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US IMMIGRATION & NATIONALITY LAW

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Feature Article:

SECURITY MEASURES: AN OVERVIEW

This article provides an overview of recent developments in security measures

in several countries implemented in response to terror attacks and related concerns.

Belgium

The 2015 terror threat is having direct and indirect effects on Belgian immigration law. The following summarizes highlights, with a main focus on foreign nationals:

1. A bill, dated July 20, 2015, and effective August 15, 2015, introduced criminal sanctions (imprisonment of 5 to 10 years) for those who either leave or enter Belgium to commit, organize, fund, and/or assist in preparing acts of terrorism in Belgium or abroad. A conviction for such crimes that leads to effective imprisonment of at least 5 years can also, for some Belgian citizens, lead to the revocation of Belgian citizenship by a court decision.
2. To try to control "foreign terrorist fighters" and "returnees" (people who return from conflict areas), the Belgian federal government has proposed a draft bill that would allow the registration and processing of passenger data.

The draft bill provides that passenger carriers and travel companies of all transport sectors (air and sea, high-speed trains, international bus transport) must communicate passenger data to a passenger database. These data can be analyzed for security purposes by the Passenger Information Unit (PIU), which will be part of the federal Ministry of Interior Affairs. The draft bill provides privacy guarantees, such as the organization of the PIU, and a limited list of purposes for which passenger data can be processed and analyzed.

The draft bill must go through the legislative process before it becomes effective.

3. The high volume of asylum seekers is affecting the workload of the federal immigration department, due not only to the increasing number of applications in general but specifically to the increasing number of family reunification applications.

To allow the immigration department to process the family reunification applications, the Belgian federal government has proposed a draft bill to extend the current processing time from a maximum of 12 months (6 months +

two possible 3-month extensions for complex files) to a maximum of 15 months (9 months + two possible 3-month extensions for complex files).

This extension will probably not have a huge effect on family reunification applications by family members of work permit holders because these applications are in principle prioritized. However, a delay in processing these applications cannot be excluded.

The draft bill must go through the legislative process before it becomes effective.

Canada

Effective March 15, 2016, certain international travelers will need an entry document, the Electronic Travel Authorization (eTA), to travel by air to Canada. This applies to visa-exempt foreign nationals—non-Canadians who are not required to have a visa to enter Canada. The requirement only applies to those traveling by air, not those traveling by land or sea. It does not apply to citizens of the United States (U.S. permanent residents will need an eTA). Thus, if you require a visa to enter Canada or you are a U.S. citizen, you will not require an eTA.

What is the purpose of the eTA? The implementation of the eTA program is a result of the Canada-United States Perimeter Security and Economic Competitiveness Action Plan. In essence, the eTA is a security measure that allows Canadian authorities to screen foreign travelers before they arrive to ensure that they are not inadmissible to Canada. In the absence of such a pre-screening measure, visa-exempt foreign nationals are not systematically screened for admissibility until they arrive at a Canadian port of entry. The eTA will allow Canadian authorities to lessen the expense and delay to travelers, airlines, and the Canadian government caused by significant numbers of travelers being deemed inadmissible when arriving at Canadian ports of entry. Reasons for inadmissibility include membership in terrorist groups, participation in war crimes or crimes against humanity, membership in organized crime groups, criminality, and public health risk. The United States has already implemented a similar travel authorization program. Travelers must show the eTA before boarding a flight to Canada or they will not be permitted to fly to Canada.

The requirement to obtain an eTA does not dispense with any other

authorizations or requirements applicable to a traveler, such as work permits or study permits. In addition, the traveler remains subject to examination by the Canada Border Services Agency upon arrival in Canada.

Who will need an eTA? Citizens of the following countries will need an eTA to travel to Canada by air as of March 15, 2016: Andorra; Antigua and Barbuda; Australia; Austria; Bahamas; Barbados; Belgium; British citizens*; Brunei; Chile; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hong Kong*; Hungary; Iceland; Ireland; Israel*; Italy; Japan; Republic of Korea; Latvia; Liechtenstein; Lithuania; Luxembourg; Malta; Monaco; Netherlands; New Zealand; Norway; Papua New Guinea; Poland; Portugal; Samoa; San Marino; Singapore; Slovakia; Slovenia; Solomon Islands; Spain; Sweden; Switzerland; Taiwan*; and Vatican City (the Holy See)*. It is best to always consult the Canadian government's website for updates at http://www.cic.gc.ca/english/visit/visas.asp#wb-sec.

* Certain citizens of the asterisked countries above require visas to travel to Canada and hence do not need an eTA.

Certain individuals are exempt from the eTA requirement. This group includes those who hold a valid Canadian temporary resident visa, members of the British royal family, and certain foreign nationals seeking only to transit through Canada as passengers on flights stopping in Canada for the purpose of refueling, among others.

How do you get an eTA? Applicants can access the eTA application online at http://www.canada.ca/eTA. Applicants must provide passport details, basic personal information, responses to background questions, and contact information. The online application process also allows an applicant to indicate whether there are any additional details pertinent to the application and any urgent need to travel to Canada, if applicable.

No documents are required for the eTA application. Canadian authorities may request additional documents later, to be submitted manually. Once an application is submitted, the applicant will receive an automated email confirming receipt and containing an application number and a link by which the applicant can check the status of the application. The cost is CAD$7.00. Applicants who are unable to submit the application electronically because of a physical or mental disability may do so by other means, including a paper form.

The eTA itself is electronic. There is no paper evidence or receipt provided to the applicant upon approval. Air carriers have access to the Canada Border Security Agency's database to confirm the presence of an eTA before the person boards the aircraft. Before a boarding pass is issued, the air carrier must receive an "ok to board" message from the CBSA database.

How long will it take to process an eTA? Most eTA applications are approved within minutes of applying. However, some requests may need more time to process. If that is the case for an application, Citizenship and Immigration Canada will email the applicant within 72 hours with next steps.

How long is the eTA valid? The eTA is linked to the applicant's passport. It is valid for five years or until the passport expires, whichever occurs first. The same passport used to obtain the eTA must be used for travel with the eTA.

