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IMPACT ASSESSMENT

Annexes to the Impact Assessment

Accompanying the document

Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment

{COM(2016) 378 final}

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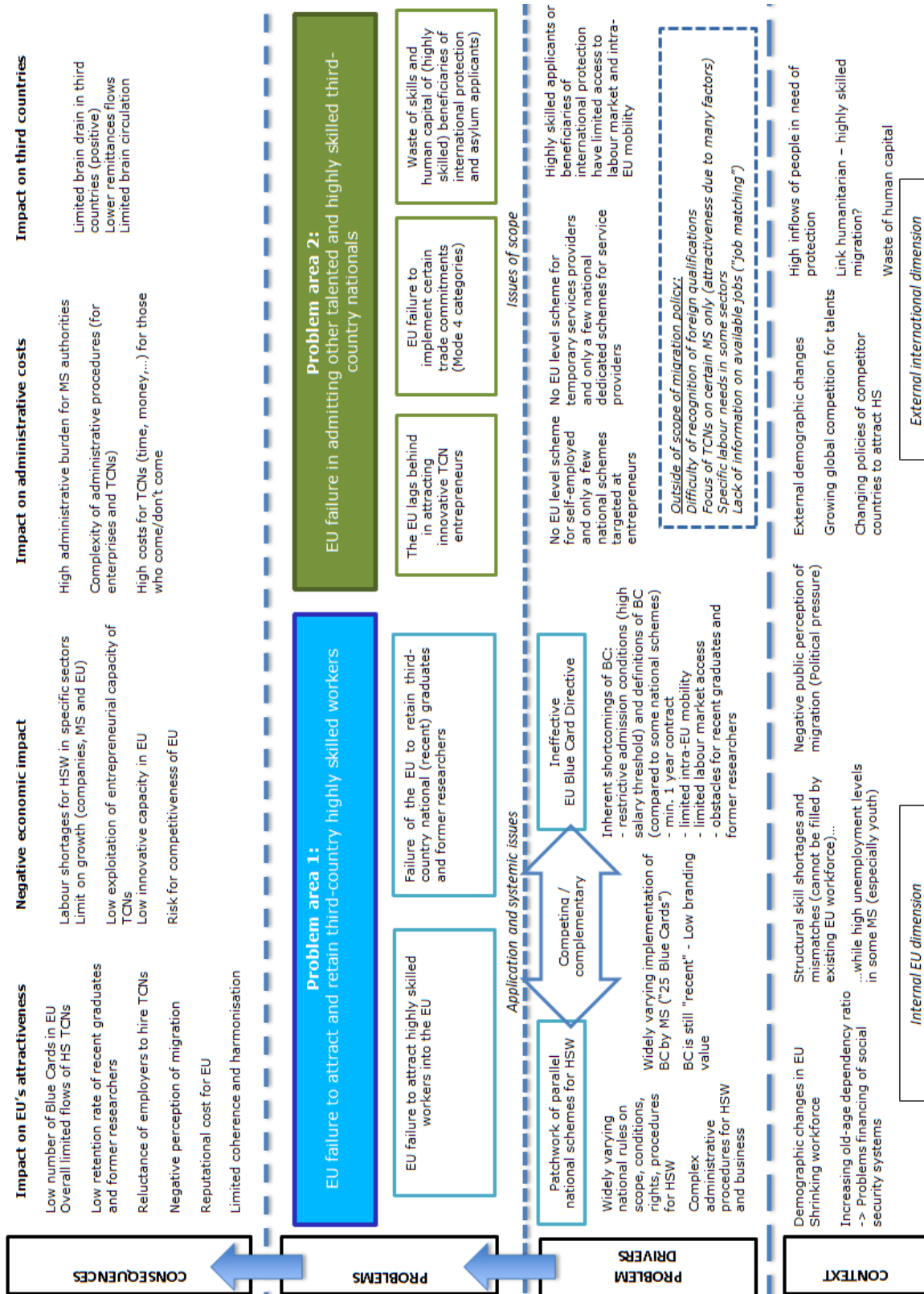
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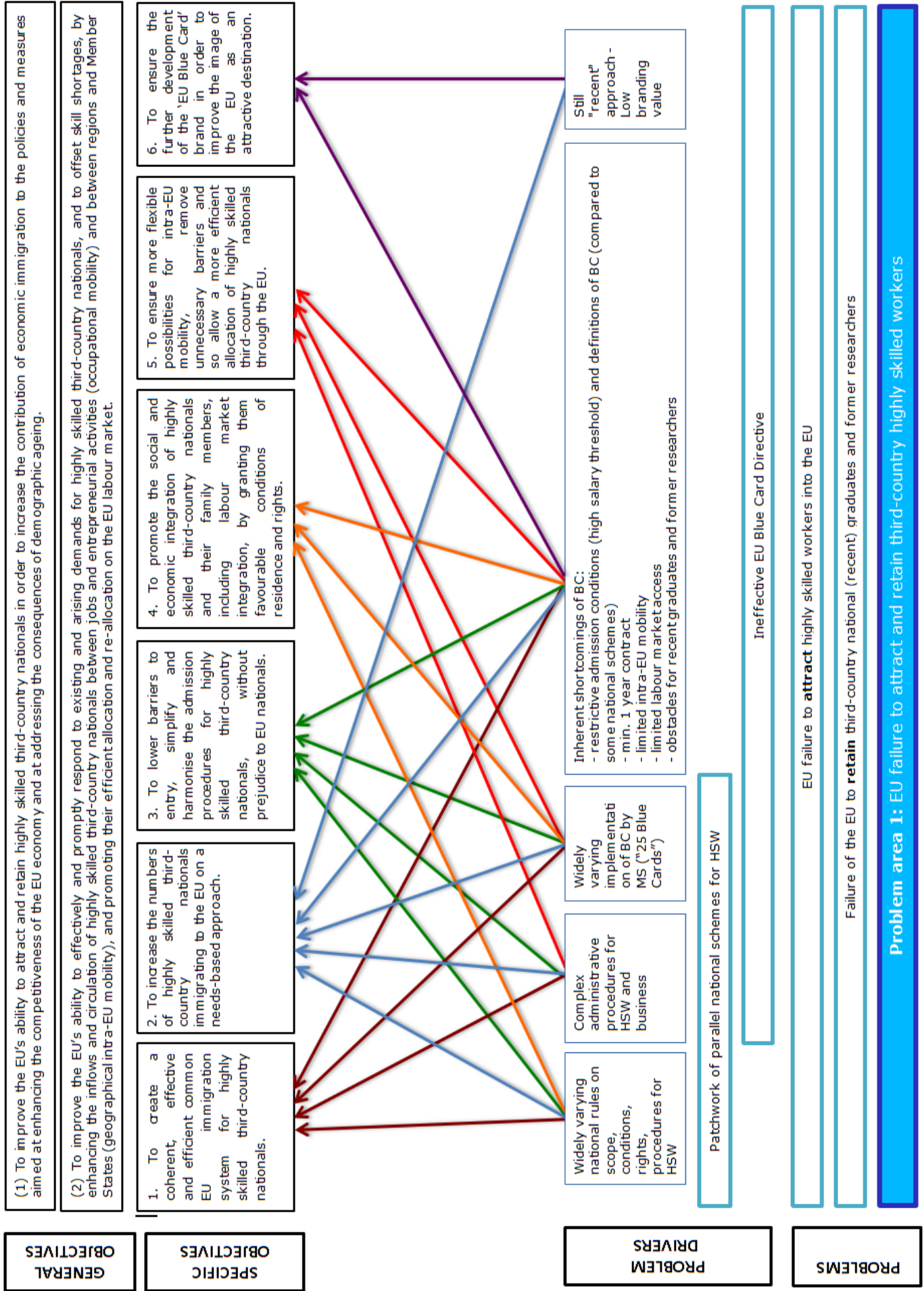
ANNEX 3

LINKS BETWEEN PROBLEMS, OBJECTIVES AND POLICY OPTIONS

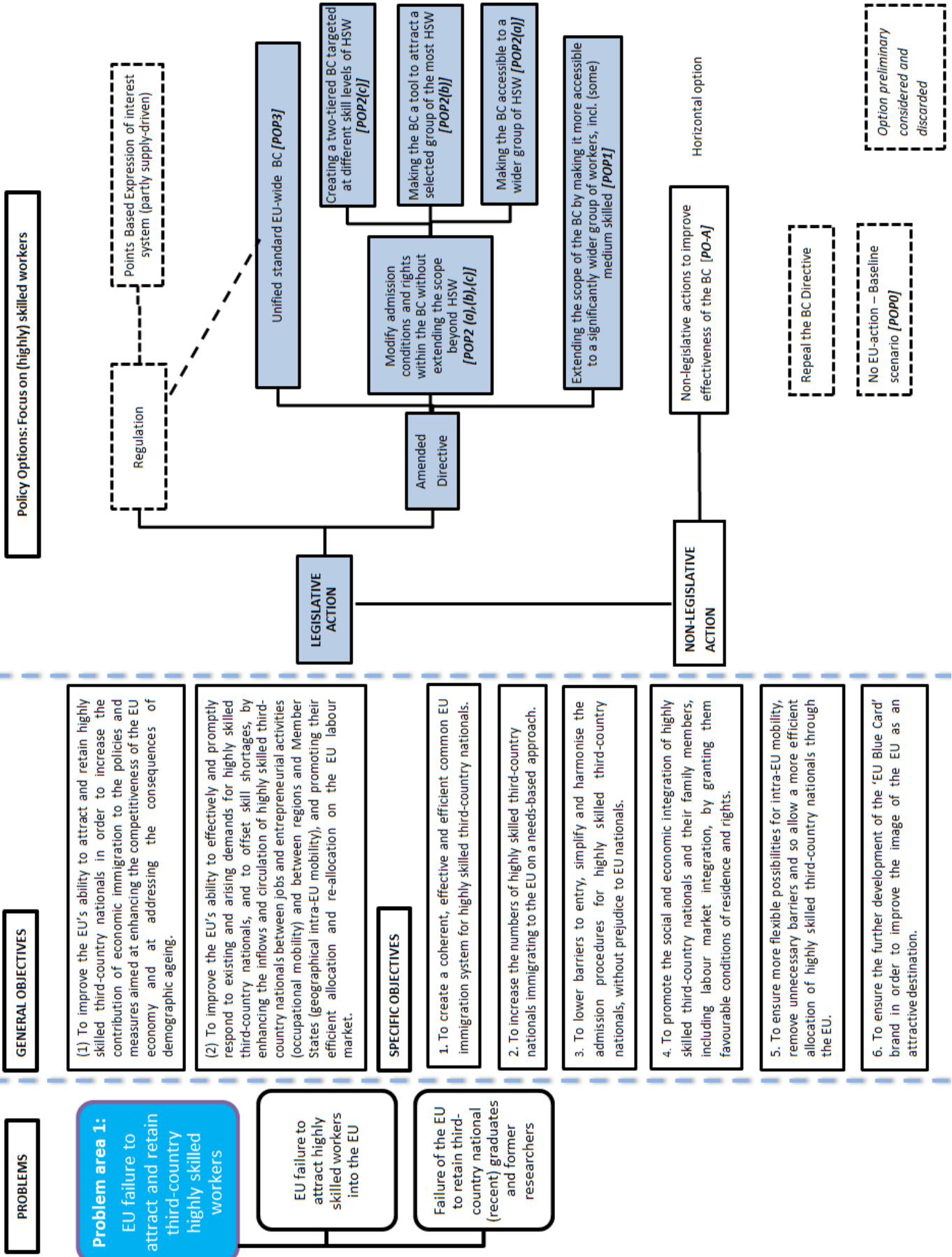
1. Problem Tree – Context, Problem Drivers, Problems and Consequences



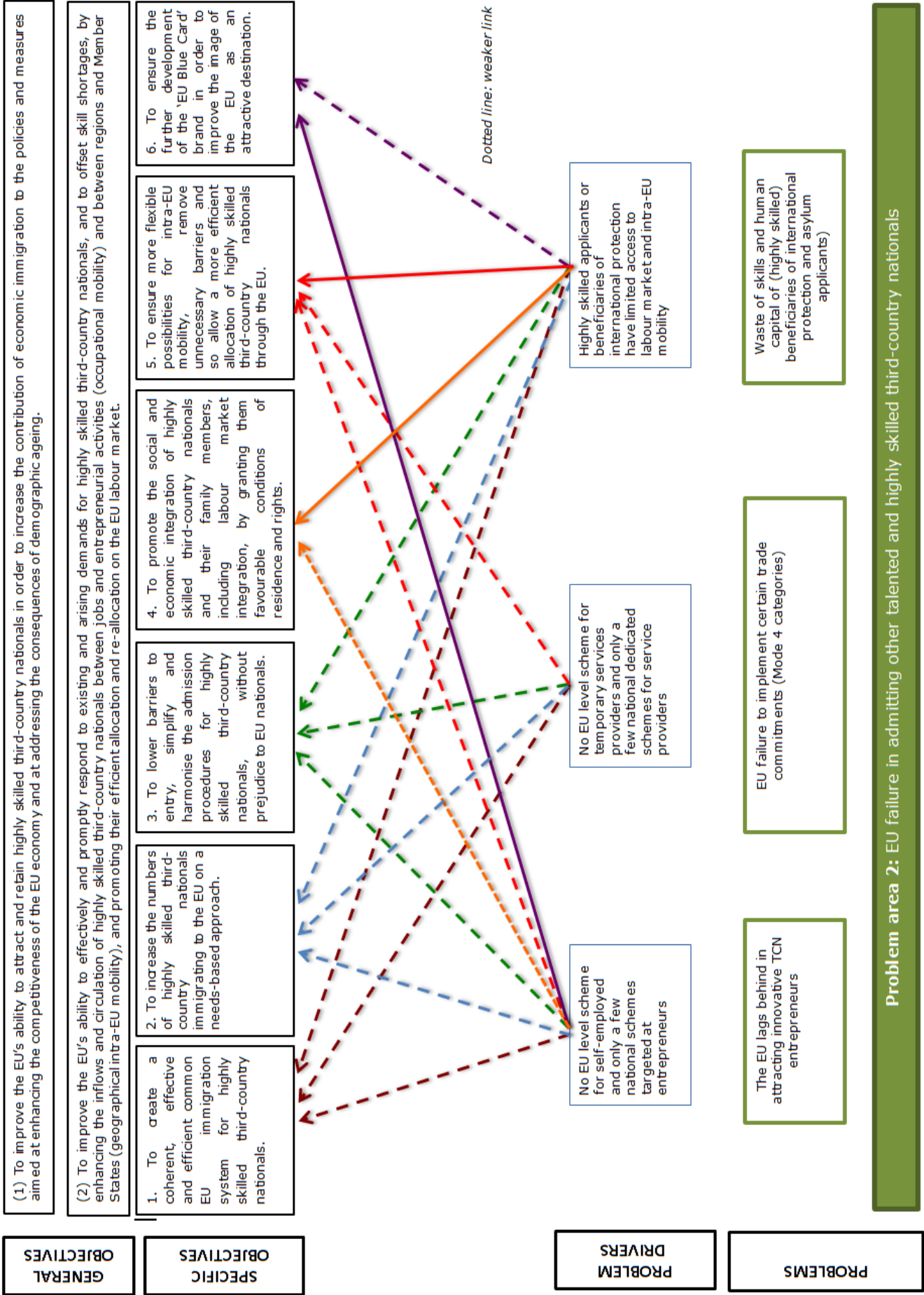
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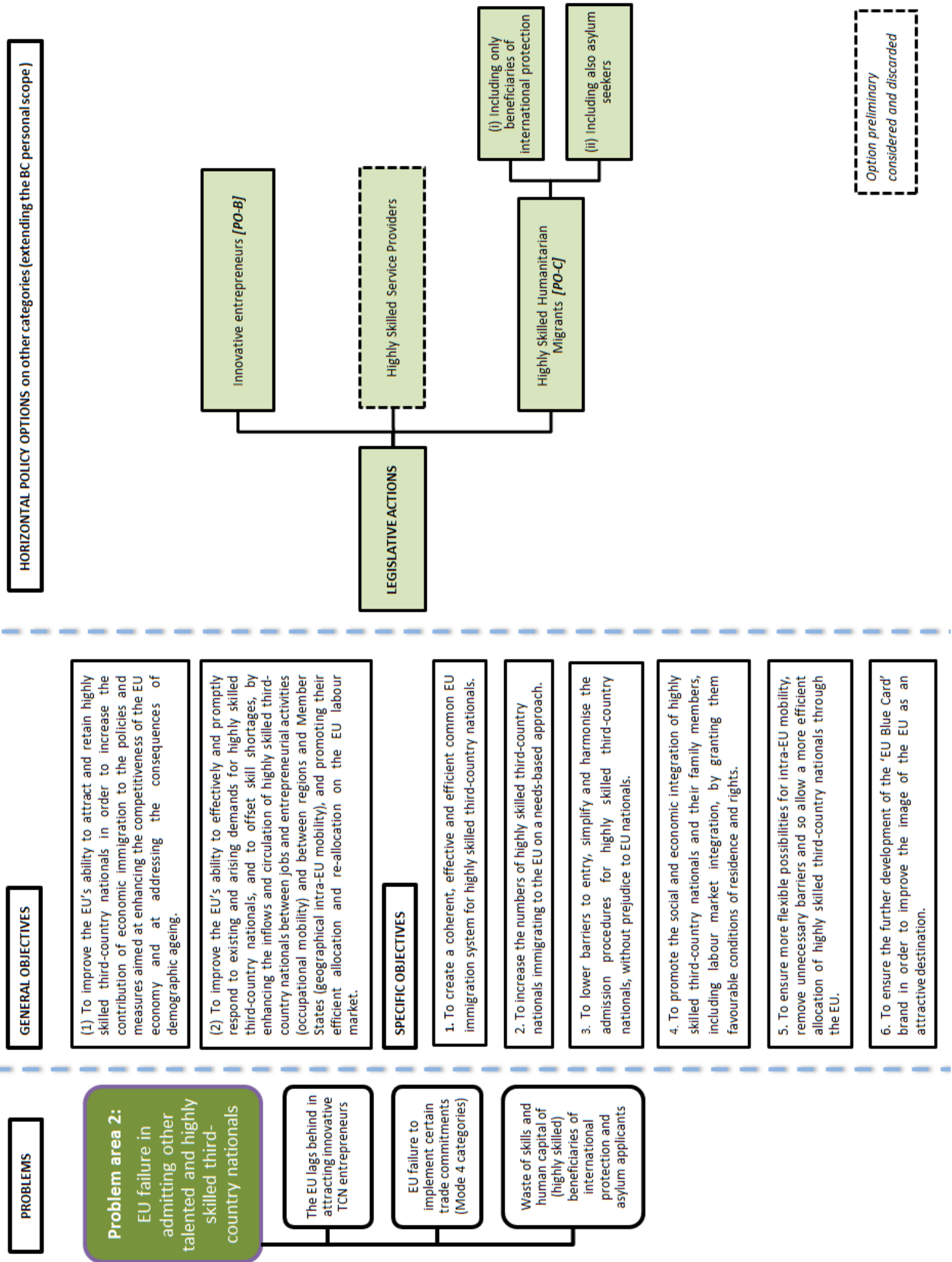
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ANNEX 4

