



KINGSLEY NAPLEY

WHEN IT MATTERS MOST

IMMIGRATION

Fly In Fly Out - Belgium

Transcript

Hello and welcome. My name is Ilda and I'm a partner in the Immigration Department at Kingsley Napley.

With effect from the 1st of January 2021, British citizens travelling into Europe are now deemed as third country nationals, meaning that UK law firms who regularly send British national lawyers to provide advice to their client in Europe will first need to check whether work permission is required in advance of their travels.

This is because every country in Europe has their own immigration rules.

Equally, they should check whether there is a requirement to register with the local law society.

To that end, I'm delighted to say that I have Bernard Carus from Unity, a Belgian immigration lawyer with me alongside my colleague Jessica Clay, who's a partner in our regulatory department.

So my colleague Jessica will be talking about the points covering in respect of the regulatory position and what you should be thinking of if you are sending a lawyer into Belgium.

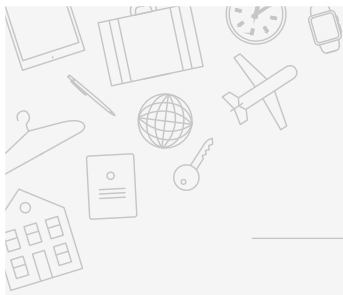
And Bernard will be covering the immigration points of things you need to consider when sending a lawyer on a British passport into Belgium.

So my first question is directed to Bernard and Bernard. Thank you very much for joining us today.

The first question I have for you is do you have any top tips for UK law firms that need to send UK lawyers into Belgium for short term trips?

Yes. Thank you Ilda.

Thank you for the invitation.



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Hello, everyone. Top Tips.

I would say the first top tip is be careful in this respect, although you already mentioned it in your introduction, so you always need to make a clear distinction first between once they try to work and the rights to reside in Belgium.

Those are two totally different things. So obviously UK nationals can stay in Belgium in the Schengen area up to 90 days in any six month period. But that doesn't mean that you're in those so that's a very clear, very clear distinction, such a distinction to be made if you are going to check the right to work.

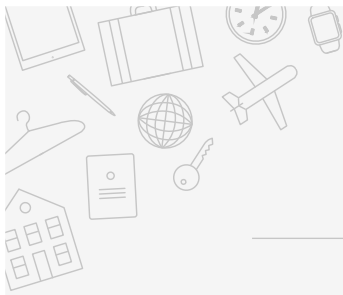
What can UK fly in, fly out lawyers do or not?

There's no distinction between situation of employees and self-employed. So the basic rule in Belgium is that employees will need a work authorisation if they're working in Belgium and self-employed will need a so-called professional court. This is more like the equivalent of a work authorisation. But for a self-employed, unless some kind of exemption applies. So that's something that should be checked and an exemption be invoked.

And when we look at the exemptions that are basically two types that we need to check. The first ones are the exemptions based on the trade and cooperation agreements. The TCA, which was entered into between the EU and UK following Brexit. For those of you are not familiar with it, it's very extensive agreements and there is also a specific chapter on the rights to enter and reside for natural persons for business purposes within these.

Within this chapter there are clauses regarding independent professionals, regarding the short term business visitors which are beneficial in a sense that they could lead to an exemption for both employees and self-employed in Belgium.

Now, how did authorities look at this at the TCA?



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Because obviously it's an international treaty. It's not it's not national law. The authorities in charge of immigration, they have pointed out quite clearly that as long as the clauses of the TCA that are invoked are sufficiently precise and unconditional that they will apply these provisions automatically.

And so, for example, when we look at the clauses regarding short term business visitors, dirty authorities accept that these clauses can be applied, but these are sufficiently precise and unconditional.

What does it mean in practice for UK fly in, fly out lawyers?

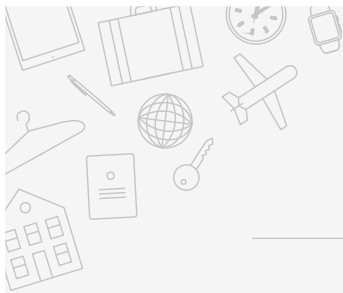
It does mean that as long as they are not providing services to general public, if they are not receiving remuneration from a Belgian source and if they only perform allowed activities, that they will not need a work permit or professional court to be active - what are the allowed activities?