France

Within hours after the horrific terrorist attacks in France on November 13, 2015, President François Hollande declared the country to be in a "state of emergency," which allowed the executive to move swiftly to arrest the suspected perpetrators and prevent new terrorist attacks. Measures taken included renewal of the state of emergency, a reexamination of the Schengen border rules, house arrests for mere suspicion of future wrongdoing, and dispossession of French nationality.

The State of Emergency

As set in the Law of April 3, 1955, a state of emergency can be declared in the event of imminent danger to the public following a disaster. Most member states of the European Union have similar laws, which provide exceptional powers to their executives during exceptional events.

Once declared by the Council of Ministers, the state of emergency in France gives the executive vast police powers, including carrying out arrests and searches, surveilling private information, seizing property, restricting mobility, and closing national borders. The executive can carry out these and other acts without judicial warrants, even when such warrants are otherwise mandatory, and without having to comply with the usual safeguards meant to protect the population from undemocratic conduct of its government. Fundamental civil liberties can be restricted or suspended for the duration of the state of emergency.

The initial duration of the state of emergency in 2015 was limited to 12 days. President Hollande had it extended to the end of February 2016 by an extraordinary joint vote of the Senate and the Parliament. President Hollande has stated that he intends to seek its further extension for yet another three-month period, which if approved will last through the end of May.

Although currently there is no strong criticism of the state of emergency and its renewals, the voices of the defenders of civil liberties are becoming increasingly audible.

Six weeks after the events, warrantless searches are still frequent and are carried out in a sometimes brutal manner (doors are often kicked in without warning, often in the middle of the night). The brutality (but not the frequency) is receiving negative press coverage.

The government will also put forward for vote a French version of the USA Patriot Act, which will allow it to continue surveillance of private information, maintain national border controls, place suspects under house arrest, and dispossess dual nationals of their French nationality if they are convicted of terrorism or related activity.

Schengen Area and National Borders

France had incidentally restored its national borders just before the November 13 attacks, for the security of the United Nations Climate Change Conference, or COP21, in Paris. The borders remain restored after COP21 under the state of emergency.

The Schengen agreement allows France and its other adherents to restore national borders temporarily to safeguard national interests. The French national borders may remain restored for up to two years within the framework of the Schengen agreement.

However, the restoration of national borders has not resulted in rebuilding of barriers and customs offices on each border crossing, which would involve an allocation of considerable resources. In his public speech following the November 13 attacks, President Hollande stated that 1,000 additional customs officers are to be hired and trained to guard the restored borders. The government's message seems to be that it is preparing to guard the newly restored borders for some time to come.

Preceding the November 13 attacks in Paris, the Schengen countries were already facing border issues due to the massive and continual flow of refugees penetrating the Schengen exterior borders and then crossing the virtual national borders to try to reach one of several generous hosts, such as Germany and the Scandinavian countries. There was little consensus before November 13 on how to deal with the refugee crisis at the national and EU levels.

The November 13 attacks made national and EU-wide security the determining principle in the issue of how permeable the outer and inner borders must be. The answer now seems to be: we do not want any permeability at all, at the level of the outer Schengen border, if it entails the risk of letting in potential terrorists among the mass of refugees. This answer is loud, consensual, and on the front pages of newspapers throughout the Schengen area. The need to restore internal borders will depend on the efficiency of the outer Schengen borders in putting a stop to the unchecked flow of refugees. Until then the internal borders are being restored on an ad hoc basis.

In the months to come, it is likely that the EU border control agency, Frontex, may receive substantial resources to assist the national authorities where they need help: escorting refugee boats back to territorial waters of embarkation and managing refugees who have already entered the Schengen area. But will Frontex be able to provide a feeling of security and avoid a massive restoration of national borders within the Schengen area?

If the walls on the borders cannot be raised high enough, an alternative may be to push them further out beyond the border. This is precisely the deal the EU wants to make with Turkey. But when thought is put to this alternative, it looks more like the EU will be just buying time, and very little of it.

House Arrests of Suspects

The shock following the Paris attacks was such that no one opposed the declaration of the state of emergency. However, the government is beginning to face mild criticism for placing under house arrest persons who are suspected of having embraced the cause of militant jihad, but with no tangible proof of having committed any illegal acts. Marc Trévidic, a member of the French judiciary and an authority on antiterrorism, considers that only a very small percentage of those on the government's long suspicion list (*fichier S*) are potential terrorists, and it is very difficult to distinguish them from the others.

According to Trévidic, if harmless persons are treated as would-be terrorists, then they will be encouraged to become so.

House arrests are being logged and monitored by journalists. Some are being challenged in courts, and the first cancellation of a house arrest was ordered last week.

Dispossession of French Nationality

The government has proposed to dispossess dual nationals of their French nationality if they are convicted of terrorism or acts related to terrorism. The government's proposal would have French nationals dispossessed of their French nationality even if they were born French. The proposal does require the dispossessed national to have another nationality to fall back on, to avoid creating a stateless person, which would make the proposal questionable under international conventions and treaties. For this proposal to become law, France may need to modify its constitution.

Under the proposal, a French national who has conserved or acquired another nationality may be punished first in France and then a second time by being banished to another country with which he or she may not have any ties, and with all the ensuing damage to his or her right to family life in France. If the proposal passes the French constitutional hurdle, it will still have to be acceptable under the European Convention on Human Rights.

So far President Hollande's proposal has divided his political party (Partie Socialiste) and resulted in the resignation of his Minister of Justice, Christiane Taubira, who some say was the last socialist to leave the socialist government.

Italy

In April 2015, following the terrorist attacks in France and Denmark in January and February 2015, Italy adopted a decree aiming to fight terrorism (Decree no. 7/2015 converted into law on April 15, 2015) and, in particular, the phenomenon of so-called "foreign fighters."