PROBLEM ASSESSMENT FROM SOCIO-ECONOMIC PERSPECTIVES

1. Demography and Migration

EU Member States, as other parts of the world, will be affected by radical demographic changes in the next decades. This will affect the capacity of economic growth, sustainability of social security systems as well as the global weight of the EU in the world and in comparison to its competitors.

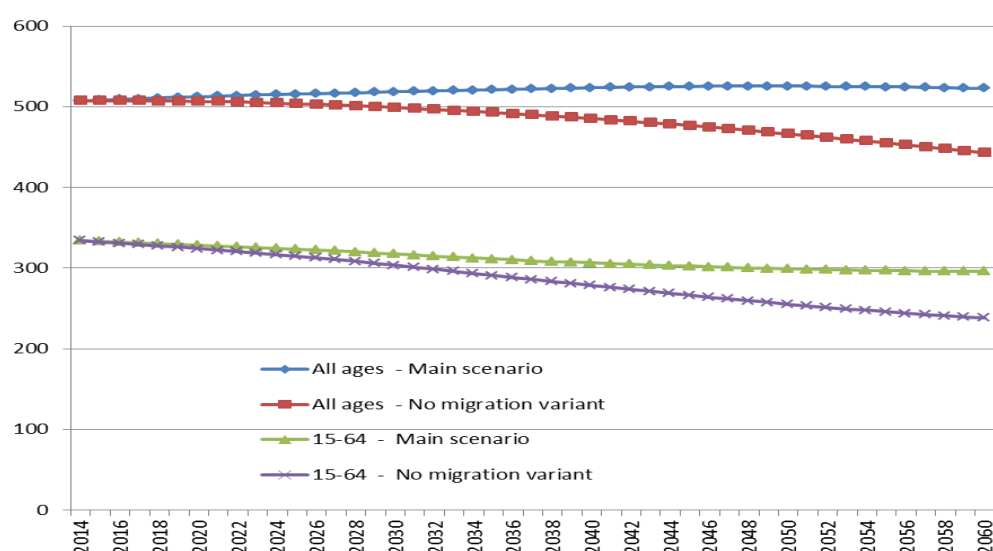
The charts and tables below present the main elements of the demographic changes forecasted in the EU and highlight the potential contribution of migration to attenuate their impacts. This concerns in particular the size and share of working-age population; the old-age dependency ratio; as well as indicators on the "ageing of skills" (measured as the share of the population aged 45 and more in the overall working-age population).

1.1. Forecasted developments of (working-age) population in the EU-28

In order to highlight the role of migration in attenuating the impact of the ageing process, the indicators below, based on the Eurostat 2013, the latest population projections released by Eurostat¹, are broken down under two scenarios:

- main scenario - produced based on 'main input dataset';
- no migration variant - obtained by considering the component of international net migration equals zero (see methodological box below).

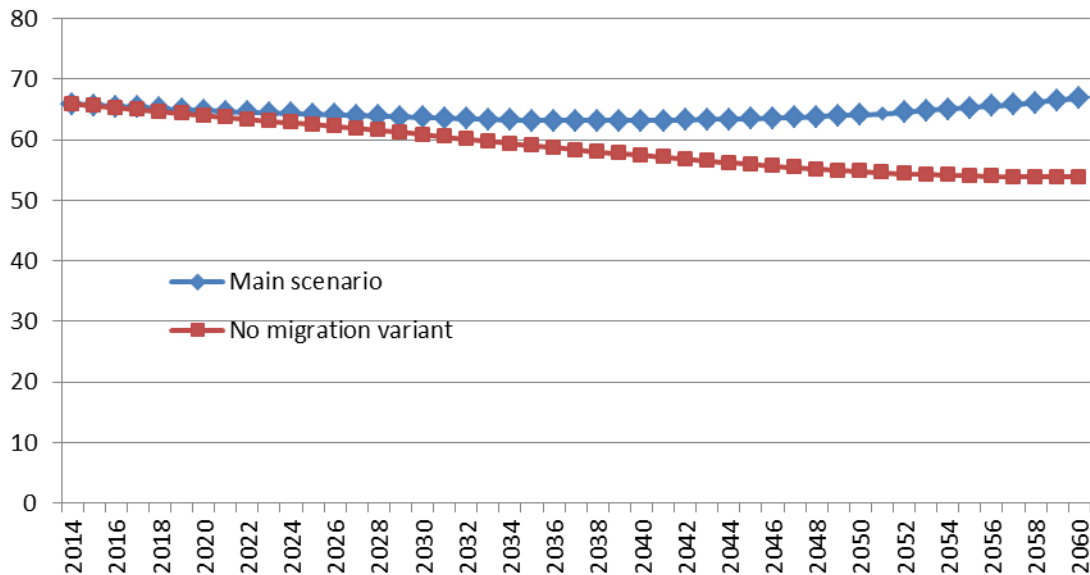
Chart 1: Population and working-age (15-64) population developments over 2014-2060, EU-28, in millions



Source: Eurostat, Eurostat 2013, proj_13npms and proj_13npzms

Chart 2: Working-age (15-64) population as a share (in %) of total population over 2014-2060, EU-28

¹<http://ec.europa.eu/eurostat/web/population-demography-migration-projections/population-projections-database>



Source: Eurostat, *Europop2013, proj_13npms and proj_13npzms*

Considering the overall population (i.e. of all ages) in EU-28, it is forecasted to slightly increase in the next decades (from around 507 million in 2014 to 521 million in 2034) before stabilising later on (523 million in 2060). However, the situation would be different, should the contribution of international migration be equal to zero: in that case, the overall population (i.e. of all ages) would decline by 13 million over 2014-34 (-2.6%) and by a 64 million over 2014-2060 (-12.7%).

As far as labour market and sustainability of social security are concerned, it is more relevant to analyse how working-age (15-64) population will develop in the next decades. As a matter of fact, 2014 is the first year when the working-age population started to decline in the EU-28, the starting point of a protracted decrease. In the main scenario developed by Eurostat, the working-age population will decline by 21.7 million over 2014-2034 (-6.5%) from 334.1 to 312.4 million - and by 38.1 million over 2014-60 (11.4%). Again this development would be even more severe in the 'no-migration variant' as the drop of the working-age population would be close to 41 million (-12.2%) in the next 20 years (2014-34) and by around 96 million (-29%) over 2014-60.

Consequently, the share of working-age population in overall population will decline in the next decades, from currently 65.9% to 56.6% in 2060 in the main scenario and to even lower share (53.8%) in the no-migration variant.

Bearing in mind that potential economic growth is the sum over employment and productivity growth, the declining working-age population may have implications for the EU's long-term growth prospects. Without additional migration from third countries and substantial progress in terms of higher employment rates, the pressure to generate ever higher productivity gains will be immense². Based on these considerations, several recent analyses concluded that

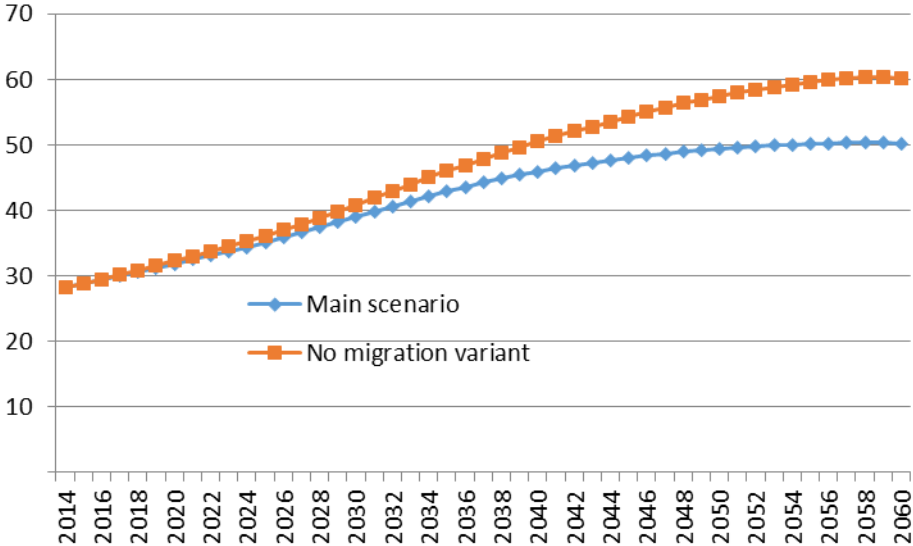
² Peschner, J. and Fotakis, C. (2013), [Growth potential of EU human resources and policy implications for future economic growth](#), European Commission, DG EMPL, Working Paper 3/2013

qualified migration should be part of a broad policy concept to maintain the EU's growth potential through the decades to come³.

Another key measure for the sustainability of social security and economic dependency is the so-called **old-age-dependency ratio**, defined as the ratio between the number of persons 65+ over the number of working-age persons (15 to 64 years), expressed as percentage (see Chart 3).

This ratio is forecasted to sharply increase in the next decades, from 28% in 2014 to 42% in 2034, putting pressure on growth and on the sustainability of social security systems in particular for the pensions systems. In the no-migration variant the ratio in 2034 would be even more worrying, reaching 45%. Considering a longer time horizon (2060) the old-age-dependency ratio will further increase, to reach 50% in the main scenario (meaning that there will be one person aged 65+ for every two persons aged 15-64) and a higher level (60%) in the no-migration variant.

Chart 3: Old age dependency ratio over 2014-2060, EU-28



Source: Eurostat, Europop2013, proj_13ndbims and proj_13ndbizms

Ageing will not only affect the overall size of the population and the distribution between those of working-age and the others – it will also involve a **rising average age of the workers**. The share of older working-age people (aged 55-64 years) in total working-age population will increase from today's 19.5% to 22.2% around 2030. Their absolute numbers actually continue to increase until 2027. That is, even in a period of overall workforce decline, the EU disposes an increasing stock of experienced older workers. Taking stock of their experience older workers generally have higher level of productivity. Yet they are also more likely to have achieved their higher level of education a long time ago. For some sectors and occupations, this "ageing of skills" may be a worrying phenomenon if the labour market needs workers with up-to-date qualifications, in the context of structural change and technological changes. It is therefore important to consider how the share of those aged 45+ (i.e. those having achieved their higher level of education since more than around 20 years) in the

³ European Commission, ESDE 2015, Chapter " Mobility and Migration in the EU: Opportunities and Challenges".

overall labour force is forecasted to evolve in the forthcoming decades⁴. From 2014 to 2034, the share of persons aged 45+ in the overall working-age population will increase from 41.5% to 43.1% while developments without the contribution of international migration would lead to a quicker ageing of skills, with a share of 45.2% in 2034.

The various indicators provided above all lead to the same conclusion: ageing will be a major challenge for the EU-28 as the working-age population will decline, both in absolute terms and as a share of the total population. The positive net migration assumed by Eurostat in their projections will not prevent ageing to happen; however it could contribute to attenuating its impact. Table 1 below provides a synthetic view of the various indicators.

Box 1: Forecasting population developments with or without the contribution of international migration

EUROPOP2013 population projections is a 'Convergence Trends' scenario that includes short-term (nowcasting), medium-term (trend) and long-term (convergence) components.

Computations are based on cohort-component method with 1st January 2013 base population, disaggregated by sex and age. Data on population, live births and deaths used as input data in EUROPOP2013 round are official statistics provided by the national statistical authorities to Eurostat in the frame of annual demographic data collection. Migration flows have been measured in terms of net migration (including statistical adjustment) and computed as residual from the annual demographic balance.

The 'main input dataset' includes the 2013 base-population and the assumptions for fertility, mortality and international net migration (including statistical adjustment), and defines the frame of main scenario for producing the population projections. Four variants ('no-migration variant', 'reduced-migration variant', 'higher-fertility variant' and 'lower-fertility variant') were obtained by modifying one of the assumptions' component while the other components of the 'main input dataset' were maintained constant.

The data used in this annex mainly refer to the 'main scenario' (produced based on 'main input dataset') in comparison to the 'no-migration variant' - obtained by considering the component of international net migration equals zero. It should be noted that Eurostat also publishes statistics under a "reduced migration variant", considering that the component of international net migration is reduced by 20%.

In EuroPOP2013, "**net migration (including statistical adjustment)**" is a general estimation of the net migration based on the difference between population change and natural change between two dates (including other changes which cannot be attributed to births, deaths, immigration or emigration between that time period).

One of the implications is that, for a given Member State, net migration is the result (apart from so-called "**statistical adjustment**") of the difference, in a given year, between immigration flows and emigration flows with the rest of the world. Flows to and from other EU Member States are therefore also included into this net migration definition, and not only migration flows from third-countries. However, this is not the case when using the EU-28 aggregate as net migration

⁴ While Eurostat population projections do not contain the breakdown for those being economically active (or in employment), the share of those aged 45+ can be measured in proportion of the overall working-age population (15-64).

refers then only to the differences between immigration flows and emigration flows with third-countries.