As far as Belgium is concerned. These includes meetings and consultations. In a broad sense can be meetings with clients, meetings within the firm, and also involve trainings, training seminars. Although the definition of training seminars is this it's not very broad because it's rather limited to, let's say, classroom situations, observation.

So it's not very broad, but for meetings, for example, it can be very a very useful exemption. And what is the maximum duration there? It's 90 days and six month periods.

Unfortunately, there is when it comes to independent professionals, which is not a cause of the dirty authorities which have the tendency to say, okay, we did not consider these clauses to be sufficiently precise and unconditional.

So at the present, in the present situation, it is very unlikely that the rules laid out in the TCI regarding independent professionals can be invoked by UK attorneys to be active in Belgium, but there are exemptions. So I mentioned the first time exemption under the TCE specifically for UK attorneys.



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Second type exemptions are those who are generally applicable to all third country nationals. There we also make a distinction between employees and self-employed for employees. There's a similar one we discussed in meetings of consultations under TCA.

There's a similar exemption here, meetings in close circle where the idea is that the meeting relates to, let's say not your usual work. If a UK attorney comes to Belgium to advise a client, it's not a such a meeting in close circle in a sense of the law, because it's the attorney who is actually working.

If on the other hand, the meeting relates to new clients and you want to discuss files or if there's a discussion within the firm strategy meeting and things like that - evaluation process reviews.

Those are the kinds of business meetings that are meant by this tax exemption. There is a time limitation here overall per year. So two time limitations that must be met consecutively.

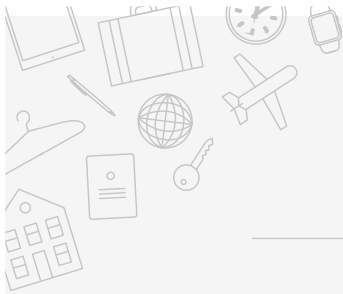
Second time have the exemption for employees, generally applicable is attending conferences, speaking at conferences without a time limitation

For self employed, there is a similar system for conferences is exactly the same. Also attending or speak speaking at conferences or lectures. That's perfectly exempt so you don't need any permits and also an exemption up to three months for business trips, which is defined a little bit shorter than for employees because it relates to it can relate to seeking contacts with professional partners or signing negotiate contracts, attending trade fairs and attending shareholder meetings.

So it's a little bit broader, but you can say that easily. Maybe to summarise, when it comes to the exemptions, what is in any event, covered are meetings.

We can always have some kind of discussion like is it's the meeting in a sense of the law. But as you can say, the business meetings up to 90 days and three months are exempt.

Thank you.



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So just so I'm very clear, if you have a British lawyer that is now traveling into Belgium and the purpose is just perhaps to visit the client, they're not giving advice.

They are not essentially going to be giving any kind of chargeable work. Then they can enter as a visitor. And how long is it that they can stay then in Belgium?

What stay is like I said, you always have to make a distinction between the right to work and the right to to reside or to stay. The right to stay is limited to 90 days in any 180 days. But as for the entire Schengen area, so you always have to look at not only Belgium but all countries. So if the UK attorney has already spent some time in another country, that must be taken into account.

Furthermore, the 90 days in any 180 days periods, it's a rolling period, so you always have to come back 180 days and see how many days have already spent in country.

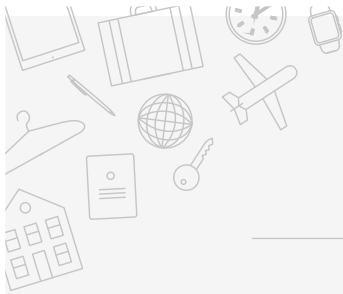
How many days do we have left? But that's the basic rule.

It is quite prescriptive.