The main points in the decree are:

- Foreign fighters—those who travel abroad to join the Islamic State (ISIS)—as well as anyone found guilty of organizing, funding, or supporting this cause will face 5 to 8 years in prison if convicted.
- Anyone training to commit acts of terrorism in Italy will face 5 to 10 years

in prison (for example, so-called "lone wolves").
- Use of the Internet to plan terrorist acts (such as recruiting foreign fighters and supporting foreign fighting in the name of jihad) is considered an aggravating circumstance.
- Internet providers must shut down jihadist websites, and IT and telephone providers must store all user traffic data until December 31, 2016.
- Wiretapping of Internet communications of international terrorism suspects is now permitted.
- Intelligence agents can infiltrate the prison system to investigate terrorist recruitment activities.
- Funds are assigned for participation in international security operations in Europe.
- Human traffickers caught in the act of bringing migrants to Italy will be immediately arrested.

Following the attacks in Paris in November 2015 and per the resolutions adopted during the European Council in Brussels on November 20, 2015, Italy committed to strengthening controls of external borders, increasing the fight against money laundering and terrorist financing, information sharing, finalizing a European Union (EU) Passenger Name Record (PNR) agreement before the end of 2015, and financially supporting the implementation of the Council's conclusions (using the Internal Security Fund).

In light of the Paris attacks, the Italian government also invested additional funds to reinforce the country's security, but no additional specific laws were adopted. The government actions were focused mainly on security cooperation and intelligence-sharing at an international level, with the aid of technology and databases.

Special security strategies were implemented in major Italian cities such as Rome and Milan with increased surveillance and deployment of special armed forces. Control checks were also reinforced over the main immigration flow via the Mediterranean sea into Italy, and an increasing number of individuals considered to be a risk to national security were deported.

The Italian prison system is also under scrutiny in an effort to minimize the risk of proselytizing and radicalization within prisons.

A final area of counterterrorist measures in Italy is related to airspace control,

including a system to protect from possible drone attacks.

On December 16, 2015, Italy ratified the EU PNR agreement for the registration of passenger data, which regulates the transfer of PNR data from the airlines to national authorities, as well as the processing of this data. Under the new directive, airlines must provide PNR data for flights entering or departing from the EU.

With respect to the ramifications for companies and employees, expect applications for both work and residence permits to be highly scrutinized internally by authorities resulting in delays in overall processing times.

United States

On January 21, 2016, the United States began implementing changes to the Visa Waiver Program (VWP) under the "Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015." Under this new law, travelers in the following categories are no longer eligible to travel or be admitted to the United States under the VWP:

- Nationals of VWP countries who have traveled to or been present in Iran, Iraq, Sudan, or Syria on or after March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country)
- Nationals of VWP countries who are also nationals of Iran, Iraq, Sudan, or Syria

The Department of Homeland Security (DHS) said these individuals will still be able to apply for visas using the regular immigration process at U.S. embassies or consulates. For those who need a U.S. visa for urgent business, medical, or humanitarian travel to the United States, U.S. embassies and consulates will process applications on an expedited basis.

Under the new law, travelers who currently have valid Electronic System for Travel Authorizations (ESTAs) and who have previously indicated holding dual nationality with one of the four countries listed above on their ESTA applications will have their ESTAs revoked.

The Secretary of Homeland Security may waive these restrictions if he determines that such a waiver is in the law enforcement or national security interests of the United States. Such waivers will be granted only on a case-by-case basis. As a general matter, categories of travelers who may be eligible for a

waiver include:

- Individuals who traveled to Iran, Iraq, Sudan, or Syria on behalf of international organizations, regional organizations, and sub-national governments on official duty;
- Individuals who traveled to Iran, Iraq, Sudan, or Syria on behalf of a humanitarian nongovernmental organization on official duty;
- Individuals who traveled to Iran, Iraq, Sudan, or Syria as journalists for reporting purposes;
- Individuals who traveled to Iran for legitimate business-related purposes following the conclusion of the Joint Comprehensive Plan of Action (July 14, 2015); and
- Individuals who traveled to Iraq for legitimate business-related purposes.

In addition, DHS said it will continue to explore whether and how the waivers can be used for dual nationals of Iraq, Syria, Iran, and Sudan.

Any travelers who receive notification that they are no longer eligible to travel under the VWP are still eligible to travel to the United States with valid nonimmigrant visas issued by a U.S. embassy or consulate. Such travelers must appear for interviews and obtain visas in their passports at a U.S. embassy or consulate before traveling to the United States.

The new law does not ban travel to the United States, or admission into the United States, and the great majority of VWP travelers will not be affected by the legislation.

An updated ESTA application with additional questions is expected to be released in late February 2016 to address exceptions for diplomatic and military-related travel provided for in the new law.

DHS's announcement is at https://www.dhs.gov/news/2016/01/21/united-states-begins-implementation-changes-visa-waiver-program.

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Country Updates:

BELGIUM

Belgium sets new 2016 salary thresholds for some fast track work permits B and the

Blue Card.

1. One of the requirements for some Belgian fast track work permits B, as well as for the Blue Card, is a salary threshold. The annual gross remuneration must meet the threshold amount, which is adjusted on a yearly basis.
2. Work permits are processed by the Belgian Regions: Flanders, Brussels, and Wallonia.
3. The new salary thresholds effective January 1, 2016, are:

   - For highly skilled work permits: €39,824 for all three Regions (€39,802 for 2015);
   - For executive level work permits: 66,442 € for Flanders (€66,406 for 2015) and Wallonia (66,405 € for 2015), and 66,441 € for Brussels (€66,405 for 2015);
   - For Blue Cards: €51,494 for Brussels (€51,466 for 2015), and probably €51,494 for Flanders and Wallonia (€51,465 for 2015).

4. The Ministries will only issue a fast track work permit B or Blue Card if it is clear that the employee's salary will meet the threshold amount. The Ministries will only take into account amounts that will definitely be paid. Discretionary bonuses and COLA (Cost Of Living Allowances) cannot be taken into account when processing work permit applications. Some benefits in kind may qualify, depending on the specific facts.

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BRAZIL

A new resolution has been published.