As shown in the table below, the net migration assumed by Eurostat in the main scenario would be around 920.000 per year for the period 2015-19 and slightly higher than 1 million over 2020-24. For both periods, this represents a positive contribution of net migration to the EU-28 population around +0.2% per year.

Annual net migration assumed in Eurostat Europop2013 main scenario (all ages), EU-28, in thousands

Period	Cumulative net migration over 5 years period	Average net migration per year
2015-19	4,605	921
2020-24	5,107	1,021
2025-29	5,814	1,163
2030-34	6,505	1,301

Source: Eurostat, Main scenario - International net migration by age and sex [proj_13nanmig]

Source for the box: Eurostat, Europop2013, Metadata available at:

<http://ec.europa.eu/eurostat/web/population-demography-migration-projections/population-projections-/database>

Table 1: Summary table of forecasted population developments and indicators, EU-28

a) Main scenario

	2014	2034	2060	2014-2034		2014-2060	
				in million	in %	in million	in %
Total population	507.2	520.6	522.9	13.4	2.6	15.7	3.1
Working-age population (15-64)	334.1	312.4	296.0	-21.7	-6.5	-38.1	-11.4
Share of working-age population	65.9	60.0	56.6				
Population aged 65+	94.1	131.8	148.5	37.6	40.0	54.3	57.7
Old age dependency ratio	28.2	42.2	50.2				
Persons aged 15-44	195.5	177.8	175.0	-17.7	-9.1	-20.5	-10.5
Persons aged 15-44 in % of working age pop.	58.5	56.9	59.1				
Persons aged 45-64	138.6	134.6	121.0	-4.0	-2.9	-17.6	-12.7
Persons aged 45-64 in % of working age pop.	41.5	43.1	40.9				

Source: Eurostat, Europop2013, proj_13ndbims and proj_13ndbizms

b) No-migration variant scenario

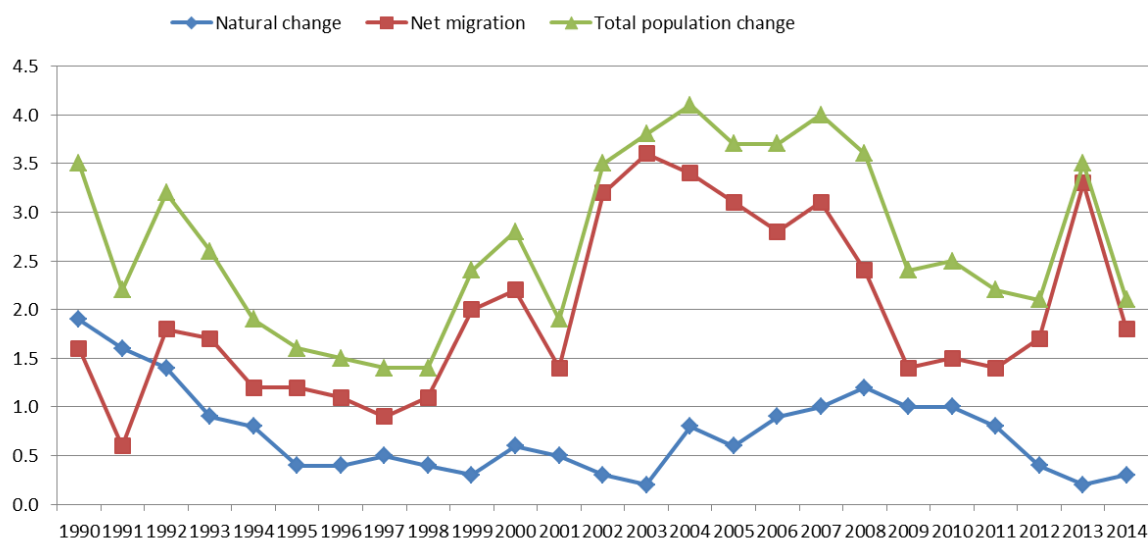
	2014	2034	2060	2014-2034		2014-2060	
				in million	in %	in million	in %
Total population	507.2	494.0	442.8	-13.2	-2.6	-64.5	-12.7
Working-age population (15-64)	334.1	293.3	238.3	-40.8	-12.2	-95.8	-28.7
Share of working-age population	65.9	59.4	53.8				
Population aged 65+	94.1	131.9	143.5	37.7	40.1	49.4	52.5
Old age dependency ratio	28.2	45.0	60.2				
Persons aged 15-44	195.5	160.8	136.3	-34.7	-17.8	-59.2	-30.3
Persons aged 15-44 in % of working age pop.	58.5	54.8	57.2				
Persons aged 45-64	138.6	132.5	102.0	-6.1	-4.4	-36.6	-26.4
Persons aged 45-64 in % of working age pop.	41.5	45.2	42.8				

Source: Eurostat, Europop2013, proj_13ndbims and proj_13ndbizms

1.2. Contribution of third-country migration to population developments

Migration from third-countries plays a significant role in the population dynamics of European Member States. Since the mid-90s, natural change of the population is on average around or less than 0.1% per year while positive net migration has always been higher, especially during the period 2002-08. It means that the increase in the population of the EU-28 Member States has mainly been due to positive net migration rates (i.e. the fact that inflows outweighed outflows⁵).

Chart 4: Population change by component, EU-27, 1990-2014 (per 1000 inhabitants)



Source: Eurostat (online data code: demo_gind), Note: net migration includes statistical adjustment. Breaks in series in 2000, 2001, 2008, 2010, 2011 and 2012. Provisional estimates for 2013 and 2014.

For the EU-28 as a whole, net migration has been positive and around or higher than 1.5 million per year over 2002-2007, representing an increase in EU-28 population around 0.3% per year.

Over the period 2009-12, net migration to the EU has slightly diminished to around +1.5% per year. This is to be put in relation to the economic crisis which implied decreasing immigration and increasing emigration (both Europeans and return migration to origin countries). Nevertheless, even over the period 2008-12, net migration still contributed around two thirds of the total population increase.

According to Eurostat, in many EU-28 Member States, immigration is not only increasing the total population, but also bringing in a much younger population.

Table 2: Net migration to the EU-28, in millions and in % of population (2000-14)

⁵ Due to the limited reliability of emigration and immigration statistics in many EU Member States, it is preferable to calculate net migration as the difference between population change and natural change between two dates. It is called "**net migration (including statistical adjustment)**" as it includes other changes which cannot be attributed to births, deaths, immigration or emigration between that time period.

	In millions	In % of pop.
2000	1.1	0.22
2001	0.7	0.14
2002	1.6	0.32
2003	1.8	0.36
2004	1.7	0.34
2005	1.5	0.31
2006	1.4	0.28
2007	1.5	0.31
2008	1.2	0.24
2009	0.7	0.14
2010	0.8	0.15
2011	0.7	0.14
2012	0.9	0.17
2013	1.7	0.33
2014	0.9	0.18

Source: Eurostat (online data code: demo_gind). Note: net migration includes statistical adjustment. Breaks in series in 2000, 2001, 2008, 2010, 2011 and 2012 .Provisional estimates for 2013 and 2014. Figures in millions: own calculations based on variables "Average population - total" and "Crude rate of net migration plus statistical adjustment".

2. Skills needs and shortages in the EU

2.1. Summarising data and knowledge on current and future skills shortages in the EU

The term “*labour/skill shortage*” has no universally agreed upon definition and in practice, measuring occupational labour shortages is difficult (see box on definition below). Against this background, the section below aims at summarising briefly the main data and knowledge on current and future skills shortages in the EU Member States. It is based mainly on few recent key studies at EU level in particular:

- European Commission, *Mapping and Analysing Bottleneck Vacancies in EU Labour Markets* (2014)
- OECD/EU, *Matching economic migration with labour market needs* (2014)
- European Migration Network, *Determining labour shortages and the need for labour migration from third countries in the EU* (2015)
- European Parliament, *Labour Market Shortages in the European Union* (2015)
- European Parliament, *Exploring New avenues for legislation for labour migration to the European Union* (2015)
- IOM-LINET, *Labour shortages and migration policy*, 2012

Based on a review of those studies, the situation can be summarised as follows:

- In the EU there is currently **no overall "labour shortages"** as the tightness of the EU-28 labour market has decreased substantially compared to the pre-crisis period and that unemployment is high compared to the number of vacancies. However, we do observe tighter labour markets in some Member States than in others, highlighting that labour demand and supply are not balanced across Member States. Moreover, quantitative shortages may grow if the economic recovery picks up.
- Within Member States and regions, sector and occupation **specific labour shortages do already occur**. According to the European Company Survey (Eurofound, 2015), two in five companies (39%) claim to have **difficulties recruiting people** with the required skills to fill their open vacancies⁶. This share is particularly high in the manufacturing sector (43%). Moreover, many employees have difficulties to find a job which matches their qualification level. This signals the presence of skill mismatches and possibly skills shortages.
- Skills shortages can be observed for low, medium and high skilled jobs. However, it is clear that in the long-run (CEDEFOP forecasts for 2025) the expected level of employment will rise much more among **jobs requiring high level of education**: +15 million or +23% over 2012-25 than among jobs requiring medium level of education (+3.6 million or +3%) and even more compared to jobs where a low level of education is sufficient (-11.5 million or -24%).
- By 2020, the EU economy would be able to absorb 825.000 additional workers in ICT jobs, if demand is not hampered by supply bottlenecks⁷. In the health sector, a potential shortfall of around 1 million workers is estimated by 2020, rising up to 2

⁶ Similarly, in a joint OECD-DIHK survey of German employers in 2011, about half of firms reported staff shortages in medium skilled occupations, compared with less than 20% for low-skilled workers and 42% for the highly-skilled. A breakdown according to company size shows that 55% of small companies reported shortages at the intermediate level while 70% of large companies were looking for highly skilled workers.

⁷ Empirica, "E-skills and e-leadership skills 2020", Working Paper, May 2015.

million if long term care and ancillary professions are taken into account. This means that around 15% of total care would not be covered compared to 2010⁸.

- Throughout Europe there is some consistency across Member States when it comes to occupational groups with shortages: **metal, machinery and related trade workers, science and engineering as well as ICT professionals**. However, when analysed in detail, the specific occupations experiencing shortages differ between Member States.
- The studies reviewed, in particular the 2015 EP study on *Labour Market Shortages in the European Union* also concludes that "additional training and retraining is necessary to counter these shortages, which **take time to have an effect** (...) and reducing the current labour market shortages is therefore not a quick-fix for unemployment".

Box 2: Definitions of labour and skills "shortages"

When individual employers cannot find the workers they need to fill open vacancies, labour shortages occur. Labour shortages refer to a situation in which labour demand exceeds labour supply. However, a distinction should be made between quantitative and qualitative labour shortages.

In case of a **quantitative** labour shortage, there is an absolute lack of workers in the labour market. Labour demand is larger than labour supply, resulting in a large share of difficult-to-fill vacancies and a low unemployment rate. Quantitative shortages can be caused by increased demand for specific goods or services or economic growth more generally. The insufficient supply of labour can be caused by a decline in the working age population due to ageing or emigration or by a decrease in participation rates due to early retirement or the inactivity of certain groups.

In case of a **qualitative** labour shortage, labour demand and labour supply are roughly in equilibrium (balanced), but a large share of unfilled vacancies and a high unemployment rate exist simultaneously. This signals a qualitative mismatch between supply and demand. A common cause is skill mismatch, either because there are not enough graduates with the necessary skills to fill open vacancies, or because skill requirements have changed or because job requirements by employers do not fit with the competences of jobseekers and graduates.

Qualitative shortages can also be caused by a mismatch between the preferences of jobseekers and the characteristics of the open vacancies. This occurs when jobseekers do not want to fill a vacancy because of the working conditions offered or because the sector is seen as unattractive. Moreover, the lack of sufficient and correct labour market information for both employers and jobseekers can also contribute to qualitative shortages.

However, it should be noted that a labour shortage is **always relative** in the sense that it refers to labour demand in excess of labour supply of people willing to work at a particular wage and under particular working conditions at a particular place and point in time. Offering better wages and working conditions can thus be effective at resolving shortages. Employers who do not increase wages in the face of shortages indicate that they expect to find a candidate at the current wage and labour conditions. Shortages are therefore relative to the terms offered, as

⁸ Commission estimates, "Action Plan for the EU health workforce", Commission Staff Working Paper (SWD (2012)93 final).

wage levels might be the reason why students and jobseekers do not opt for a field of study or job which could reduce the shortage.

One also finds the distinction between **cyclical and structural shortages**. Skills mismatches will always exist as a part of the frictional dynamics of the labour market and due to the business cycles (i.e. cyclical labour shortages). However, persistent or structural shortages can be detrimental to economic recovery and growth. Some structural changes, such as the adoption of new technologies, may increase the demand for certain skills that are not available in the labour market in the short run, creating skills shortages even when unemployment is high. Therefore, one of the main challenges faced by policy makers is identifying real, structural labour shortages, which cannot be met by the local labour force even if the labour market is functioning well or measures are taken to improve it, e.g. by supporting labour matching or by investing in education and training.

In practice, measuring occupational labour shortages is difficult. Using interviews is imprecise and tends to be biased. Objective labour market information, such as vacancy rates, unemployment rates, and changes in wage rates can be extremely useful but, in many countries, data on detailed occupations are not necessarily available.

Source: based on European Parliament, *Labour Market Shortages in the European Union* (2015) ; European Migration Network, *Determining labour shortages and the need for labour migration from third countries in the EU* (2015); OECD/EU, *Matching economic migration with labour market needs* (2014)

2.2. Bottleneck occupations

The recent study commissioned by the European Commission on *Mapping and Analysing Bottleneck Vacancies in EU Labour Markets* (2014) provides information about the top-20 bottleneck occupations on the EU labour markets (in all Member States and including Iceland, Norway and Liechtenstein). Bottleneck occupations were defined as occupations where there is evidence of recruitment difficulties, i.e. employers have problems finding and hiring staff to fill vacancies, based on indicators such as duration of vacancy filling, past/existing bottleneck vacancies and expected bottleneck vacancies.

When considering occupational group (ISCO at 2 digit level), bottleneck occupations concern various occupations within metal and related trades workers, science and engineering, IT and health professionals and construction worker (Table 3 below).

From the point of view of the **sectors** confronting bottlenecks, Manufacturing, Construction, Health, Tourism, IT, Commerce, Transport, Professional, scientific and technical activities, Financial and insurance activities and Education are the economic activities which are most affected. In manufacturing, Construction and Transport recruitment difficulties are at skilled manual level while in most other activities high skilled labour are more problematic to fill (Education, Professional, scientific and technical activities, Financial and insurance activities, ICT and Health).

Table 3: Top 20 bottleneck vacancies at ISCO 2-digit level, EU level

Rank	Occupational group	Number of countries reporting	Number of bottleneck vacancies reported
1	Metal, machinery and related trades workers	23	53
2	Science and engineering professionals	22	48
3	Information and communications technology professionals	20	47
4	Health professionals	21	45
5	Building and related trades workers, excluding electricians	18	41
6	Personal service workers	22	32
7	Science and engineering associate professionals	14	29
8	Sales workers	13	14
9	Drivers and mobile plant operators	16	21
10	Food processing, wood working, garment and other	12	20
11	Teaching professionals	12	17
12	Business and administration associate professionals	13	15
13	Business and administration professionals	11	17
14	Electrical and electronic trades workers	12	15
15	Stationary plant and machine operators	9	13
16	Cleaners and helpers	8	8
17	Refuse workers and other elementary workers	5	6
18	Personal care workers	6	9
19	Administrative and commercial managers	6	11
20	Agricultural, forestry and fishery labourers	3	5

Source: European Commission, *Mapping and Analysing Bottleneck Vacancies in EU Labour Markets* (2014)

The study on bottleneck occupations also concluded that:

- **Skills shortages** are the main reason for most of the bottlenecks occupations. The data also suggest a relation with skill level: a lack of skills is reported for most high skill level occupations, while the role of working conditions is of higher importance at lower skill levels.
- Among occupational groups there are clear **differences between how employers work to mitigate recruitment problems**. While recruitment abroad is relatively common among health professionals, it is less used to recruit science and engineering professionals. Among the skilled manual occupations, employers mainly cope by providing training and development to existing staff, and to a limited degree on labour mobility.
- There are **structural shortages at EU level**, which should be a priority for EU level policies. When trends differ between countries, mobility can offer a good opportunity for reducing bottlenecks. This concerns especially occupational groups within the top 5 at 2-digit level. Mobility schemes could add value in this respect, but they should be narrowly defined, preferably at ISCO 4-digit level (or even more specific). For instance ICT professionals, one of the top 5 bottleneck occupational groups, schemes should be oriented to occupations within the 4-digit groups —Software developers and —Systems analysts, which are both within the top 20 bottleneck vacancies at 4-digit level.