And I think at the moment it's probably not being monitored at my opinion. But I think with a roll out of X, that that may change. But I'm expressing an opinion in terms of the next question. So if you are traveling on a British passport into Belgium, is there a visa that's issued at the port on arrival, if it's just for a short term, as if it's just a visit?

No, which is not so that there will not be a visitor visa or anything that will be issued on arrival, maybe just to adhere. There is one additional, let's say, immigration requirements that's linked to a short term stay. The UK attorney will well, unless the UK attorney stays in a hotel, which will probably happen if it's really short term, the UK attorney will have to go to the municipality where he or she resides and make what's called a declaration of arrival.

Basically it's what it says.



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You go to a municipality and say, here I am. I've arrived and I have 90 days to stay in Belgium. And that's the only thing that the documents will say, the arrival and the date of expiry.

But as I mentioned, if you stay in a hotel, there's not going to do that because hotels that keep registers of their guests and if necessary, the authorities can check their status between what day and what day. So that's a requirement. It's only only required if you do not stay.

Okay, very clear. Thank you.

And you've touched on this, Bernard, but so you've talked about the distinction on permission to reside and to to stay. But for the avoidance of doubt, if there are lawyers, UK lawyers that are going to see their client in order to provide the chargeable advice to even include preparing of legal documents, even if it's for a few days, it's then essentially consideration of whether the work permission is required.

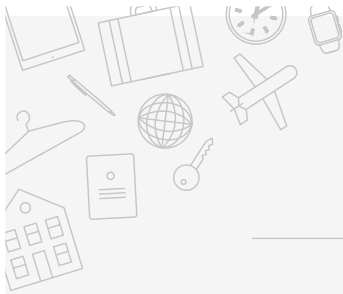
Let's say theoretically, yes. So for any chargeable works, indeed there will be the need to obtain a work permit for dealing with employees or professional code for dealing with self-employed, because like I said, the exemptions do not really cover actual work activities.

Okay.

And what happens if the lawyer then needs to travel frequently? I know in the UK that can sometimes cause a problem coming in, you know, into Belgium in order to see a client that they because they need to complete a project.

Is there a concern if they travel frequently into Belgium?

Well, obviously the first concern when you travel frequently is that you need to monitor the 90 days rule. But that's that's one issue. Make sure that you do not exceed the 90 days. As you mentioned at present, it should be monitored every time you enter and leave, which will probably does not happen nowadays. But things with agents will be will be very different indeed.



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So it is already important now to monitor that will become even more important. Secondly, the right to work, if you're, let's say, working on a on a project where you are providing advice, where you are, prepare legal documents and and stuff like that, then indeed it will be considered work and you will need, let's say, a long term support depending on the duration of the project, short term or long term work, work permit or professional court, indeed.

Thank you, Bernard.

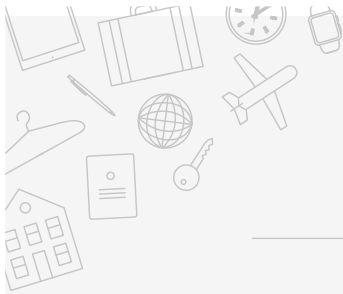
You've touched on that. The work permission. How does that work? Just in practice? How quickly can you actually obtain a work permit to work in Belgium?

Yep. So. Well, once again, I will deal with two things here. So to work both for employees and the professional code for self-employed, the work permit work authorisation for employees, that's an application that must be filed beforehand, which say the regional authorities of the place of employment or location of employment. Because in Belgium immigration is handled on regional level.

There are three regions Brussels, Flanders and Wallonia. I assume that most UK lawyers will come to Brussels so that in most cases the Brussels region will have jurisdiction. How does it work?

An application must be filed with the Brussels authorities. In most cases this will be a fast track, highly skilled application, fast track in the sense that there is no resident labor test required highly skills. There are basically two requirements. First one is a salary threshold, which is at this point fifty thousand, X.