A new Normative Resolution (No. 118) was published in December, canceling NR-84 and increasing the foreign investment required for a personal investor to obtain a permanent visa in Brazil to a minimum of R$500,000, with some special cases between R$150,000 and R$500,000.

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CHINA

Companies filing for work permits in Beijing must receive preapproval.

As of January 4, 2016, companies sponsoring work permit applications and

Expert Certificates in Beijing must receive preapproval through online certification with the Beijing Labor Bureau. This includes applications for short-term work authorization, employment licenses, work permits (including permits for Hong Kong, Taiwan, and Macao nationals), and expert certificates. Sponsoring companies must apply for and activate a digital certificate with the Labor Bureau online. The Labor Bureau will review the application and schedule an interview for the sponsor to submit the required documents in person.

This is expected to increase the application time for a work permit in Beijing. It is recommended that sponsoring companies register with the Labor Bureau as soon as possible to avoid delays in the work permit process.

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COLOMBIA/EUROPEAN UNION

The European Union (EU) and Colombia have signed a short-stay visa waiver agreement.

The EU and Colombia have signed a short-stay visa waiver agreement allowing Colombians free entry into the 26 European countries. The new visa regime provides for visa-free travel for EU citizens when traveling to the territory of Colombia and for citizens of Colombia when travelling to the EU, for a period of stay of up to 90 days in any 180-day period.

To benefit from visa-free travel, citizens from the EU and Colombia must possess a valid ordinary, diplomatic, service/official, or special passport. Visa-free travel applies to all categories of persons and for any kind of travel (e.g., tourism, cultural visits, scientific activities, family visits, business), except for persons traveling for the purpose of carrying out a paid activity.

The text of the decision on the conclusion of the agreement, and of the agreement, will now be sent to the European Parliament with a view to obtaining its consent before the agreement can be concluded. However, it is being applied on a provisional basis as of December 3, 2015.

Ireland and the United Kingdom are not subject to the agreement, in accordance with the protocols annexed to the EU treaties. The visa regime for these member states remains subject to their national legislation.

More information on this agreement is at

http://www.consilium.europa.eu/en/press/press-releases/2015/12/02-visa-waiver-colombia/. The full text of the agreement is at http://data.consilium.europa.eu/doc/document/ST-12094-2015-INIT/en/pdf.

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ITALY

Several developments have been announced.

New Annual Quota Decree

A new annual quota decree setting numerical limits on foreign workers was published on February 2, 2016. The new decree sets a limit of around 30,000 for subordinate, autonomous work, and other categories of employment, included seasonal workers.

17,850 quotas for subordinate and self-employed work are allocated as follows:

- 1,000 for those who have completed study/training programs in their home countries (under article 23, legislative decree no. 286, July 25, 1998)
- 2,400 for those performing the following autonomous work activities:

- Entrepreneurs intending to carry out investment plans of interest for the Italian economy, for a minimum amount of €500,000 and aimed at creating at least three new work positions
- Freelance workers in skilled regulated professions (e.g., lawyers, doctors, architects) or in professions not regulated by professional registers or by corporative arrangements but nationally representative and included in Public Administration lists
- Officers and owners of noncooperative companies as foreseen by the law on entry visas
- Internationally well-known artists or those with high professional qualifications employed by public or private organizations
- Individuals willing to set up innovative start-up companies (under law no. 221, December 17, 2012)

- 100 for subordinate and autonomous work, reserved for individuals of Italian origin with at least one Italian parent (up to third in line of direct ascendancy) residing in Argentina, Uruguay, Venezuela, or Brazil
- 100 for non-EU citizens who have taken part in Milan Expo 2015

Conversion of Existing Permits Into Work Permits

- 4,600 for conversion of seasonal work permits into non-seasonal work permits
- 6,500 for conversion of study/internship/training permits into subordinate work permits
- 1,500 for conversion of study/ internship/training permits into self-employed work permits
- 1,300 for conversion of EC long-term residence permits issued by other EU Member States into an Italian subordinate work permit
- 350 for conversion of EC long-term residence permits issued by other EU Member States into an Italian autonomous work permit

Online applications can be submitted by registering on the website of the Ministry of Interior at http://nullaostalavoro.dlci.interno.it/Ministero/

The remaining quotas are reserved for seasonal workers and can be applied for starting February 17, 2016.

Quotas will be allocated on a first-come, first-served basis.

Mandatory Employment Notifications and Immigration Procedures

Italian immigration authorities have fully implemented some changes to the immigration laws introduced in 2012 and 2014 (legislative decree 16 July 2012, n. 109, and legislative decree 4 March 2014, n. 40).

Authorities have lifted the Italian employer's obligation to notify the Immigration Office (*Sportello Unico per L'Immigrazione*) separately whenever a mandatory employment notification is needed.

To comply with the mandatory employment notification requirement, an employer must send to the Employment Center relevant to the place of work the applicable online form through the government CO e-Service (*Comunicazioni Obbligatorie* , which is Italian for "Mandatory Communication"). By doing so, all relevant authorities involved are notified at the same time: the National Social Security Institute (INPS), the Italian Workers' Compensation Authority (INAIL), and any other relevant social security institutions, as well as the government local immigration office (*Sportello Unico per L'Immigrazione*).

Through filing the form, the employer undertakes not only the commitments relevant to the employer relationship but also, in the case of foreign nationals,

those pertaining specifically to immigration regulations.

Mandatory employment notifications are required in a variety of cases, including:

- When an employee is hired;
- When an employee is assigned to work at a company, though remaining employed at the sending employer;
- When a job relationship/assignment ends or is canceled
- When an employee is transferred; and
- Wen there's a change in the work place.

The online mandatory employment communications can be sent only by the employer or by a consultant/agency duly accredited and authorized to deal with the relevant online procedures (see https://www.co.lavoro.gov.it/).

Consequences in immigration procedures. By law, an Italian employer no longer must notify immigration authorities separately whenever there is a variation in the conditions indicated in the contract of stay (e.g., a change in the anticipated end date of assignment, a cancelation, or a change in workplace). Now the employer need only submit the online form.