2.3. CEDEFOP projections of future employment by skill / qualification level

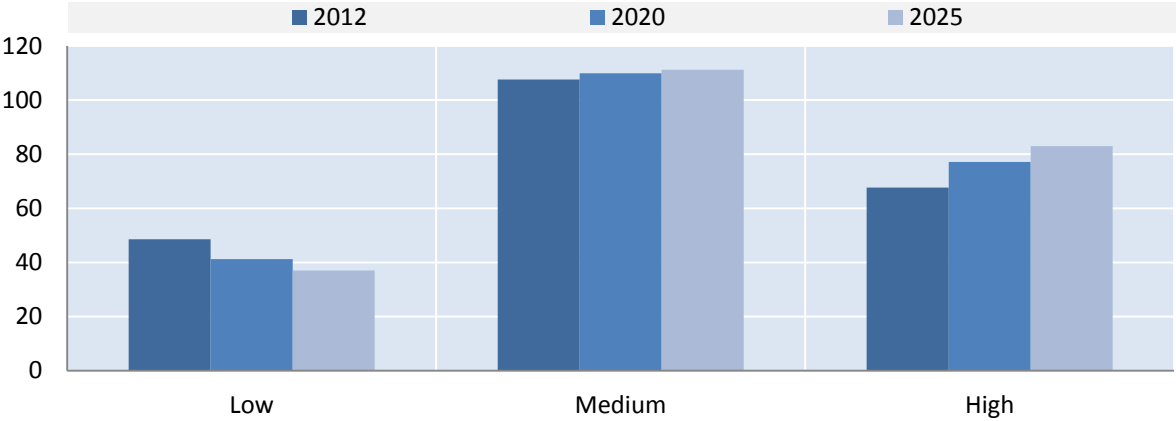
As there is currently no general agreement on "labour shortages", OECD/EU (2014) concluded that the issue of labour market needs is "better approached in the broader context of skill needs and mismatches". The European Centre for the Development of Vocational Training (Cedefop) is monitoring current and future skills needs in Europe. In 2013, there were more low-educated workers in the EU than jobs at that level, suggesting an over-supply of low-skilled workers. The reverse is true for jobs requiring medium-level qualifications, while at higher level, supply and demand were more or less in line⁹. An overall balance between aggregate labour supply and demand can, however, hide micro-level qualitative mismatches. These may be due, for example, to frictions, barriers to mobility, or asymmetric information between employers and workers¹⁰.

In the EU28, changes in the skill composition of employment between 2012 and 2025 are expected to show a sharp increase in the share of jobs employing higher-educated labour (by 23%), while demand for medium-level jobs is expected to increase moderately (3.5%) and that of lower-skilled workers is expected to decrease significantly, by 24% (Chart 5). It means that the share of jobs requiring a high level of education will increase from 30% of the total in 2012 to 36% in 2025..

⁹ Cedefop (2014b), "Projected Labour Market Imbalances in Europe: Policy Challenges in Meeting the Europe 2020 Employment Targets", in OECD-EC (2014), *Matching Economic Migration with Labour Market Needs*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264216501-en>.

¹⁰ European Commission (2012a), "The Skill Mismatch Challenge in Europe", *Employment and Social Developments in Europe 2012*.

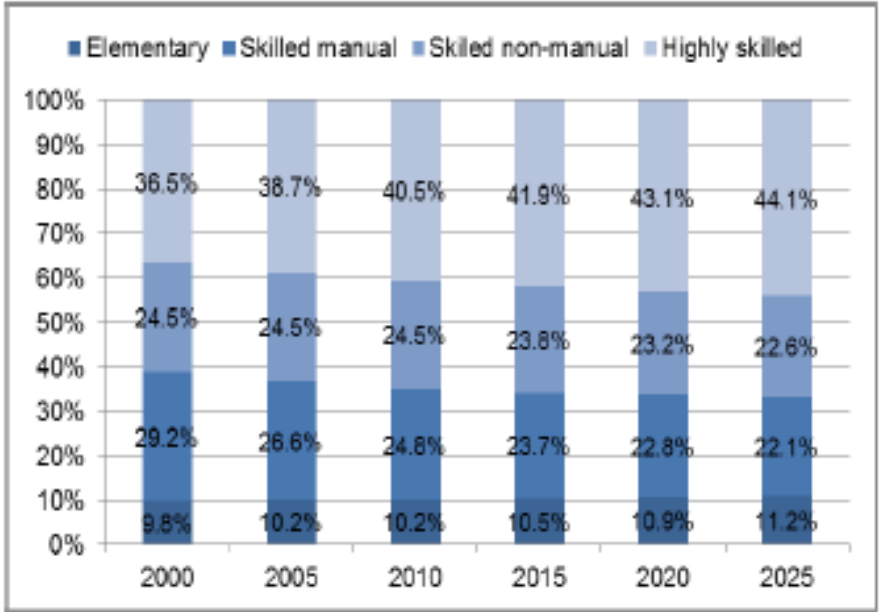
Chart 5: Projected employment trends by level of education, EU28, 2012-25



Source: Cedefop. Notes: Baseline scenario; Low = ISCED 0-2; Medium = ISCED 3-4; High = ISCED 5-6

Moreover, CEDEFOP also breaks down future employment levels by group of occupations¹¹ with four broad categories: i.e. high-skilled (ISCO 1-3), skilled non-manual (ISCO 4-5), skilled manual (ISCO 6-8) and elementary jobs (ISCO 9). According to this nomenclature, the increase in the share of high-skilled jobs (in terms of % of total employment) would be from 40% in 2010 to 44% of the total in 2025 while other groups will see their relative weight decreasing¹².

Chart 6: Employment share by skill level, 2000-25, (EU 27+), CEDEFOP baseline scenario (%)



Source: Cedefop.

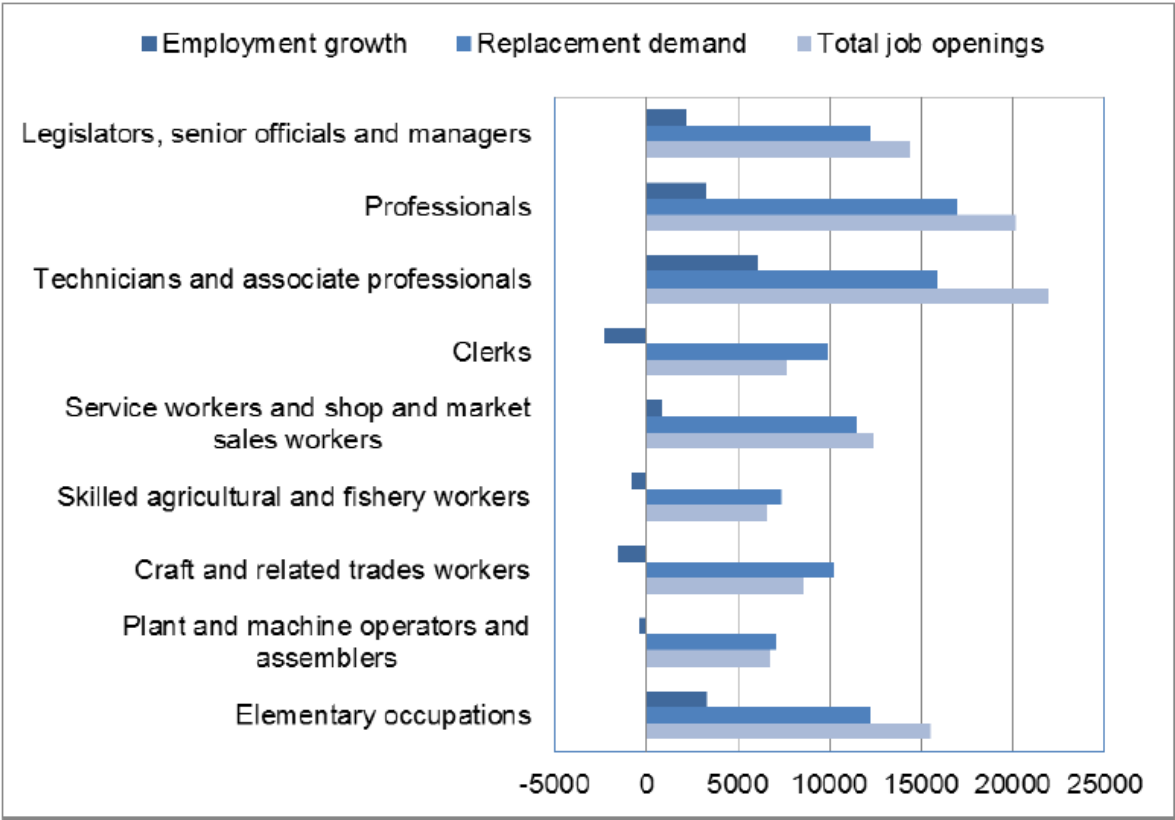
¹¹ CEDEFOP (2013), Roads to recovery: three skill and labour market scenarios for 2025.

¹² With the exception of elementary jobs which will see their share slightly increase but representing only around 11% of all jobs.

The expected development in employment over 2012-25 across occupations is the result of both employment growth (expansion) as well as replacement demand. Indeed, even in occupational groups that will be declining, there will be a number of job openings, driven by replacement demand (see chart 7 below).

Overall, the occupational group that will see the largest increase in absolute number in total job openings will be: "Technicians and associate professionals" (ISCO 3), "Professionals" (ISCO 2) and "Legislators, senior officials and managers" (ISCO 1). Those three groups, all considered as highly skilled occupations will benefit from both replacement demand and expansion. In absolute terms, the lowest skilled group ("Elementary occupations", ISCO 9) will also grow, though mainly due to replacement demand and representing less than 11% of all jobs in 2025.

Chart 7: Total job opportunities, CEDEFOP baseline scenario (EU-27+) 2012-25 (000s), by group of occupations (ISCO)



Source: Cedefop.

2.4. CEDEFOP projections of future employment by sectors and occupations

The expected development in employment over 2012-25 across economic sectors will also vary across expansion and replacement demand (see table 4 below).

The NACE sectors where the expansion demand is expected to be the strongest (with + 2 million or more) will be "Real Estate, Professional, Scientific and Technical Activities", Wholesale and Retail Trade and Human Health and Social Work.

When taking into account replacement demand, the largest number of job openings will be, with more than 10 million each: Wholesale and Retail Trade, Human Health and Social Work, Manufacturing and "Real Estate, Professional, Scientific and Technical Activities".

Table 4: Total job opportunities, CEDEFOP baseline scenario (EU-27+) 2012-25 (000s), by economic sector (NACE), broken down by expansion versus replacement demand (in %)

	Expansion Demand 000s	Replacement Demand 000s	Total Job Opportunities 000s	Expansion Demand % of total	Replacement Demand % of total
All	9754	98031	107784	9.0%	91.0%
LM: Real Estate, Professional, Scientific and Technical Activities	3355	7120	10475	32.0%	68.0%
G: Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles	2554	13419	15972	16.0%	84.0%
Q: Human Health and Social Work Activities	2249	9998	12248	18.4%	81.6%
N: Administrative and Support Service Activities	1934	5864	7798	24.8%	75.2%
RSTU+: Arts, Recreation, and Other Service Activities; (Film & TV production/broadcasting)	1242	6150	7392	16.8%	83.2%
I: Accommodation and Food Service Activities	943	4845	5787	16.3%	83.7%
J*: Information and Communication, Part of	487	2359	2845	17.1%	82.9%
K: Financial and Insurance Activities	353	2587	2941	12.0%	88.0%
F: Construction	318	5458	5777	5.5%	94.5%
P: Education	219	7095	7314	3.0%	97.0%
H+: Transportation and Storage; (Telecommunications)	-29	5189	5159	-0.6%	100.6%
E: Water Supply, Sewerage, Waste Management and Remediation Activities	-119	729	610	-19.6%	119.6%
D: Electricity, Gas, Steam and Air Conditioning Supply	-128	511	382	-33.5%	133.5%
B: Mining and Quarrying	-142	272	131	-108.2%	208.2%
O: Public Administration and Defence, Compulsory Social Security	-664	6013	5349	-12.4%	112.4%
A: Agriculture, Forestry and Fishing	-1179	8305	7126	-16.5%	116.5%
C+: Manufacturing; (Publishing activities)	-1638	12116	10478	-15.6%	115.6%

ANNEX 5

EVALUATION OF THE BLUE CARD DIRECTIVE

1. Introduction

Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (the Blue Card Directive)¹³ already provides an EU-wide scheme for highly qualified third-country nationals. It determines the conditions of entry and residence for highly qualified workers and their family members in the first and subsequent Member States, as well as their rights. The Directive was meant to promote the objective of the EU becoming the most competitive and dynamic knowledge-based economy in the world. This was to be achieved e.g. through developing well-managed migration policies, helping Member States to meet existing and future labour market needs. Labour shortages were to be addressed by facilitating admission and fostering mobility, namely through fast-track procedures and enhanced social and economic rights.

2. Evaluation of the Directive Provisions and their National Transposition

2.1. General remarks

The national transposition of the Blue Card Directive was to be completed by June 2011. However, only four Member States completed the transposition on time, whereas most countries had relevant national measures enter into force during the year 2012 or some even in 2013. The first implementation report¹⁴, assessing the conformity of national legislations with the provisions of the Blue Card Directive, was adopted in May 2014. It concluded that there are a number of deficiencies in the transposition and, more specifically, that Member States have been neglecting their reporting obligations under the Directive. This makes it difficult to get an overall picture of the legal transposition and practical application of this Directive in the Member States and to identify possible implementation challenges.

According to Eurostat data the numbers of EU Blue Cards issued remain limited and vary greatly across Member States (see Annex 12). In 2014, Germany issued almost 90 per cent of the EU total, with many other Member States issuing very few to none. Due to the economic crisis, the situation in many countries has for a prolonged period remained unfavourable to the creation of highly skilled employment. However, one explanation can also be found in the national parallel schemes for attracting highly qualified migrants that many Member States continue to run and that compete with the EU Blue Card and with each other. This creates a fragmented landscape of numerous regimes for admitting highly qualified migrants. Furthermore, the current Directive sets only minimum standards and leaves considerable leeway to Member States through many "may"-clauses and references to national legislation, which also leads to a low level of coherence. One reason behind this is that the former legislative procedure required unanimity in the Council. Therefore, there are not only various

¹³ [Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment](#), OJ L 155, 18.6.2009, p. 17–29

¹⁴ Communication from the Commission to the European Parliament and the Council on the implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, COM(2014) 287 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0287&from=EN>

national schemes but also 25 very different EU Blue Card approaches¹⁵ adding diversity to the migration policies addressing the highly skilled.

The following pages present the most important issues arising from the current provisions of the Directive and their implementation.

2.2. Admission conditions

Description of the provisions

The Blue Card Directive sets out a number of conditions for issuing an EU Blue Card. Few of the provisions on admission conditions entail full harmonisation, in the sense that neither more lenient nor more stringent conditions in the Member States are allowed. This is the case for the Articles on a **valid work contract** or, if applicable, a binding job offer for at least 1 year (Art. 5(1)(a)), and **necessary qualifications** for regulated and unregulated professions (Art. 5(1)(b-c)). However, there is some leeway in the Directive regarding the higher professional qualifications, as Article 2(g) foresees that they may be attained not only by means of higher education, but also through 5 years of pertinent professional experience, if national law so provides. Around half of the Member States have opted for this possibility¹⁶.