Second requirement is a degree must be a higher education degree. If those two requirements are met, a highly skilled permits can be obtained. And for the purposes of UK attorneys, what would probably be easiest and fastest would be what we call the cross-border frontier work permits. So it's an authorisation that can be valid up to one year if necessary, which can be renewed, but the initial permits can be held up to one year. It will allow to work, but it will not allow to take up residence in Belgium.



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Furthermore, requirement is or the idea behind this is that one can only be considered a cross-border worker if one returns to UK at least once a week. But the advantage of this permits, as I mentioned, is that it will go substantially faster than than other permits, where you also need a residence authorisation.

We can say now, for example, if you would apply for highly skilled cross-border permits in Brussels, that would take between four and six weeks probably at this point in time.

Thank you. Bernard, my last question to you.

So you know how it goes. Law firms are really busy and clients are asking for meetings at the last minute. What would you advise if all else fails?

You know, we know we need work permission and it's going to be too long to obtain it.

What would your advice be if all else fails?

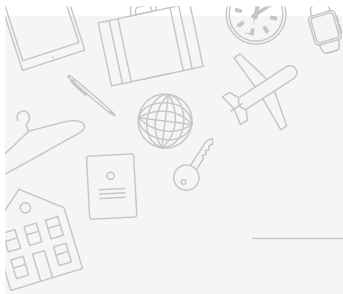
Yeah, the the solution in that case will be check if you have other people who can fly in, for example, people from other EU offices, perhaps more people with EU citizenship, because obviously they can they can travel to Belgium without a problem and work without any problem.

Another option is if you have like UK attorneys, maybe in other EU member states, you can have them fly in or flown, have them come to Belgium and let them work under the principle of freedom to provide services, because that's also something that's generally accepted both for employees and self-employed.

So people who play nationals, for example, are already established in EU member states as self-employed, as employees. If their employer sends them or their company sends them to Belgium to work, in most cases that will be exempt as well. So that might be a solution.

Thank you, Bernard.

Very, very helpful.



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I now turn to my colleague, Jessica Clay. As I said, she is a partner in our Regulatory department.

Jessica, thank you again for joining us today. My first question to you is, what is the regulatory position now for UK solicitors slash lawyers wishing to fly in or out of the out of Belgium?

Thanks Ilda. I think I'll start by saying that in terms of Belgium, there's already a fairly liberal regime in place for non EU lawyers and the position as such for the UK is very much strengthened, I would say by extremely positive working relationships between the Belgium bars and our Law Society of England and Wales.

So what that really means in practice is that on the basis that temporary practice on a FIFO basis is permitted for third country lawyers, UK lawyers will be able to advise in Belgium on a temporary basis on UK and international law as well as on EU law.

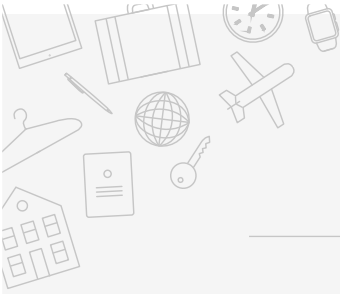
Thank you.

Are there any conditions or restrictions attached to the scope of permitted practice?

Yeah, there are some, so foreign lawyers can represent clients in arbitration, conciliation or mediation and that would include UK lawyers and they can appear with their clients before administrative bodies, for example. But they cannot represent their clients on their own, in the courts of Belgium, however, UK lawyers can attend court on client matters, but when they do so, they will need to be accompanied by a registered, qualified and practicing Belgian or EU lawyer.

Thank you. And my last question - will LPP apply?

So, in short legal professional privilege will not apply in respect of temporary practice on a fly in fly out basis matters unless the UK lawyer is an associated member of the Brussels bar, which is also known as the B list, and that is more more primarily associated with permanent presence in Belgium. So in short, a legal professional privilege would not apply.



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Thank you.

Jessica and Benard, thank you very much for your time.

Thank you to all of you for listening today.

We hope you found this session helpful.

Our contact details, both for Jessica Bernard and myself, will be made available with the release of this podcast. If you have any other questions, do feel free to contact us.

But otherwise, thank you very much for listening and enjoy the rest of your day.

Thank you.