Red flags. Because changes in law are implemented slowly and vary throughout the country, employers should continue to send certain notifications separately to the immigration offices to ensure that they are correctly received. In particular, employers shoul continue to notify authorities of any significant changes like the anticipated end of assignment, a cancelation, or a change in workplace. For changes to the contract of stay that are not "ordinary," the employer should contact the relevant immigration office for guidance.

Any employer failing to comply with the mandatory employment notification procedure is subject to administrative penalties ranging from 250 to 1,500 EUR for each employee. (See article 19, legislative decree 276/03—labor regulations.) Therefore, any employer must be sure to use the government CO e-Service as appropriate.

Self-Certification of Foreign Legal Residents' Data in Public Offices

The Court of Brescia (Labor division) ruled on February 4, 2016, that the right to provide a self-declaration confirming data already in possession of Public Offices (such as residency in Italy), as set forth for by articles 46 and 47 of

Presidential Decree 445/2000, must be granted also to any foreigners legally residing in Italy. Accordingly, a foreigner who is submitting an application to a Public Office can avoid submitting certificates issued by different Public Offices and instead can provide a self-declaration confirming that the data submitted is true.

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NETHERLANDS

Amendments to the entrepreneur visa schemes and other important changes have been announced.

Important exemptions for startup entrepreneurs have been introduced, streamlining the application process and allowing them to extend their stay in the Netherlands. The requirements for high net worth individuals have also been made less strict. Furthermore, the search year visa for young graduates with a foreign degree will include work authorization, and graduates from Dutch institutions can preserve their search year for up to three years after graduation. Finally, the 2016 salary thresholds for highly skilled migrants are listed below.

New Exemptions for Startup Entrepreneurs

The startup visa clearly remains a favorite of Dutch policymakers. First, renewal of stay has been made easier. Start-up visas are issued for only one year, non-renewable. As of January 1, 2016, startup visa holders can prolong their stay easily by applying for a *general* entrepreneur visa (*verblijfsvergunning als zelfstandige*). Whereas regular entrepreneur visa applicants must go through a cumbersome points assessment (resulting in a very low average success rate of 15%), the former startup visa holder only needs an endorsement from his or her facilitator. The facilitator—the same one that has sponsored the startup visa in the first place—must make a written statement that under its guidance, the startup has "performed to satisfaction" during the first year of stay in the Netherlands. No further requirements apply. As for regular applicants, the entrepreneur visa is granted for two years, bringing the total stay of the startup to three years.

Another important exemption was introduced in October 2015: startup visa applicants are exempt from the entry clearance visa requirement (*machtiging tot voorlopig verblijf,* MVV). This means that a startup visa applicant can apply

and await a decision on the application in the Netherlands without having to travel back to the country of origin. This is remarkable because the MVV requirement is one of the most sacred cows of the Dutch immigration system. The startup visa scheme was seriously hampered by this MVV requirement. Many startups had to interrupt high-pressure facilitator programs to travel back to their countries just to collect visa stamps. Clearly, the government intends to make this visa scheme work.

Making the "Golden Visa" Work

The conditions to obtain a "Golden Visa," or high-net-worth individual permit, were made less strict. No longer is an auditor required to state that the funds of the applicant are of legitimate origin. These statements were superfluous because the government does its own checks on the origin of these funds. To recall the main requirement, an investment of €1,25 million must be made into a Dutch company with an innovative character. The necessity of innovativeness of the investment will be made alternative; if the investment target is not so innovative—e.g. acquisition of real estate—this can be compensated for by creating 10 new full-time jobs instead. Another change is that the permit is issued in the first instance for three years instead of one year. These changes will enter into force on July 1, 2016.

The amendments seem to be prompted by the lack of success of the scheme. Only 10 applications were filed in the first three years, of which only one was approved.

Highly Educated Persons: Important Changes

The "highly educated persons" visa is a one-year, non-renewable visa for persons with tertiary education (a bachelor's degree or higher) from a foreign top-200 university. This program is meant to attract valuable immigrants, but it has not resulted in many applicants. The highly educated persons visa is granted for a "job search" year but paradoxically does not allow for work of any kind. To work legally, the highly educated person must first find a prospective employer willing to sponsor a work permit. This will be changed. The visa will allow for work during the search year without specific conditions ("labor freely permitted; work permit not required"). This will allow the visa holder to make a living during the search year. Ultimately, at the time of renewal, an employer must be found to sponsor the application for an extension of stay; e.g., through a highly skilled migrant permit (*kennismigrant*).

Another important change was announced relating to the search year visa for graduates from Dutch tertiary education institutions. Until now, the search year was available during the first 12 months following the date of graduation. Under the new rules, this will be extended until three years after graduation. The visa will allow graduates to return home after their graduation and spend some time there (or elsewhere), and still return to the Netherlands to look for a job. In addition, the graduates' search year visa will become available to former researchers who have completed their research.

The effective date of these new rules has not been announced yet.

Salary Thresholds for 2016

The new salary thresholds for 2016 for highly skilled migrants (*kennismigranten*) and EU Blue Card holders have been published. As of January 1, 2016, the following gross monthly salary amounts apply, to which a statutory 8% holiday pay is added (see the figures in parentheses):

Highly skilled migrant aged 30 and above: €4,240 (i.e., €4,579.20 inclusive of 8% holiday pay)
Highly skilled migrant younger than 30 years: €3,108 (€3,356.64)
Highly skilled migrant with a Dutch degree: €2,228 (€2,406.24)
EU Blue Card holder: €4,968 (€5,365.44)

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RUSSIA

Various developments have been announced.

Restrictions on Visas and Employment of Turkish Workers

In accordance with Presidential Order No. 583, employers in Russia can no longer employ Turkish citizens as of January 1, 2016. This ban does not include those already employed and working in Russia on the basis of labor and civil agreements with Russian employers.

It is probable that employers will not be able to file for extensions of work permits for Turkish citizens working in Russia now after their work permits expire.