The third admission condition apart from the work contract and the required qualifications is the **salary threshold** (Art. 5(3)). This was subject to intense discussions when the current Directive was being negotiated. In the original Commission proposal, the salary threshold was set at three times the national minimum wage, or, if not applicable, at no less than three times the minimum income under which citizens of the Member State concerned are entitled to social assistance, or at a level in line with applicable collective agreements or practices in the relevant occupational branches. It seemed that this calculation method rather well corresponded to the thresholds that Member States (which had schemes in place prior to the EU Blue Card) applied to highly skilled workers. Also, minimum wages and other corresponding data had already been used as a reference when calculating the sufficient income required from third-country nationals as a condition for other types of resident permits (Directive 2003/86/EC on family reunification¹⁷ and Directive 2003/109/EC on long-term residents¹⁸).

The discussion went in different directions with Member States wishing for either lower or higher thresholds, and it became clear that both the reference salary and the "highly skilled multiplier"¹⁹ to be applied were controversial issues. Finally, it was concluded to set the threshold at the *minimum level* of 1.5 times the national *average* salary. As a result, Member States are free to impose a higher, but not a lower threshold in their national legislation. Member States may use Eurostat data to determine the average gross salary, but they may also use national data. It seems that also lower thresholds than those foreseen by the Directive are applied in reality (see Chart 1 in Annex 7); although the transparency of the calculation method applied to the national thresholds is hampered by the fact that national data can be

¹⁵ The UK, Ireland and Denmark are not bound by the Blue Card Directive due to their opting out in accordance with the relevant protocols annexed to the Treaties.

¹⁶ DE, EE, EL, ES, FR, LT, LU, MT, PL, PT, SE and SK.

¹⁷ [Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification](#), Chapter V; OJ L 251, 3.10.2003, p. 12–18

¹⁸ [Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents](#), OJ L 16, 23.1.2004, p. 44–53

¹⁹ This refers to the factor (now at least 1.5) used to reach the threshold salary for highly qualified taking the benchmark figure (now the average salary) as a starting point.

used for determining the reference salary. Member States may add flexibility to the salary requirement by introducing a lower salary threshold of at least 1.2 times the average gross annual salary for certain occupations facing shortages (Art. 5(5))²⁰.

Member States may make the issuance of EU Blue Cards conditional upon a **labour market test** (Art. 8(2))²¹ or limit it to pre-determined **volumes of admission** (Art. 6)²². These are measures to enable adjustments to the national labour market situation and protect the domestic workforce. Regarding Article 6, retaining the right to determine the volumes of admission of third-country nationals entering their labour market is guaranteed for Member States by Article 79(5) of the Treaty on the Functioning of the European Union.

Member States also have the right to refuse an application for an EU Blue Card to ensure **ethical recruitment** with the purpose of avoiding "brain drain" (Art. 8(4))²³ or in cases where the employer in question has been **sanctioned** for undeclared work and/or illegal employment (Art. 8(5)). No extensive information is available on Member States' practices regarding these provisions, but Member States have not reported many rejected applications on these grounds.

Assessment of the conditions

The bar set by the EU Blue Card Directive for potential applicants is arguably quite high. The material conditions are cumulative and absolute: the requirements of a one-year work contract, relevant qualifications and sufficient salary all need to be fulfilled simultaneously and without exceptions. The requirement of a one-year work contract has the effect of excluding categorically those highly qualified workers whose initial contract is for a shorter period, even if there were reasonable prospects for getting an extension subsequently (see Chapter 2 in Annex 7). The salary threshold is higher than in most corresponding national schemes, and obtaining the EU Blue Card can be difficult especially for younger professionals²⁴. In addition, as demonstrated in Charts 2–4 of Annex 7, the current threshold has a very different impact across Member States for reasons related to differences in the distribution of wages. Only the minimum level for the salary is defined in the Directive, which allows Member States to apply a very high threshold for the EU Blue Card if they wish to limit the number of persons admitted under that scheme. Furthermore, as stated above, the fact that Member States do not have to use Eurostat data for determining the benchmark salary hampers the transparency of the calculation method of each national threshold, and therefore also complicates the enforcement of the provision by the Commission.

Requiring a certain level of qualifications is essential in a scheme addressing highly skilled workers. However, the current provisions in the Directive can be criticised for being rudimentary. For workers in unregulated professions any education reaching the required level which is relevant for the employment concerned is accepted. There is no room left for Member States to make the requirement more specific (or higher or lower) based on labour market needs or other considerations. On the other hand, the current provisions are simple to apply and to communicate to stakeholders. In addition, there is no obvious way to broaden the

²⁰ This option has been transposed by 9 Member States: CY, DE, EE, EL, ES, HU, LU, MT and PT, but not all of them have actually set such a lower threshold.

²¹ Applied by 17 Member States in one form or another, except DE, ES, FI, FR, LV, NL, PT, and SE.

²² Foreseen in the national law of 7 Member States: CY, EE, EL, HU, MT, RO and SI.

²³ Option taken up by BE, CY, DE, EL, LU and MT.

²⁴ See Chapter 2 in Annex 6 for comparison between the national schemes and the EU Blue Card and Chart 6 in Annex 7 for the exclusion effect for young professionals.

required qualifications level without including also medium skilled workers²⁵. For regulated professions there is no specific level of qualifications required, as presenting the necessary documents for exercising the profession in question is sufficient²⁶.

For this admission condition, the main matter of concern does not seem to be the required qualification levels as such, but rather procedural obstacles²⁷. Getting qualifications obtained in third countries recognised in the EU can be burdensome, the results are uncertain and practices across Member States vary greatly. However, it is important to distinguish between regulated and unregulated professions. For the former Member States have specific criteria which have to be fulfilled in order to be able to exercise that profession in that country, and therefore, if the EU Blue Card is to be issued for such employment, it is necessary to ensure that the qualifications are adequate. Therefore, the room for any added flexibility is limited. For unregulated professions, however, the situation is different. For unregulated professions, the qualifications requirements in the context of the EU Blue Card only serve to guarantee that the applicant is indeed highly qualified in the occupation or sector indicated in the work contract or job offer. Therefore, obliging the applicant to go through the full recognition procedure of third-country qualifications – which could take months – only in order to qualify for an EU Blue Card may be disproportionate. Nothing in the current Directive provides guidance to Member States on how to assess applicants' qualifications.

Another issue related to the qualifications is the role of professional experience and how it can be validated as an alternative to educational accomplishment. Under the Directive it is optional for Member States to recognise at least 5 years' professional experience, but even those Member States having transposed this option have not reported established practices in this respect. Validating experience gained abroad is undoubtedly challenging, but it seems important to be able to reach also those persons whose high qualifications and skills are not based on education.

As indicated, Member States are allowed to impose labour market tests on EU Blue Card applicants. While the objective to protect the local workforce may be justified, labour market tests have the tendency of prolonging processing times, as they are often carried out by another authority than the one responsible for issuing the residence permit. They also increase uncertainty regarding the outcome of the application procedure and therefore may deter both employers and migrants from lodging the application in the first place.

In addition to issues related to each individual condition, the leeway given to Member States in multiple aspects contributes to the creation of a patchwork of EU Blue Card admission schemes in the 25 Member States: obtaining an EU Blue Card can be considerably more difficult in one Member State than in another. The more admission conditions vary across Member States, the more difficult it is to provide information on the EU Blue Card at EU level or to portray an image of a streamlined instrument for the highly skilled. The current low level of harmonisation makes the EU Blue Card virtually impossible to promote towards third countries as an EU-wide scheme.

²⁵ See Chapter 3 in Annex 7 on ISCED levels.

²⁶ Regulated professions are different across Member States and many of them can be classified as highly skilled, but arguably not all of them. See an EU database on regulated professions per Member State: <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=regprofs>

²⁷ In the Public Consultation carried out to support (e.g.) the Blue Card review in 2015, problems related to qualifications were subject to a specific Chapter (5). See Annex 2 for details.

2.3. Procedures and formalities related to the EU Blue Card

A swift and predictable procedure for obtaining an EU Blue Card is likely to be crucial for its attractiveness both in the eyes of employers and potential migrant workers²⁸. There are many provisions in the Directive aimed at guaranteeing that the EU Blue Card performs well in this respect. However, statistics show that the EU Blue Card has remained less widely issued than the national permits for highly skilled, and there are many Member States issuing practically no EU Blue Cards²⁹. This indicates that the objective of making the EU scheme fast and streamlined has not yet been satisfactorily reached. However, due to the low numbers of issued EU Blue Cards it is also possible that relevant stakeholders are not thoroughly aware of the conditions or rights associated with that permit, and the procedure may thereby seem overly complicated. The different degree of use and familiarity with the Blue Card scheme by the national authorities also has an effect on how this option is presented to potential applicants.

In addition to the role played by national legislation and national authorities, there are also a number of elements in the Directive itself that should be addressed in order to further enhance procedural clarity and efficiency. Firstly, Member States are required to notify their decision on an EU Blue Card application within 90 days from its lodging (Art. 10(1)). In total 11 Member States³⁰ have chosen to set a shorter national time limit varying between 7 and 60 days, often to be in line with general deadlines for migration procedures rather than as a prerogative for the highly skilled. Therefore, it seems that there is still room for shortening the maximum processing time. In the current directives on legal migration there are only maximum time limits indicated, whereas processing the application "as soon as possible" is the main rule. In order to concretise what is meant to be the regular procedural timeframe envisaged by the EU legislator, a target processing time (shorter than the maximum) could be useful.

However, it is not sufficient to look only at the legislative time limits for an EU Blue Card application. Attention should also be paid to the overall time that goes into obtaining all the necessary documentation (including the recognition of qualifications) and to actually get the permission to enter the host country. Member States do not generally count the time required for getting relevant qualifications recognised or for obtaining the requisite visas towards the 90-day (or shorter national) time limit. This is a plausible approach as such, confirmed in Recital 12 of the Directive. According to information provided by the Member States, the recognition of qualifications alone can prolong the overall processing times by numerous months³¹. For highly skilled workers and their employers several months of application processing may already result in the loss of valuable opportunities. As indicated above, the Directive should determine what is meant by adequate validation of qualifications (for unregulated professions) *for the purposes of the EU Blue Card*. This could lead to greater flexibility and faster overall processing in Member States.

Secondly, apart from processing times, the rules on who can submit the application and where are also highly relevant for the smoothness of the process. The Directive allows multiple options in this regard. According to Article 10(1) Member States are free to choose if it is the

²⁸ In the Public Consultation, when asked about the most important aspects for the attractiveness of the EU Blue Card, the most reoccurring first priority was a fast-track entry procedure; a clear, streamlined and uniform scheme was the second most important aspect. See Question 25 in Annex 2.

²⁹ See Table 1 in Annex 6.

³⁰ AT, BG, EE, ES, LT, LV, PL, PT, RO, SI, SK.

³¹ EMN Ad Hoc Query 465/2013.

employer or the employee - or one or the other - who may lodge an application for an EU Blue Card. All possible options exist in Member States: some require that it is one or the other party alone (most commonly the employee), some require action from both sides and some accept applications from either party as well as from a lawyer acting on behalf of either one of them. Similarly, paragraphs 2-4 of Article 10 allow leeway for Member States to determine if they accept in-country applications. A solution where only applications lodged abroad would be accepted is possible only under a standstill clause, applied by two Member States (Luxembourg and Sweden). Most countries accept applications in their territory from all legally staying TCNs (at least under further conditions), whereas some require a preceding national residence permit or long-stay visa. As a result, if a potential applicant inquires about how to go about applying for an EU Blue Card, the answer is again very different depending on the Member State.

Thirdly, the Directive requires Member States to set a standard validity for the EU Blue Card. This can vary between 1 and 4 years. However, if the work contract is valid for less than the standard period, the validity of the permit will be the duration of the contract plus 3 months. Member States have adopted standard periods varying between 1 and 5 years, 1 and 2 years being the most frequent options³². However, the standard validity does not necessarily have much significance, as work contracts for a determined period often call for a shorter permit. It should also be noted that the same validity provisions apply whether it is a question of a first EU Blue Card or a renewal, whereas it would be reasonable in many cases to grant the renewed EU Blue Card for a longer period than the initial one, as there is already a stronger presumption of continuous residence. To sum up, the current provisions on the validity of the permit have very limited harmonising effects, but still seem to lead to a relatively rigid system within Member States.

2.4. Rights granted to EU Blue Card holders and their family members

Equal treatment, labour market rights and access to permanent residence

Highly skilled workers are a favoured group of migrants in the EU *acquis*. This is particularly visible in the rights granted to EU Blue Card holders. According to Article 14 of the Directive, right to *equal treatment* with Member State nationals is granted in numerous fields, such as working conditions, access to education and vocational training, recognition of diplomas, and social security rights. There are possible limitations only regarding access to study and maintenance grants and loans³³ as well as access to housing³⁴, both of which have been applied only by a minority of Member States. It is also possible to subject access to universities and post-secondary education to specific prerequisites under national law. In many Member States that opted for this possibility such prerequisites entail generally applicable standard linguistic or other requirements intended to facilitate the successful completion of studies³⁵. In conclusion, no major shortcomings in the equal treatment of EU Blue Card holders seem to exist in legislative terms. Obviously, the actual entitlement is still determined by the relevant national practices in each Member State.

Article 12 of the Directive regulates EU Blue Card holders' *access to the labour market* of the host country. Multiple angles have to be considered when discussing the labour market access

³² One year in BG, CY, ES, LT, MT, and PT; 13 months in BE; two years in AT, CZ, EL, FI, IT, LU, PL, RO, SE and SI; two years and three months in EE; three years in FR and SK; four years in DE, HU and NL; and five years in LV.

³³ Applied by CY, DE, EL, FI, LU, MT, SK.

³⁴ Applied by CY, DE, EL, ES, FI, LU, MY, PL, RO, SK.

³⁵ BE, DE, FI, LU, NL, PL, PT, SE.

of the highly skilled. When employers hire highly skilled persons, they have a legitimate wish to retain the talent they have managed to attract. However, dependency of migrant workers on their employers should be generally reduced to prevent any form of exploitation, even though the risks are typically smaller for the highly skilled. Furthermore, employers have contractual means to provide the right incentives and need not rely on migration rules to retain their employees. In addition, if the change of employer is strictly limited and marked by administrative hurdles, this is bound to reduce the attractiveness of the migration option. Clearly, there is a need for safeguards to ensure that the persons admitted as highly skilled also end up in corresponding occupations and the EU Blue Card scheme is not used for abusive purposes by either employers or migrants.

The current Directive provision basically states that during the first 2 years access to the labour market shall be restricted to employment fulfilling the conditions of the EU Blue Card. If the employer changes, a prior authorisation from the competent authorities – and sometimes obtaining a new EU Blue Card – is required. For other relevant changes prior notification is sufficient, if a Member State so chooses. After the initial 2 years Member States may opt for granting equal treatment with their own nationals concerning access to highly qualified work or, alternatively, require that the EU Blue Card holder still communicates pertinent changes. Member States seem to have chosen a variety of schemes in this respect, using the leeway provided by the Directive (see Table 2). Therefore, the level of flexibility and potential administrative burden are very different across Member States. It is questionable whether such a complicated Directive provision is necessary, as it is in any case possible for Member States to withdraw the EU Blue Card if the conditions are no longer fulfilled – this would be the case if the person took up employment that was not highly qualified.

In the current Directive there are no rules on access to self-employed activity. Evidently, as the ground for residence the highly qualified employment of EU Blue Card holders has to remain their principal activity. However, without precise provisions at EU level, it is unclear if Member States allow access to secondary entrepreneurial activity, which might, in the medium to long term, lead to innovation and job creation.

Akin to the issue of labour market access is the question how Member States address the *temporary unemployment* of an EU Blue Card holder. The Directive requires that unemployment of less than three consecutive months and occurring only once shall not result in termination of the right of residence. More favourable conditions are allowed, and a few Member States have chosen to be more flexible in this regard. The vast majority, however, applies the Directive provision unaltered (see Table 2). The period of 3 months seems to be proportionate and consistent with other EU policies.

