federal level to support development initiatives of diaspora organisations.[52] The Flemish development policy recognizes diaspora organisations as potential, yet not privileged, partners, and does not give them access either to a separate budget line.[53] It is therefore recommended to "[i]nvolve diasporas as full partners in development cooperation", by providing specific funding and adequate support.[54]

(20) Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants

The average cost to send remittances from Belgium in the third quarter of 2020 was 10.08% to Algeria, 8.87% to DRC, 5.05% to Morocco and 7.94% to Turkey.[55] The new federal government has announced to support the SDG of lowering the transaction costs for remittances to below 3%.[56]

(21) Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration

The GCM reaffirms the prohibition of returning migrants when there is a real and foreseeable risk of inhuman and degrading treatment. On 27 October 2020, the European Court of Human Rights found in *M.A. v. Belgium* that Belgium had violated Article 3 ECHR by deporting a Sudanese national to his country of origin, without sufficiently assessing the real risks he faced in Sudan.[57] This judgment points to a more structural problem in Belgium: the **absence of an effective procedure to assess an Article 3 ECHR risk** prior to removal.

The *M.A.* judgment is the last episode of the so-called '**Sudan crisis**', in which the previous Secretary of State for Asylum and Migration had organised an identification mission with Sudanese experts and employees from the Sudanese embassy, to facilitate the identification of irregular migrants with a view to their return.[58] Following this crisis, a temporary Commission was established to evaluate the voluntary and forced return policy of Belgium, under the presidency of former Constitutional Judge Marc Bossuyt ('**Commission Bossuyt**'). The Commission only consisted of state actors, with very minimal consultation of civil society. The Commission's final report, launched on 15 September 2020, proposes among others to increase the current criminalisation of irregular stay with a prison sentence of 3 months to 1 year, to facilitate the arrest of irregular migrants (by allowing the issue of an arrest warrant or search warrant).[59] This goes against the spirit of the action suggested under Objective 11 of the GCM "[t]o review and revise relevant laws and regulations to determine whether sanctions are appropriate to address irregular entry or stay and, if so, to ensure that they are proportionate,

[51] CARITAS, *Ons Gemeenschappelijk Huis. Migratie en Ontwikkeling in België*, 2019, 47.
[52] Flor Didden (11.11.11), *Migratie en ontwikkelingssamenwerking: een goed huwelijk?*, 2020, 7.
[53] CARITAS, *Ons Gemeenschappelijk Huis. Migratie en Ontwikkeling in België*, 2019, 54.
[54] Ibid., 61; 11.11.11, et al., *Global Compact for Safe, Orderly and Regular Migration, Actieplan België*, 10.
[55] Based on the Worldbank Remittanceprices Webtool on 22 October 2020.
[56] Federal coalition agreement, 30 September 2020, 83.
[57] ECtHR, *M.A. v. Belgium*, 27 October 2020, no. 19656/18. The Court also found a violation of Article 13 (right to an effective remedy) taken together with Article 3 ECHR, because the deportation ignored a court decision ordering its suspension.
[58] See also CGRS, "Het respecteren van het non-refoulement principe bij de organisatie van de terugkeer van personen naar Soedan", 8 February 2018, www.cgvs.be/nl/actueel/soedan-rapport.
[59] Rapport final la Commission chargée de l'évaluation de la politique du retour volontaire et de l'éloignement forcé d'étrangers, 15 September 2020, dofi.ibz.be/sites/dvzoe/FR/Documents/CommissionBossuyt_RapportFinal_FR.pdf.

equitable, non-discriminatory, and fully consistent with due process and other obligations under international law".

The federal coalition agreement of 30 September 2020 does not endorse the suggestions of the Commission Bossuyt. One of its priorities is increasing the effectiveness of Belgium's return policy through a "humane and firm return policy". Overall, a broader approach seems to be taken than before, with more emphasis on **information, orientation and counselling provision** for migrants, which should not only revolve around the return option, but also take into account residence opportunities. A varied group of relevant actors should be involved in this counselling and orientation, including Fedasil,[60] the Immigration Office, major cities, social services and non-governmental organisations. This confirms Belgium's long-standing engagement of actors beyond the governmental level, especially in voluntary return. The intention to broaden orientation and counselling provision appears in line with the GCM's call for voluntary return programmes to be based on "the migrant's free, prior and informed consent".

On the other hand, the federal coalition agreement also states that **forced returns** should be equally reinforced. The intention to reduce the recourse to detention should not prevent removals from being implemented. This suggests that the seemingly permissive approach taken by the new government does not imply that deportations would be decreased.

In line with the GCM, the new federal coalition agreement announces that human rights considerations will guide the drafting of **readmission agreements**, which will be subject to parliamentary scrutiny.

Unlike the GCM, the new federal coalition agreement does not refer explicitly to **post-return reintegration** and its sustainability. In this regard, it is recommended to start up inclusive, participatory and broad-minded discussions on the meaning and implications of sustainable reintegration, which move away from a narrow correspondence of sustainable reintegration with the absence of returnees' re-emigration.

[60] Federal agency for the reception of asylum seekers.