It has been reported that the Federal Migration Service office is not accepting applications for technical or business invitation letters for Turkish citizens. Also,

a number of Turkish citizens having valid work visas issued before the Presidential Order came into force were denied entry to Russia recently.

Additionally, as part of a sanctions package that began January 1, 2016, a bilateral agreement between Russia and Turkey on simplification of visa requirements, in effect since May 12, 2010, is suspended. This means that in 2016, Turkish citizens cannot enter Russia without a visa except for diplomats and those who have residence permits.

The Presidential Order introducing these sanctions will apply until further notice.

Definition of Medical Insurance Minimum Requirements

In accordance with § 10, article 13 of FL–115, "On the legal status of foreign citizens in Russia," foreign citizens performing work activities in Russia must have medical insurance that ensures they can receive first aid and urgent medical care if needed while in Russia.

On January 31, 2016, Bank of Russia requirements regarding this issue entered into force. In accordance with these requirements, medical insurance documents held by foreign citizens should include the following:

- *Information regarding the insurer*. For persons: full name, sex, date of birth, citizenship, residence address, address registration date, passport details, contact details. For individual entrepreneurs: full name, sex, date of birth, citizenship, residence address, address registration date, passport details, contact details, state registration date, details of registration document confirming individual entrepreneur's entry to unified state register of entrepreneurs. For legal entities: legal form, title, address, contact information, full name and job position of a person entitled to sign medical insurance agreement on insurer's behalf, and documentation of the basis on which he or she was granted these rights;
- *Information regarding the insured person*. This includes the full name, sex, date of birth, type and ID document details, residence address, citizenship and contact information;
- *Information regarding the insurance company*. This includes the legal form and full title, license number and date, address, phone, URL of official Internet website, bank details, full name and job position of a person empowered to sign a medical insurance agreement on the company's

behalf, and documentation of the basis on which he or she was granted these rights;
- *Certain information on the medical insurance certificate*. This includes the series and number of the certificate, number of visual control device, date of certificate issuance, term and territory where the certificate is valid, insurance fund, and insurer's signature; and
- *Validity term of the medical insurance certificate*. This should be determined on the basis of the requested term of the patent or work permit, and the territory where the certificate is valid must include all Russian regions where the assignee plans to work.

Insurance companies must amend their documentation in accordance with the above requirements within 120 days of January 31, 2016. This means that starting May 1, 2016, the Federal Migration Service office will require medical insurance certificates to match the above requirements.

Fines for Violating theRequirement to File for Work Permit Amendment Due to Passport Change

Beginning January 1, 2016, all Federal Migration Service offices stopped accepting applications for work permit corrections if the seven-business-day deadline was violated. To file such documents, applicants now must pay an administrative fine of 4–5,000 RUB.

Salary Payment Rules for Highly Qualified Work Permit Holders

Monthly salary payments for HQS work permit holders should be at least 167,000 RUB gross. Should the HQS work permit holder take sick leave and/or unpaid leave or other type of leave, his or her salary should be at least 501,000 RUB gross for three months (quarter). This is in accordance with article 13.2, Federal Law 25.07.2002, N 115-FL (amended 30.12.2015).

Foreign National Passport Validity Requirements

Passport validity for HQS work permit applicants should not be less than three years from the date of work permit application filing at the Federal Migration Service office. This requirement also applies to HQS work permit extension applications.

Passport validity for standard work permit applicants should not be less than one year from the date of work permit application filing at the Federal

Migration Service office.

Passport validity for work visa invitation letter applicants, including accompanying family members, should not be less than 1.5 years from the date of requested entry into Russia.

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TURKEY

Several developments have been announced.

New Online Visa Filing System for Consular-Issued Visas

The Turkish Ministry of Foreign Affairs announced in January 2016 a new online visa filing system for consular-issued visas. The new consular visa online system applies to AMS (Assembly, Maintenance and Service) visas and work visas, and those visitors who are not visa-free or E-visa eligible. This new system is not to be confused with the E-visa system for eligible visitors that started in 2013.

Foreign nationals filing Turkish visa applications at a Turkish consular post must now upload their applications and supporting documents online before their appearance at the applicable consulate through the MFA's online visa system (https://www.konsolosluk.gov.tr/eKonsolosluk/Sayfalar/VizeBasvuru/VizeBasvuru) or at http://www.visa.gov.tr. Applicants must select the specific consular post and category of visa for which they wish to apply (e.g., Work, AMS, Student, Intern) and include biographical information. The applicant then selects an appointment date. The applicant will receive an email confirmation reiterating consular filing details for the specific consular post. The email will contain a reference number allowing the applicant to re-log into the system to edit or change the appointment date. The applicant must still submit his or her visa application form and supporting documents *in person* at the Turkish consular post.

The online system has several glitches and is still being amended frequently.

Proposed Changes in Turkish Visa and Immigration Policy

Meanwhile, proposed changes in visa and immigration policy in Turkey are rife with rumors. These are a result of both deteriorating relations with Russia and pressure on the EU to change Turkey's visa requirements as it rekindles membership talks. The following is what can be confirmed:

Russian nationals. Despite Russia's greatly enhanced restrictions on Turks' entry and work authorization, there have not been reciprocal moves by Turkey. Although this could change in 2016, Russians still enjoy visa-free entry for up to 60 days. Restrictions on work permits are not anticipated, according to unofficial reports.

Syrian work permits. Syrian nationals' exemption from the 5:1 ratio of Turkish to foreign employees is on the table for removal. Some denials based on this issue are on appeal. A modification of Syrian work permit issuance is anticipated in early 2016.

Eligibility for visa-free and E-visa entry. Turkey has been on an especially long road to EU membership talks. But now that relaxation of visa entry into EU countries for Turks is on the table, the EU has made it clear that Turkey's visa-free and e-visa regime is problematic for many nations that are required to obtain consular visas to enter the EU. It is anticipated that a significant number of countries will not be allowed visa-free or E-visa entry into Turkey in the long term.