Directive 2003/109/EC on *long-term residents* generally applies to Blue Card holders, but there are a few derogations foreseen in Article 16 of the Blue Card Directive. First of all, periods of residence in different Member States can, under certain conditions, be cumulated to count towards long-term residence. Also, longer absences from the EU are allowed without a negative effect on obtaining or retaining the status. However, Member States may choose to limit the latter prerogative to those who return to their country of origin for economic activity, study or volunteer service, an option taken up by 13 Member States (see Table 2). Not being tightly bound to continuous physical presence in a specific country may be crucial for highly skilled workers (and promotes circular migration), while sufficient links to the host country still remain necessary for the EU Blue Card to serve its purpose.

Apart from the flexibility in the calculation of residence periods as described above, the EU Blue Card holders are not granted fast-track access to long-term resident status, as the required period of residence is still the standard 5 years. Outside of the Directive provisions, Germany has chosen to grant EU Blue Card holders fast-track access to national permanent residence status: this permit may be granted after 33 months of residence or already after 21 months if the person has at least level B1³⁶ knowledge of German. This possibility has been widely used by EU Blue Card holders residing in Germany: between July 2012 and the end of 2015 altogether 37 093 EU Blue Cards had been issued in Germany. At the end of 2015 the stock of EU Blue Card holders in Germany was 26 679 third-country nationals (72% of the total number of EU Blue Cards issued in Germany), while 2 813 former Blue Card holders were no longer residing in Germany (8%). In addition, some 8 211 persons (22%) who were granted an EU Blue Card since 1 August 2012 had received another German residence permit in the meanwhile. Of those 7 571 (20%) obtained national permanent residence (unbefristetes Aufenthaltsrecht, 6 669 (18%) were settlement permits (Niederlassungserlaubnis nach § 19a Abs. 6 AufenthG)³⁷. At the end of October 2015, 1 935 EU Blue Card holders had obtained a national permanent residence title after 33 months of residence, 4 601 after 21 months and 883 without time specification³⁸. The share of former EU Blue Card holders changing status to national permanent residence in Germany can be expected to rise further³⁹. Former EU Blue Card holders who change status to a national permanent residence lose their rights under the EU Blue Card, including the mobility provisions, and the facilitated access to EU long-term residence.

For many third-country nationals, accelerated access to permanent residence is an important element of attractiveness⁴⁰ security and a guarantee for a level of stability favourable to the establishment of a family. A representative German survey interrogated EU Blue Card holders on their *long-term stay prospects*: 70.4% plan to stay for the long term (at least 10 years) while only 8% of respondents did not plan to stay longer than 5 years⁴¹.

Family members of EU Blue Card holders

Article 15 of the Blue Card Directive foresees significant derogations from conditions included in Directive 2003/86/EC on family reunification specifically designed for family members of EU Blue Card holders. These include exemptions from pre-entry integration measures, waiting period, and temporal restrictions in access to the labour market. These alleviations can be regarded as central in attracting highly skilled workers with families and should continue to be guaranteed in all Member States. In terms of access to the labour market, Directive 2003/86/EC only provides for equal treatment with the sponsor. As in this case the sponsor's permit can be tied to one professional field at least for the first 2 years, this may imply limitations also for the family member, depending on how the provision is applied

³⁶ According to the Common European Framework of Reference for Languages.

³⁷ BAMF, 2015 Wanderungsmonitor.

³⁸ Data directly obtained from the BAMF.

³⁹ Counting back 33 months from December 2015 gives April 2013 which is still fairly early in the existence of the Blue Card in Germany, counting back 21 months gives April 2014. Soon those who arrived later in 2013 and 2014 will become eligible for permanent residence.

⁴⁰ See results public consultation in Annex 2.

⁴¹ Hanganu, E. and Heß, B., 'Die Blaue Karte EU in Deutschland: Kontext und Ergebnisse der BAMF-Befragung', *Forschungsbericht 27*, Bundesamt für Migration und Flüchtlinge, Nürnberg, 2016, *forthcoming*. For this survey about 18 000 EU Blue Card holders in Germany were contacted and a total of 4 340 (approximately 27 %) responded.

in Member States. Therefore, the comparison to the EU Blue Card holder sponsor seems ill suited for this purpose.

If national law so provides, family members are able to cumulate periods of residence in different Member States when counting towards an independent residence permit, but this option has been transposed by only seven Member States⁴². Given that the rights of family members crucially complement those of the worker, a weakening of their position due to an exercise of their intra-EU mobility rights is rather problematic.

Family reunification applications of EU Blue Card holders have to be processed no later than 6 months after being lodged (instead of 9 months in the general regime). Many Member States have opted for an even shorter time limit starting from 30 days⁴³. As the confidence about being able to be joined by family members without delay could be a major factor in the migration decision of a highly skilled worker, the current time of 6 months in the Directive can be considered unnecessarily long. This is confirmed by the fact that many Member States have voluntarily committed to a speedier examination of the application, and many have reported that they allow applications for the worker and the family members to be lodged simultaneously⁴⁴ – an approach taken in Directive 2014/66/EU on intra-corporate transferees⁴⁵. EU Blue Card holders now face a wide range of time limits of up to 6 months across Member States, instead of being clearly guaranteed immediate access to family reunification regardless of the country they choose.

2.5. Intra-EU mobility

The Blue Card Directive (Art. 18) provides for a rather conservative approach on intra-EU mobility compared to e.g. the more recent Directive on intra-corporate transferees. After 18 months of residence EU Blue Card holders may move to another Member State and apply for a new EU Blue Card there. The second Member State shall apply the same admissions conditions as for any applicant, although according to Article 4(2)(a) they may choose to introduce more favourable provisions regarding the salary threshold, an option not applied by any Member State. If the second Member State rejects the application, the first Member State has the obligation to readmit the EU Blue card holder, even if the permit has expired.

The possibility to move from one Member State to another is a right only an EU-wide scheme can provide, and therefore this question is especially pertinent when assessing the added value of the EU Blue Card. The current mobility scheme can be considered very limited, as it only allows lodging an application for a new EU Blue Card from within the territory of a second Member State, without any further derogation from the regular procedures and conditions. The only tangible mobility benefit is the possibility to cumulate the periods of residence in the first Member State when counting towards long-term resident status in the second Member State. In the more recent comparable instruments the mobility rights are more extensive and there are separate rules for short- and long-term mobility; in case of long-term mobility the application in the second Member State is subject to fewer formalities compared to the initial

⁴² BG, CZ, EL, LU, LV, NL, RO.

⁴³ See Annex 12.

⁴⁴ In 2013 these included AT, BE, CZ, DE, EE, FR, EL, LT, IT, LU, NL, SV, ES, SE; *Attracting Highly Qualified and Qualified Third-Country Nationals, EMN Focussed Study 2013*, p. 19.

⁴⁵ [Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer](#), OJ L 157, 27.5.2014, p. 1–22

one⁴⁶. Annex 9 includes a more detailed analysis of mobility provisions in relevant EU instruments for legal migration.

When asked in a survey about their views on *mobility possibilities* in the EU Blue Card, 87.4% of 4 116 responding German Blue Card holders to a survey consider improved mobility within the EU important (visa-free travel and the possibility of moving to another MS) while 13% say that they have already or will probably make use of it. 66.6% would consider an extension of the possibility for easy "short-term" mobility to 12 months useful, another 27% simply do not know if this could be useful, but very few oppose this⁴⁷.

3. Conclusions

Clearly the EU Blue Card in its current form does not exhaust its potential for adding value to the competing and complementary national schemes for highly skilled workers. First, some of the approaches taken in the Directive are unsuited to fulfil the requirements of today's highly skilled labour market. The salary threshold is relatively high and its impact varies greatly depending on the wage distribution in each Member State. As a whole, the admission conditions are quite stringent and may exclude certain categories of highly skilled workers, especially those who work in sectors with lower salaries or who have recently graduated. Procedural problems may ensue when applicants are trying to get their qualifications obtained in a third country recognised in an EU Member State. The intra-EU mobility provisions in the Directive do not entail facilitated access to the labour markets of Member States other than the one having granted the first EU Blue Card. Yet, such facilitated mobility would greatly enhance the overall attractiveness of EU area compared to overseas competitors.

Due to the high level of flexibility in the Directive, the issuing of Blue Cards across Member States is inconsistent in terms of admission conditions, procedures and associated rights. It seems that the Directive has failed to provide adequate harmonisation, while simultaneously being too rigid to be relevant in many Member States. It is virtually impossible to provide information about the EU Blue Card to potential employers or migrants at EU level, as the instrument is so different across Member States and remains so clearly secondary to national schemes in many countries. Finally, the current Directive allows Member States to grant any residence permit to highly qualified workers, which means that there are no limitations regarding parallel national systems. As a result, the EU Blue Card seems to face remarkable competition from national schemes targeting (partially) the same group of migrants. There are indications of efforts being concentrated to developing and promoting the national scheme instead of the EU Blue Card, as described in Chapter 6 of Annex 6. All of these issues combined lead to the fact that creating an image of the EU Blue Card as an up-to-date, coherent and attractive EU-wide scheme towards employers and highly skilled workers is very challenging.

⁴⁶ [Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra- corporate transfer](#), and proposal for a Directive on conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing (Recast).

⁴⁷ Hanganu, E. and Heß, B., 'Die Blaue Karte EU in Deutschland: Kontext und Ergebnisse der BAMF-Befragung', *Forschungsbericht 27*, Bundesamt für Migration und Flüchtlinge, Nürnberg, 2016, *forthcoming*. For this survey about 18 000 Blue Card holders were contacted and a total of 4 340 (approximately 27 %) responded.

Table 1: Key features of the current Blue Card Directive

CHARACTERISTICS OF THE CURRENT BLUE CARD	
Basic approach: demand or supply-driven	Demand-driven: a work contract or binding job offer of at least 1 year is required
Required qualifications	<p><u>Unregulated professions</u>: post-secondary higher education programme of at least 3 years (bachelor, master, doctor) or at least five years of equivalent professional experience, relevant for the occupation/sector specified in the work contract</p> <p><u>Regulated professions</u>: evidence of fulfilling the conditions for exercising that regulated profession in the Member State concerned</p>
Salary threshold	<p>The salary of the worker has to be at least 1.5 times the average annual salary in the Member State concerned.</p> <p>For shortage occupations belonging to ISCO major groups 1 and 2 (managers and professionals), a lower threshold of at least 1.2 times the average annual salary is allowed.</p>
Labour market test	Member States are allowed to impose a labour market test both at first admission and when the Blue Card holder moves to a second Member State to apply for a Blue Card there; this means that they may verify the unavailability of domestic workforce before admitting a third-country national worker.
Quotas for admission	Member States may set a limit to the number of third-country nationals admitted yearly under the Blue Card scheme; it applies to first admission and move to a second Member State.
Duration of the permit	Standard validity is from 1 to 4 years, and if the work contract is shorter, the length of the contract plus three months.
Recognised employers	No system of recognised employers: all employers get similar treatment
Access to employment outside the original contract	During the first two years, access is restricted to work fulfilling the Blue Card conditions, and a change of employer requires prior authorisation. After two years, Member States may either grant equal treatment with nationals regarding access to highly skilled employment or require that relevant changes are communicated.
Access to long-term residence	Access to long-term resident status and, once obtained, retaining the status is facilitated: residence periods in different Member States are cumulated and longer absences from the territory of Member States are allowed compared to the general scheme.
Family reunification rights	There are favourable derogations from the Family Reunification Directive: no waiting period or pre-entry integration measures can be imposed, the maximum processing time of applications is shorter, and family members have immediate access to the labour market.
Intra-EU mobility	After 18 months of residence in one Member State, a Blue Card holder is allowed to move to a second Member State and apply for a new Blue Card there, with the same conditions applying as for the first admission. Residence period in the first Member State is taken into account when long-term resident status is applied for in the second Member State.

Table 2: Transposition of the provisions related to rights in the Blue Card Directive

MS	Labour market access (Art. 12) <i>Transposition study 2013</i>	Temporary unemployment (Art. 13) <i>Transposition study 2013</i>	Access to education and vocational training: grants and loans (Art. 14(2)) <i>Transposition study 2013</i>	Access to university and post-secondary education (Art. 14(2)) <i>Transposition study 2013</i>	Access to long-term resident status/withdrawal of the status: possible limitation of the more favourable time frames to economic activity/studies in the country of origin (Art. 16(5)) <i>Transposition study 2013</i>	Family members: processing time (Art. 15(4)) <i>Transposition study 2013</i>	Family members: access to autonomous permit, periods in other MS (Art. 15(7)) <i>Transposition study 2013</i>
AT	First two years: Restricted to BC conditions, new employer means new BC application After two years: Equal treatment if a person obtains a national permit (Red-White-Red Card Plus)	Consequences of unemployment not specifically dealt with in national law, 3 months of unemployment allowed when renewing the permit	No limitations	Possible to limit the annual number of TCN students admitted in universities	Limitation applied with a different scope than in the Directive	6 months	Immediate right to autonomous permit
BE	First two years: Restricted to BC conditions, new authorisation needed in case of change After two years: Changes need to be communicated	Unemployment of more than 3 months or occurring more than once leads to revoking the BC	No limitations	Entry exams and other procedures exist in certain fields of higher education	No limitations	4 months (+3 months in complex cases)	Periods not accumulated
BG	First two years: Restricted to BC conditions, prior authorisation for a change of employer After two years: Changes need to be communicated	Unemployment of more than 3 months or occurring more than once leads to revoking the BC	No limitations	No limitations	Limitation fully applied	45 days	Accumulation of periods foreseen
CY	First two years: Restricted to BC conditions, prior authorisation required for a change of employer After two years: Changes need to be communicated	Unemployment of more than 3 months or occurring more than once leads to revoking the BC	Limitation fully applied	Prerequisites possible, but not specified in law	Limitation fully applied	6 months	Periods not accumulated
CZ	First two years: Restricted to BC conditions, prior	Unemployment of more than 3 months or	No limitations	Special admission conditions possible for	No limitations	180 days	Accumulation of periods foreseen

	authorisation for a change of employer After two years: Changes need to be communicated	occurring more than once leads to revoking the BC		those having already passed a university study programme or a part of it			
DE	First two years: Restricted to BC conditions, prior approval required for a change of employer After two years: Equal treatment	Consequences of unemployment not specifically dealt with in national law	Limitation fully applied	Knowledge of German is required before admission to higher education in some Federal states	No limitations	3 months (not set as deadline, but after that applicants may take action against the authority)	Periods not accumulated
EE	First two years: Restricted to BC conditions, prior authorisation required for a change of employer After two years: Equal treatment (however, there is a general obligation of notifying beginning and end of employment)	Unemployment of more than 3 months (be it 3 consecutive months or altogether) leads to revoking the BC	No limitations	No limitations	Limitation applied with a different scope than in the Directive	2 months after admissibility of application	Periods not accumulated
EL	First two years: Restricted to BC conditions, prior authorisation needed for change of employer After two years: Changes need to be communicated	Consequences of unemployment not specifically dealt with in national law	Limitation fully applied	Prerequisites possible, but not specified in law	Limitation <u>may</u> be applied as defined in the Directive	6 months	Accumulation of periods foreseen
ES	Initial authorisation (1 year) allows access to that specific employment only, changes are communicated upon renewal	Unemployment of more than 3 months or occurring more than once leads to revoking the BC	No limitations	No limitations	Limitation applied with a different scope than in the Directive	45 days	Periods not accumulated
FI	First two years: Restricted to BC conditions (change of employer possible without communication) After two years: Equal treatment	Unemployment of more than 3 months leads to revoking the BC	Access depends on whether permit is continuous or temporary (BC can be both)	There are general prerequisites for access to higher education	No limitations	6 months	Periods not accumulated