Upgrades to passports and ID cards. Both passports and ID cards (*kimlik*) are set to undergo production changes in 2016 to meet EU requirements.

The issues summarized above are likely to be subject to many changes in 2016.

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UNITED KINGDOM

Several developments have been announced.

Hot Topics for 2016

A number of important immigration-related issues are coming up in 2016 for the United Kingdom (UK). There are changes to the Registered Travellers Scheme. Also, on January 19, 2016, the Migration Advisory Committee (MAC) published a widely anticipated Tier 2 review, "Balancing Migration Selectivity, Investment in Skills and Impacts on UK Productivity and Competitiveness." Following the publication of the MAC report on the Tier 1 (Entrepreneur) route, it is very likely that significant changes will be introduced to this route in April 2016. The Immigration Bill is likely to pass into law in April. Additionally, new fees are proposed to take force in or after April.

Highlights of these and other changes in 2016 are summarized below.

Changes to the Registered Travellers Scheme

The Registered Travellers Scheme has been opened up to a greater number of applicants. Before it was only available to applicants from Australia, Canada, Japan, New Zealand, and the United States. Now it has been opened up to nationals from Hong Kong (for those with a Special Administrative Region passport), South Korea, Singapore, and Taiwan (the passport must have the personal ID number on the photo page). The categories of applicant include all visa holders with the exception of Tier 5 (Sporting & Creative Concessions), EEA family permit holders, and those with discretionary leave outside of the immigration rules.

The other change is that it is now available to visitors who have visited the UK at least four times in the previous 24 months (formerly this was 12 months).

The number of ports offering the scheme has also expanded and includes:

- Gatwick
- Heathrow
- Birmingham
- East Midlands
- Brussels, Lille, and Paris (rail terminals)
- Manchester
- Edinburgh
- Glasgow
- London City
- Stansted
- Luton

Applicants need to apply online at https://www.gov.uk/registered-traveller. The fee is £70 for a 12-month membership. If a new passport is obtained once membership has been secured, the applicant must pay £20 for passport details to be updated on the Home Office system.

Proposed Fee Changes

On January 11, 2016, the UK government announced proposed changes to the fees for visas, immigration and nationality applications, and associated premium services that will take effect following legislation to be set forth before Parliament in April 2016.

The government proposes to set maximum levels on the amounts for broad categories of fees that can be charged by the Home Office over the next four years. There are no current plans to raise fees to the maximum levels. However, the stated goal is to make the border, immigration, and citizenship system self-funded by those who use it by 2019-2020.

Changes include:

- A 2% increase for visit, study, and work visas:

- Entry clearance fees for Tier 2 (Intra-Company Transfer) visas in the Short-Term Staff, Sport, and Minister of Religion subcategories will increase from £445 to £454.
- Entry clearance fees for Tier 2 (General and Intra-Company Transfer) visas up to 3 years will increase from £564 to £575.
- Entry clearance fees for Tier 2 (General and Intra-Company Transfer) visas greater than three years will increase from £1,128 to £1,151.
- In-country leave to remain fees for Tier 2 (Intra-Company Transfer) visas in the Short-Term Staff, Sport, and Minister of Religion subcategories will increase from £445 to £454.
- In-country leave to remain fees for Tier 2 (General, Intra-Company Transfer, Sport, and Minister of Religion) visas up to three years will increase from £651 to £664.
- In-country leave to remain fees for Tier 2 (General and Intra-Company Transfer) visas greater than three years will increase from £1,302 to £1,328.

- Fees for dependents will be charged in line with the main applicants.
- A proposed maximum fee for all Tier 2 applications of £1,500. As stated above, however, there are no immediate plans to increase the fees to this amount.
- In-person expedited processing fee for in-country applications will increase from £300 to £400.
- Expedited processing of applications not made in person will increase from £300 to £375.
- A 25% increase in settlement fees for 2016-17. For main applicants and each dependent applying for settlement, fees will rise from £1,500 to £1,875. The proposed maximum level of fees for this category is £3,250 per applicant.

- A 25% increase in nationality fees.
- No change in fees for sponsor license applications, renewals, or maintaining the license.

The new fees for applications can be found in the fees table for 2016-17 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491069/Fees_Table_-_table_with_further_detail_of_indicative_fees_for_2016-17.pdf.

UK Immigration Bill 2015 and Anticipated Changes in 2016

If enacted in its current form, the provisions in the Immigration Bill relating to unauthorized work will require ever more vigilance on the part of sponsors and migrants to avoid penalties, including severe criminal sanctions.

The Bill proposes the creation of a new criminal offense of illegal working, which will affect migrants in circumstances where they are either working in the UK without permission, or continue to do so once either their permission is invalid or expires, or they are subject to a condition preventing them from undertaking the work they are doing. In England and Wales, an offense will be punishable by imprisonment for up to 51 weeks, a fine, or both, while in Scotland and Northern Ireland, offenders may face imprisonment for a term of up to six months and/or a fine. A migrant convicted of this offense may also have his or her earnings seized as the proceeds of a crime.

The Bill also amends the existing offense of employing an illegal worker. Previously, an employer had to have known that the migrant did not have work authorization to be guilty of the offense. Under the new provisions, the offense may now be committed by an employer who either knows or has reasonable cause to believe that a person is working without leave (permission). The maximum penalty will be raised to five years' imprisonment (currently two).

An immigration officer may also arrest, without a warrant, a person whom he or she has reasonable grounds for suspecting has either committed or is attempting to commit an immigration offense.

A further new provision will give authority to a Chief Immigration Officer to issue a notice to close business premises for up to 24 hours (up to 48 hours if issued by an Immigration Inspector) if he or she is reasonably satisfied that an illegal working offense is being committed. This is subject to the condition that the employer either has an unspent conviction of employing unauthorized

workers, has received a civil penalty for employing unauthorized workers within the past three years, or has failed to pay a civil penalty that is due.