FR	First two years: No clear provision, but in general, if conditions for BC are no longer met, it can be revoked (no notification required) After two years: Equal treatment	Involuntary unemployment: if the person is unemployed at the moment of first renewal, permit is extended for 1 year, thereafter it may be revoked Voluntary unemployment may immediately lead to revoking the BC	No limitations	No limitations	No limitations	6 months	Periods not accumulated
HR	First two years: Change of employer requires a new application for a new permit After two years: Changes communicated	Unemployment of more than 3 months or occurring more than once leads to revoking the BC	No limitations	No limitations	Limitation fully applied		Periods not accumulated
HU	First two years: Restricted to BC conditions, change of employer requires prior authorisation After two years: Equal treatment	Unemployment of more than 3 months or occurring more than once leads to revoking the BC	No limitations	No limitations	No limitations	30 days	Periods not accumulated
IT	First two years: Restricted to BC conditions, change in employer subject to prior authorisation After two years: Equal treatment	Unemployment does not immediately affect the right of residence (residence allowed for the remainder of the permit or at least 1 year)	No limitations	No limitations	No limitations	180 days	Periods not accumulated
LT	First two years: Restricted to BC conditions, change in employer requires prior authorisation After two years: Equal treatment	Unemployment of more than 3 months or more than once leads to revoking the BC	No limitations	Some conditions regarding admission and funding apply	Limitation applied with a different scope than in the Directive	6 months	Periods not accumulated

LU	First two years: Restricted to BC conditions, prior authorisation needed for changes affecting Art 5 conditions After two years: Communication needed of changes in terms of Art 5	Unemployment of more than 3 months or more than once leads to revoking the BC	Limitation fully applied	There are general prerequisites for access to higher education	No limitations	6 months	Accumulation of periods foreseen
LV	Not transposed	Unemployment of more than 3 months or more than once leads to revoking the BC	No limitations	No limitations	Limitation fully applied	30 days	Accumulation of periods foreseen
MT	First two years: Restricted to BC conditions, any relevant change subject to prior authorisation After two years: Communication needed of changes in terms of Art 5	Unemployment of more than 3 months or more than once leads to revoking the BC	Limitation fully applied	Specific prerequisites are possible under national law	Limitation applied with a different scope than in the Directive	6 months	Periods not accumulated
NL	First three years: restricted to BC conditions, however no prior authorisation is required in case of change, only prior notification After three years: Equal treatment	Unemployment of more than 3 months or more than once leads to non-renewal of the BC (no mention of revoking)	No limitations	There are general prerequisites for access to higher education	Limitation fully applied	6 months	Accumulation of periods foreseen
PL	First two years: if salary/position/employer changes, application for modification of BC is needed: of other conditions change, only notification After two years: Notification	Unemployment of more than 3 months or occurring more than once leads to revoking the BC	No limitations	There are general prerequisites for access to higher education (knowledge of Polish if that is the language of studies etc.)	No limitations	6 months	Accumulation of periods foreseen

PT	First two years: restricted to BC conditions, however no prior authorisation is required in case of change, only notification After two years: Equal treatment (implied in the absence of provisions)	No specific provision, unemployment not listed as ground for revoking BC	No limitations	There are general prerequisites for access to higher education	No limitations	3 months (+ additional 3 months in case of exceptional complexities)	Periods not accumulated
RO	Maximum validity period of BC is two years, work authorisation is valid for one employer and one position only	Unemployment of more than 3 months or more than once leads to revoking the BC	No limitations	No limitations	Limitation fully applied	30 days (+15 days if additional proof needed)	Accumulation of periods foreseen
SE	First two years: Limited to one employer and one type of work, changes require a new BC After two years: Limited to one type of work, changes require a new BC	Unemployment of more than 3 months leads to revoking the BC	No limitations for studies in Sweden	There are general prerequisites for access to higher education	No limitations	6 months	Periods not accumulated
SI	First two years: Change of employer requires prior authorisation After two years: Change of employer requires notification	Unemployment of more than 3 months or more than once leads to revoking the BC (+additional provision on involuntary unemployment)	No limitations	No limitations	Limitation applied with a different scope than in the Directive	1 month (+2 months if investigations needed)	Periods not accumulated
SK		Unemployment of more than 3 months may result in not renewing the BC (revoking not mentioned)	Access to students' loans is limited to permanent residents	No limitations	No limitations	90 days	Periods not accumulated

Table 3: Transposition of the provisions related to admission conditions and procedures in the Blue Card Directive

MS	Salary threshold: EUR/year (in 2016 if not otherwise indicated) <i>Data collected from National Contact Points for the Blue Card</i> *) Lower threshold with the coefficient of 1,2 transposed <i>Transposition study 2013</i>	Standard regulated validity of Blue Card (years) (2013) <i>Transposition study 2013</i>	Maximum processing times in days (2013): <i>Transposition study 2013</i>	Average processing times <i>EMN Ad Hoc Query 465/2013</i>	Labour market test applied (2015) <i>Data collected from National Contact Points for the Blue Card</i>	Quota applied (in 2015) <i>Data collected from National Contact Points for the Blue Card</i>
AT	58 434	2 (or contract+3 months)	45/56		Y	N
BE	51 494	1	90		Y (legally possible, hardly applied in practice)	N
BG	~ 8 180	1 (or contract+3 months)	7	5 weeks (including national work permit and D-visa) + 1-2 months for qualifications	Y	N
CY	23 964 (in 2014)	1 (or contract+3 months)	90		Y	Y: 0
CZ	~ 17 620	2 (or contract+3 months)	90		Y	N
DE	49 600	4 (or contract+3 months)	90	No info on BC applications, qualifications max 3 months	N	N
EE	18 096 *	2 (or contract+3 months)	60	4 months including qualifications	Y	Y: 1 322
EL	30 675 (in 2015)	2 (or contract+3 months)	90		Y (applied through quotas)	Y: 44 (for both 2015 and 2016 in total)
ES	33 909 (in 2015)	1	45/56	Average cumulative time 2 months	Y/N (employment situation may be taken into account, with exceptions related to some groups of HSW)	N

FI	54 288	2 (or contract+3 months)	90	41 days, no information available on obtaining qualifications or other documents	N	N
FR	53 331	3	90	2-3 months	N	N
HR	~19 527 (in 2015)	2 (or contract + 3 months)	30/60		N	N
HU	~13 762 *	4 (or contract+3 months)	90	No information on BC applications, qualifications 2-3 months	Y	Y: 59 000
IT	24 789 (in 2014)	2 (or contract+3 months)	90		Y	N
LT	23 160 (in 2014)	1 (or contract+3 months)	60	4 months, all included	Y (only if applies for another job during first 2 years)	N
LU	71 946 (in 2015) *	2 (or contract+3 months)	90	No information on average times, but in principle all examination including qualifications should be carried out within 90 days	N	N
LV	13 776 (in 2015)	5 (or contract+3 months)	60	51 days' standard for ordinary migration procedure (no specific information on average times), qualifications for regulated professions 4 months	N	N
MT	24 054 (in 2014) *	1 (or contract+3 months)	90		Y	Y: No quota established (information up to 2014 available)
NL	64 385	4 (or contract+3 months)	90	No info on average times, obtaining qualifications not included in 90 days	N	N
PL	~15 504	2 (or contract+3 months)	30/60	86 days, qualifications 1-4 months depending on the case	Y	N
PT	23 711 (in 2014) *	1 (or contract+3 months)	60	No information on average times, the whole procedure cannot take more than 80 days	N	N

RO	25 828 (in 2015)	2 (or contract+3 months)	30		Y (applied through quotas)	Y: 800
SE	59 532 (in 2015)	2 (or contract+3 months)	90		N	N
SI	28 006 (in 2015)	2 (or contract+3 months)	30	Cumulative time approx. 4 months, of which 38 days for the BC and 30 days for qualifications	Y	N

ANNEX 6

MEMBER STATES' NATIONAL SCHEMES TARGETING HIGHLY SKILLED WORKERS

1. Main approaches in Attracting the Highly Skilled

The EU Blue Card Directive⁴⁸ allows Member States to grant any national residence permit to persons fulfilling the conditions of the Blue Card and also to other highly skilled workers. This means that both competing and complementary national schemes have continued to exist in parallel with the EU Blue Card. In this annex the different national schemes are described and compared to the EU Blue Card. At the end of the annex there are detailed country fiches of six Member States prepared by an external contractor assigned to carry out a study to support the drafting of the Impact Assessment. There is also a specific section describing the system in the United Kingdom, which is a Member State not applying the Blue Card Directive, but represents a major labour market and has a pertinent scheme in place to attract highly qualified workers.

Member States have taken different kinds of action to attract highly qualified workforce. There is no attempt here to fully categorise these approaches, and they are only selectively described to serve as benchmarks for the EU Blue Card. A simplified general overview is provided in Table 2. Specific attention is given to countries issuing a relatively high number of national permits to the highly skilled such as Austria, France, the Netherlands, Spain, and Sweden. The overview of national schemes is largely based on information collected from Member States through exchanges with EMN national contact points and in bilateral meetings with relevant authorities. The European Migration Network (EMN) Focussed Study "Attracting Highly Qualified and Qualified TCNs"⁴⁹ from 2013 has also been used.

The two basic options for admitting highly skilled workers are demand-driven and supply-driven systems. The former are generally based on an existing job offer or work contract and often entail a labour market test; this means that the availability of national (including legally residing TCNs) and EU workforce needs to be checked before hiring a new TCN (TCN) applicant for the job. The rationale is to attract TCN workforce in areas where there are labour shortages or otherwise specific need for skilled workers. According to an EMN Study from 2013 where 23 Member States provided responses, 16 Member States⁵⁰ favour a demand-driven, employer-led system for the highly skilled and generally, a labour market test was applied, although highly skilled workers may also be exempt from the generally applicable test. It seems that all Member States applying the EU Blue Card lean rather towards this approach than the supply-driven one (see Table 2), although there may be some elements from both.

⁴⁸ [Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment](#), OJ L 155, 18.6.2009, p. 17–29,

⁴⁹ EMN Study, *Synthesis Report - Attracting Highly Qualified and Qualified Third Country Nationals*, European Migration Network, 2013.

⁵⁰ Belgium, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Slovak Republic, Spain, Sweden, and United Kingdom; EMN Study, *Synthesis Report - Attracting Highly Qualified and Qualified Third Country Nationals*, European Migration Network, 2013, p. 18.

Supply-driven systems are often based on points collected by the applicant and a pre-selection or pooling of potential candidates. The added human capital created by highly skilled migrants is the central motivation for this approach, instead of or in addition to considerations related to labour market needs and shortages. These systems are less frequently used in the EU than the demand-driven schemes, whereas they are more popular in overseas competitor countries (see Annex 8). In the Austrian national scheme there are three categories of third-country workers for whom the collection of points is relevant for entry⁵¹. However, even in this system a work contract or binding job offer is necessary for obtaining a residence permit, whereas a six-month job-seeking visa is possible for the very highly qualified. Similar job-seeking opportunities are granted in the Netherlands and Germany.

Many Member States have introduced specific residence permits for the highly skilled (e.g. Austria, Belgium, Cyprus, Finland, France, Germany, the Netherlands, Portugal, Spain) although other groups of applicants such as investors or researchers may also be eligible for them. Some have opted to include the highly-skilled in the general regime for third-country workers; countries with no specific scheme to attract the highly skilled (in addition to the EU Blue Card) include Bulgaria, Croatia, the Czech Republic, Latvia, Lithuania, Luxembourg, Poland, the Slovak Republic and Sweden. The Czech Republic used to have a specific scheme for the highly qualified (Green Card), but all labour migration apart from the EU Blue Card was gathered under one "Employee Card" in June 2014. There are also schemes in place that target both medium and highly skilled, such as the one in Greece.

2. Personal Scope and Admission Conditions in the National Schemes

As indicated above, Member States have different approaches to granting residence permits to highly skilled workers: either through a targeted scheme of their own, as a part of a wider scheme for prioritised workers or under the general scheme for workers. Therefore, the definition of highly skilled has a different relevance based on which of these options has been chosen by the Member State. It is also possible to introduce a scheme only for certain professions; in Italy, the specific permit outside of the yearly quota is reserved only to certain professions at different skills levels: e.g. translators, interpreters and university professors. In Germany the EU Blue Card is the principal channel for attracting the highly skilled, and the most relevant complementary national permits are the ones for qualified job-seekers and scientific researchers. National schemes are often broader than the EU Blue Card covering groups such as investors, researchers, intra-corporate transferees and entrepreneurs; all of these are included in the Spanish national scheme for the highly skilled, for instance.

The definition of highly qualified is generally composed of three possible elements: education, salary, and professional experience, of which the last one is the least frequently used. International standards such as ISCO⁵² and ISCED⁵³ can be used to determine a highly qualified profession or **education**. Most common is to require the first level of tertiary education (Bachelor), but often the requirements reflect the specificities of national education systems and are not as clear-cut as in the Blue Card Directive. In Austria, different education levels give different numbers of points; the requirements are more flexible for identified shortage occupations where also medium-skilled workers may be eligible (category of skilled workers in shortage occupations). Sometimes a minimum level of education is not specified,

⁵¹ Very highly qualified workers, skilled workers in shortage occupations and other key workers.

⁵² International Standard Classification of Occupations by the International Labour Organisation; levels 1-3 (managers, professionals, associate professionals) are the ones generally associated with highly-qualified work

⁵³ International Standard Classification of Education by UNESCO; levels 5, 6 and 7 (post-secondary education, first and second stages of tertiary education) are those most often sufficient for highly-qualified persons

but it is rather required that the person has the necessary skills and expertise to take up the position in question (e.g. Estonia, France for certain categories, Spain). There are also countries where no particular educational level is required from the highly skilled, such as in the Netherlands, where the scheme is based on employer sponsorship, and the only material condition is meeting a salary threshold. The underlying idea is that the (recognised) employer is trusted to verify that the future employee is qualified for the job in question.

Professional experience may have either an independent or a complementary significance in defining who is highly qualified. In Portugal, five years of professional experience may replace university degree as an admission criterion. In France, for persons admitted as “employees” (*salariés*) higher education needs to be completed with professional experience; for holders of bachelor's degree the required period is three years and for master's degree one year.

The **salary threshold** and its level can be determined in different ways. In fact, there is no immigration scheme without any salary threshold but there are different purposes that also determine how the threshold is set. A salary threshold can be used as a proxy for skills as part of the entry conditions to filter out highly skilled, as a market conformity check to guarantee sufficient and equal pay for highly skilled third-country national workers compared to the local labour force (EU nationals and third-country nationals already present), or as a minimum guarantee to avoid inferior conditions for migrant workers or social dumping.

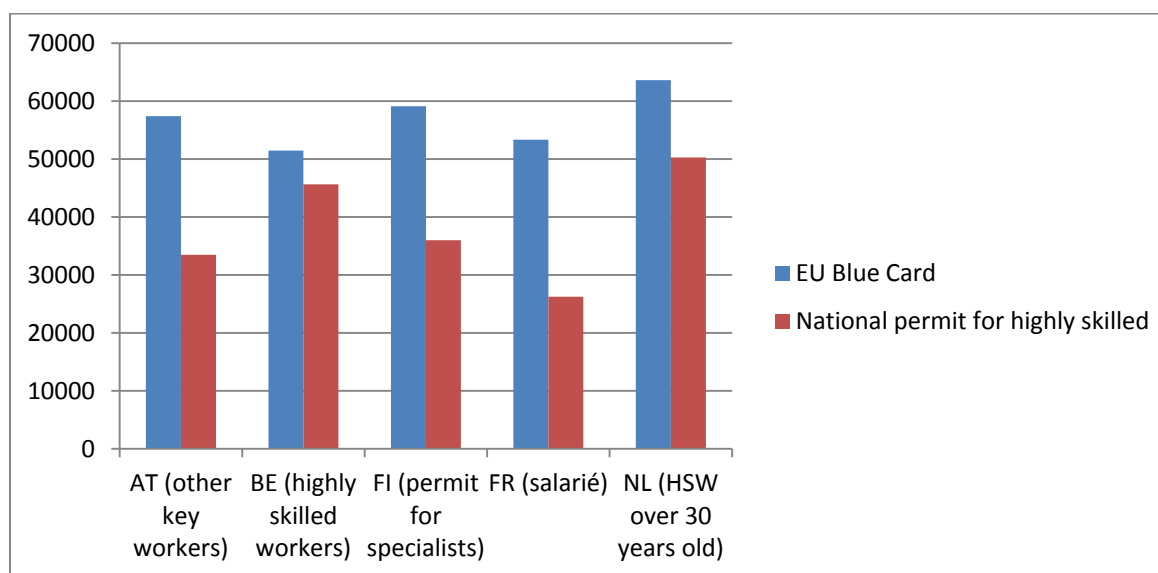
A salary threshold as proxy for skills is generally defined with reference to a benchmark figure and a multiplying factor to adapt its purpose to filter out highly skilled. Across the Member States the benchmark figure is as diverse as the average salary (Estonia), the minimum wage (France), the threshold for a relevant social security scheme (Austria) or the wage indexes (Belgium, Cyprus). In some cases, there is a figure based on estimations upon introducing the scheme, which is then indexed annually (the Netherlands). In Finland, there is no threshold or calculation method fixed in the legal provisions, but the salary is supposed to be higher than average and there are administrative guidelines on the reference amount. There can be a lower salary requirement in place for priority sectors suffering from labour shortages (Austria) as well as for young and/or recently graduated applicants (Austria, the Netherlands). In Austria, there are numerous salary thresholds in place for different categories of highly skilled, and for some groups there are many target levels of salaries to provide different numbers of points. In Belgium, there are two thresholds, one for highly skilled workers and a higher one for managers.