The Bill is moving through all the parliamentary stages at a rapid pace. As of January 20, the bill was in the committee stage in the House of Lords. Although amendments have been proposed, none has been successful. Further provisions that will restrict migrants' access to services, including holding a bank account, driving, and renting property, could lead to a dire outcome for some migrants through no fault of their own, perhaps because they followed an erroneous decision by the Home Office or because the Home Office's records were not up to date. Migrants with full working rights could find themselves dismissed from employment if the Home Office's records are not up to date or inaccurate, and as a result they could be unable to rent, maintain a bank account, or drive in the UK. Because appeal rights will also be removed for all except asylum cases, migrants will not be able to remain in the UK to challenge erroneous decisions.

MAC Tier 2 Review

The Immigration Bill also includes a provision for the Home Office to levy an Immigration Skills Charge against employers of sponsored migrants. As noted above, the MAC recently published its widely anticipated Tier 2 review.

In its report, the MAC strongly supported an Immigration Skills Charge (ISC) of £1,000 per year for each Tier 2 migrant employed. As the report explained, this could raise £250 million per year for the funding of domestics skills training, as well as reducing employers' reliance on overseas workers.

The report also recommended:

- phasing in a new minimum Tier 2 salary threshold from £20,800 to £30,000;
- overhauling the Tier 2 (ICT) route to create a separate subcategory under Tier 2 for third party contracting with a minimum salary threshold of £41,500;
- not instituting an automatic removal of jobs from the shortage occupation list; and
- not restricting dependents' automatic right to work.

The full MAC report is at
https://www.gov.uk/government/publications/migration-advisory-committee-m

ac-review-tier-2-migration.

Also, the Department for Business Immigration and Skills has consulted on a proposal to introduce an Apprenticeship Levy, to be applied to companies across the board beginning in 2017. It may make sense for the government to consider the impact on businesses of any apprenticeship levy before making a decision on the skills charge.

See the link below for a blog that *explores the background and key aspects of the new Bill and sets out the potential economic and human impact if the Bill is passed and becomes law. The blog also includes an example illustrating how some of the proposed rules could inadvertently affect all migrants and their families, including British employees, landlords, and families. See* https://www.kingsleynapley.co.uk/news-and-events/blogs/immigration-law-blog/immigration-bill-2015-the-real-impact-of-creating-a-hostile-environment.

Right-to-Rent Checks

Right-to-rent checks affecting landlords in the private rental sector are being rolled out across England. The Home Office announced that all private landlords in England must now check that new tenants have the right to be in the UK before renting their property. The new scheme does not apply in Scotland, Wales, or Northern Ireland.

This will affect anyone taking up residential tenancy for the first time, including sponsored employees. Such employees must be able to produce their original biometric residence permits as evidence of their immigration status before moving in. The new rules permit tenancy agreements to be agreed upon in advance; for example, when an employee visits the UK on a pre-assignment trip. Once the visa has been issued and evidence supplied to the landlord with respect to all proposed occupants, residence can be taken up.

Under the new rules, landlords who fail to check a potential tenant's "Right to Rent" will face penalties of up to £3,000 per tenant. Landlords may appoint agents to act on their behalf. Where an agent has accepted responsibility for compliance with the new scheme, the agent is the liable party in place of the landlord.

The new law means that to avoid penalties, private landlords, including those who sublet or take in lodgers, must check the right of prospective tenants to be in the country. Landlords need to keep records of the checks they have

undertaken on those people who occupy their accommodations. However, when doing so they need to be mindful of existing obligations under the Data Protection Act 1998 to protect personal data by keeping it securely and only for as long as necessary.

Right-to-rent checks were introduced by the Immigration Act 2014. The first phase was launched in parts of the West Midlands, and this latest announcement is the next stage of the scheme's rollout.

The Home Office published guidance in November 2014 listing the documents that can be relied on to satisfy the Right to Rent check. However, where a potential tenant has an outstanding immigration application or appeal with the Home Office and is unable to produce evidence of his or her continuing right to remain in the UK, the landlord must conduct a check on that person's right to rent via the Landlord Checking Service, but the landlord will first need to obtain the Home Office reference number from the prospective tenant. This service uses the same Home Office database as the Employer Checking Service, which is not always up to date.

Tenants finding themselves in this situation could potentially be at a disadvantage when seeking a property in the private rental sector because landlords may not want to engage with the additional onerous checking procedure. Landlords and agents will need to be mindful of the equality legislation and avoid exposing themselves to a potential claim by a tenant who has been refused a tenancy.

In the 2014 Act, these provisions were backed by a "civil penalty scheme," whereby landlords and their agents could face fines of up to £3,000 per tenant. The Immigration Bill 2015, if approved in its current form, would move the scheme onto a new footing altogether as it would be backed by criminal sanctions. It would create four new criminal offenses, two that can be committed by landlords and two that can be committed by their agents, in situations where the landlord or agent knows or has reasonable cause to believe that the person does not have a right to rent. The offenses would carry a maximum five-year prison sentence, a fine, or both (as well as further sanctions under the Proceeds of Crime Act), and are likely to further deter landlords from renting to persons, whether British citizens or not, who cannot produce a British passport and thus prove their immigration status without the landlord's having to resort to the Landlord Checking Service.

Under the 2014 Act, it sufficed for a landlord to conduct periodic checks on a tenant's immigration status. Landlords were then protected from civil penalties until the next checks were due, even if a tenant's status changed. It is now proposed that if the Secretary of State notifies the landlord in writing that a person has no right to rent, the landlord will face a criminal penalty if he or she continues to rent to the tenant, even if the next check is not yet due. It is proposed that these measures be applied to existing tenancies.

It remains to be seen whether the Immigration Bill 2015 is passed and becomes law, but landlords and agents should be alert to the new obligations coming into force now in the meantime.

Rollout of Criminal Records Checks

Criminal records checks have already been introduced for Tier 1 applications, and it is widely anticipated that these will be further rolled out in 2016 to cover Tier 2 applicants. For more on this topic, see https://www.kingsleynapley.co.uk/news-and-events/blogs/immigration-law-blog/roll-out-of-new-criminal-record-certificate-requirements-for-migrants.

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