Also market conformity or minimum wage options are common across Member States. In Italy and Portugal, only attaining the minimum wage (general or category-specific) is required, at least for some groups of highly skilled. In Hungary it is required that the TCN is not paid significantly (over 80 %) less than what is the regular wage for that position. In Poland, obtaining a work permit requires that the salary matches what is regularly paid for workers in that position, and in Latvia, attaining the average salary is required. In Spain, no specific threshold is set as the admission conditions are flexible and each application is assessed on a case by case basis, but there is a comparison made with regular wages in similar positions. There are also many other Member States where there are no salary thresholds in the national schemes apart from requirements related to the respect of minimum wages and collective agreements (Germany, Greece, Croatia, Italy, Slovenia, Slovak Republic, Sweden).

Comparing salary thresholds of the EU Blue Card to those of national schemes is not simple, as there may be different permits at national level accessible to those highly skilled workers

who would also be covered by the Directive. Also, there are sometimes different thresholds for different categories. The following table shows some examples of how the national thresholds relate to the one applicable to the EU Blue Card; it is specified for each Member State which category was chosen for the comparison⁵⁴. It is rather clear that there is a tendency to set a significantly lower threshold in the national scheme, if there even is one. This is linked to the fact that the Blue Card Directive sets a minimum threshold – which is quite high as it is – but not a maximum.

Picture 1: Salary thresholds in selected schemes (2015 data)



There are no indications of Member States requiring generally a **minimum length of work contract** or job offer comparable to the one-year rule in the EU Blue Card⁵⁵ and therefore, those schemes are open to workers with shorter contracts. In fact, on average between 2008 and 2014 in the 25 Member States applying the Blue Card, 5,17% of the first permits issued under national schemes for highly skilled workers are issued for a length of validity from 3 to 5 months, 46,42% for a validity from 6 to 11 months, and 48,42% for a validity of 12 months or over. This implies that in many Member States it is possible to receive a national HSW permit with a work contract or job offer of less than 12 months, while this is not possible under the Blue Card for a first permit⁵⁶. This is a major advantage as it may be appropriate for employers to favour a short contract first and then move on to longer extensions or open-ended contracts. Carrying out a **labour market test** before issuing a residence permit is foreseen in the Blue Card Directive, and many Member States apply it also in their national scheme, whereas highly qualified workers may also be exempt from the otherwise applicable test⁵⁷. Some Member States have chosen to apply the test on EU Blue Card applicants, but not on those applying for a national permit for the highly skilled⁵⁸.

⁵⁴ For a more extensive analysis and comparison of salary thresholds, see Annex 7.

⁵⁵ No extensive data has been collected on the issue, but e.g. in FI, NL, and SE, there is no minimum length required, although there may be general rules that residence permits are not issued for a very short stay. In CZ and IT the minimum length of residence permit is three months and in FR permits can be issued from a period of a few months upwards.

⁵⁶ See Annex 1, section 2 for detailed statistics on the length for validity of national first permits.

⁵⁷ See Table 2.

⁵⁸ This option has been taken up by AT, BE (although national authorities report that in practice, labour market tests are not carried out despite the legal possibility), and ES.

In conclusion, the admission conditions of the EU Blue Card are relatively high and demanding compared to some national schemes (see Annex 5 for more details), while some of the national schemes also allow for more flexibility and/or case-by-case assessments. Notably, the salary threshold distinguishes the EU Blue Card scheme from many of the national schemes, as the former uses salary as a proxy for skills while the latter appear to use the salary threshold more often as either as a market conformity check or as a minimum guarantee. Consequently, in any given Member State the level of the salary threshold of the Blue Card is usually relatively high in comparison with the level of the threshold in the national scheme.

3. Procedural Aspects in the National Schemes

As a part of their strategy to attract highly qualified workers, many Member States offer fast-track procedures for this group of applicants⁵⁹. Fast-tracking can mean different things; either it is a specific scheme with fewer conditions applying and it can be reserved to a prioritised group of migrants or employers, or it can be an arrangement where a shorter processing time is guaranteed in exchange for a higher application fee. Overall, Member States generally issue permits for the purposes of highly skilled employment relatively quickly and the national equivalent permits rarely exceed the 90 days maximum processing time of the Blue Card Directive (at least not in legislative terms). However, while there are no extensive statistics on actual average processing times per Member State to allow for an in-depth and across the board comparison, anecdotal evidence suggest that national schemes for highly skilled have swift procedures⁶⁰.

When discussing the efficiency of a particular immigration procedure, attention needs to be drawn to all administrative obligations that the applicant needs to fulfil before being able to take up residency and employment in the host country. For the highly skilled these include getting the necessary qualifications recognised and possibly obtaining the required visa once the authorisation has been granted. It is generally different authorities that are in charge of the different stages of the procedure.

The processing times are necessarily dependent on the admission conditions of the scheme and the level of evidence required from the applicant. In the Netherlands, for example, the target time limit for processing an application of a highly skilled worker under the national scheme is two weeks. The system is based on sponsorship by recognised employers and a fast-track procedure offered to them: no qualifications are assessed or labour market test applied, as meeting the salary threshold is sufficient. The salary is also checked for market conformity meaning that it should correspond to the salary usually paid to persons in a similar position. The starting point is that employers are trusted to make necessary assessments before recruitment and also to give correct information to the authorities. Naturally, if this trust is violated, the status of recognised employer and access to fast-track procedure can be lost. For non-recognised employers there is only the regular scheme for work permits (with a labour market test) available.

⁵⁹ In 2013, it included the following countries: AT, CZ, DE, EE, EL, ES, FR, IT, LT, LU, NL, SE, SI, SK; EMN Study, *Synthesis Report - Attracting Highly Qualified and Qualified Third Country Nationals*, European Migration Network, 2013, p. 19.

⁶⁰ According to data provided by EMN national contact points, in Finland, the estimated average processing time in 2014 was 19 days, in Sweden 91 days (however this is for all workers of all skills levels) and in Slovenia 30 days; in the Netherlands the target is two weeks and in Spain the application has to be decided within 20 days to avoid tacit rejection due to administrative silence.

A specific status for recognised employers is also used in some other Member States (including Italy, Spain and Sweden), and can vary from a formal procedure to more practical cooperation between migration authorities and employers regularly recruiting TCNs. For instance in Sweden, the system is based on agreements between the Migration Agency and employers hiring a specific minimum number of TCNs per year (in 2015 this was 20 per year) and there are no costs involved for the employer.

Another example of an accelerated procedure is the Spanish national scheme; the processing time is 20 days, after which the application is considered as tacitly rejected. The conditions are flexible and issuing the permit is largely based on a case-by-case assessment. There is no formal qualifications requirement for unregulated professions, or a labour market test. Also in Spain there is a system of recognised employers, whereby some conditions targeted to employers can be waived. In Poland, there is no scheme for the highly skilled, but many of these migrants make use of the "simplified procedure" enabling work up to six months and possible subsequent transition to a work permit without being subject to a labour market test.

The procedures are different across Member States in terms of who may submit the application and where. The most common option is that the worker lodges the application at a foreign representation (e.g. embassy or consulate) while still outside the territory of the destination country, but there is flexibility to this rule. In Spain, an application for a national highly skilled permit can be lodged in the territory, whereas EU Blue Card applications are accepted only abroad. There are also countries where the employer initiates the procedure in the host Member State (Italy, the Netherlands). It is also possible that the employer has to first obtain authorisation and after that the employee can apply for a residence permit (Belgium).

The most common legally set validity period for the first residence permit is one year, unless the underlying work contract is shorter which in practice results in a significant number of permits granted for a shorter validity period⁶¹; only 48,42% of the first permits issued under national schemes for highly skilled workers are issued for a length of validity of 12 months or over, while all the rest is issued for a shorter validity period. However, there are also possibilities to issue the permit for a longer or even unlimited period. In Spain and the Slovak Republic, the first permit is most often issued for two years, which is the maximum period (also in Italy the maximum is two years), and in France on average for three years for other categories than "employees" (*salarié*), for whom the average length is one year. In the Netherlands the first permit can be issued for five years if the work contract is open-ended⁶². Permits for the highly skilled are normally renewable and the extensions are sometimes granted for a longer period than the initial permit (e.g. in Finland the first permit is granted for one year, but the extension can be up to four years, if the validity of the work contract is equally long).

4. Rights Granted to Workers and their Family Members⁶³

Rights granted to highly skilled TCN workers are generally quite extensive under national schemes, and usually more generous than the rights granted to migrant workers with lower skills levels. This is also reflected in the broad equal treatment provisions of the EU Blue Card Directive. Specific rights granted to the highly skilled can be e.g. access to highly skilled employment outside the original contract (e.g. in Italy after two years and in the Netherlands

⁶¹ See Annex 1, section 2 for detailed statistics on the length for validity of national first permits.

⁶² See Table 2.

⁶³ For a more extensive overview and details, see: EMN Study, *Synthesis Report - Attracting Highly Qualified and Qualified Third Country Nationals*, European Migration Network, 2013, p. 18-20.

after three years of residence), facilitated conditions for and faster access to permanent residence or citizenship (Germany, Greece), financial and tax incentives to both employers and (highly) qualified employees (Belgium, Finland, France, Ireland, Luxembourg, Malta, Netherlands and Sweden).

Furthermore, improved family reunification rights are often granted, e.g. obtaining residence permits for family members can be facilitated, they can be granted access to the country simultaneously with the worker (an option chosen by more than half of Member States), they can be exempt from pre-entry integration measures (Austria, Germany), and they can be allowed to benefit from unrestricted access to the labour market (Austria, Belgium, France (for certain categories), Germany, Lithuania, Italy, Netherlands, Slovenia, Slovak Republic (where no work permit is required), Sweden) or access under similar conditions as the main permit holder (Germany for some categories).

Other incentives applied include the exemption from having to obtain formal recognition of higher education degrees (Austria and Czech Republic), as well as other support mechanism to facilitate the recognition procedures for other forms of education and professional experience.

However, any rights or facilitation granted through national schemes for highly skilled is necessarily limited to the territory of the Member States concerned. Consequently, as opposed to the EU Blue Card, no intra-EU mobility rights can be granted by any national scheme for highly skilled TCNs, neither for short⁶⁴, medium⁶⁵ nor longer term⁶⁶, while business needs more and more require employees to be mobile and geographically flexible, especially in the higher segment of the labour market.

Typically, Member States limit access to the labour market for highly skilled TCNs to some extent because they consider that persons admitted as highly skilled should end up in commensurate positions. Therefore, the permit is sometimes linked to a specific employer or sector, and for changes in employment it can be required to notify these to the competent authorities, get prior authorisation or even a new permit before any new employment can be taken up. In the Netherlands the permit holder is tied to the initial employer for three years, after which a new permit is possible provided that the salary threshold is met. In France, the professional activity has to remain the same for the first two years, and in Italy, the same applies for the chosen sector. In Spain, there is basically immediate access to any qualified employment, as long as authorities are notified (for EU Blue Card holders there are restrictions during the first year). In Austria, Red-White-Red Card holders are tied to one employer, but unlimited access to the labour market can be attained by applying for a Red-White-Red Card Plus, which is accessible for Red-White-Red Card holders after one year and for EU Blue Card holders after two years.

⁶⁴ Business trips in other Member States, e.g. participation in internal meetings in other offices, in public business conferences and seminars, trade exhibitions or fairs, giving or receiving training, visiting client sites, negotiating business deals, sales and marketing activities in other Member States, internal or external audit missions, maintenance work, etc.,

⁶⁵ E.g. longer assignments or postings, e.g. in other offices of the same employer, at clients' sites, etc.; or regular trips to one or multiple other Member States, e.g. regional managers, regional sales representatives, regional HR officers, etc.

⁶⁶ E.g. transfer of longer duration to another office of the same group (e.g. to HQ at the occasion of a promotion), a long term assignment to a client; or change of job to an employer in another Member States, e.g. a career move to a competitor which offers better conditions or another sector in need for certain specific skills (e.g. transversal skills such as ICT or HR).

5. Evaluating the Effectiveness of the National Schemes

While several national schemes were studied in-depth for this Impact Assessment, to date the most extensive overview and comparison of schemes for highly skilled third-country nationals across EU Member States remains the 2013 Study of the European Migration Network⁶⁷ on [*Attracting Highly Qualified and Qualified Third-Country Nationals*](#).

This study evaluated the effectiveness of policies and measures of Member States. A first constraint it identified was that the understanding of who is a highly qualified and qualified third-country national varies in the Member States, with different definitions and concepts existing. Member States therefore do not have concrete definitions of these individuals but rather seem to mix definitions with concepts of whom these individuals are and with specific academic, salary and professional requirements set for these individuals⁶⁸.

However, the EMN Study found that the EU Blue Card Directive influenced the concepts used in the Member States, by setting out common definitions for both “highly qualified employment” and “higher professional qualifications”, especially when Member States had no prior concepts and definitions. It considered that the development and detail of concepts relating to (highly) qualified workers in the Member States can be associated with the level of maturity of national policy⁶⁹.

According to the EMN Study, only a few Member States have specific evaluation systems in place for regularly assessing the impacts of their policies aimed to attract highly skilled third-country nationals (Ireland and the Netherlands) while others had published reports reviewing some aspects of the effectiveness of their policies although a thorough evaluation was not conducted and periodic evaluation and monitoring is not in place (Austria, France, Germany, Spain, Sweden and the United Kingdom).

The EMN Study grouped the **good practices** of Member States’ policies to attract highly skilled third-country nationals⁷⁰, thus focussing on areas for improvement and possible future reforms for other Member States as most of these good practices were only identified in a number of Member States⁷¹.

Information provision:

⁶⁷ The [European Migration network \(EMN\)](#) is an EU-funded network (established by [Council Decision 2008/381/EC](#) adopted on 14th May 2008) with the aim of providing up-to-date, objective, reliable and comparable information on migration and asylum topics to policy makers (at EU and Member State level) and the general public. The Commission services coordinate the EMN in cooperation with National Contact Points (EMN NCPs) appointed by EU countries plus Norway. In their own countries, the EMN NCPs form national networks with a wide-range of relevant stakeholders. The EMN does not normally engage in primary research; instead, its key strength is to collect, document and make available, in an accessible and comparative manner, data and information held or collected at national and EU level. The network further analyses and synthesizes this information to improve its comparability and harmonization at EU level. In this way, the EMN makes a valuable contribution to evidence-based policymaking.

⁶⁸ EMN Study, *Synthesis Report - Attracting Highly Qualified and Qualified Third Country Nationals*, European Migration Network, 2013, p. 13; The table in Annex 3 of the study provides a full overview of the national concepts existing in the Member States in 2013.

⁶⁹ EMN Study, *Ibid.*, p. 14.

⁷⁰ EMN Study, *Ibid.*, p. 24.

⁷¹ Other Member States may also apply some of these practices but did not notify this in their national report.

- The provision of relevant, up-to-date information and guidance to (highly) qualified third-country nationals to inform them of the migration process and the situation that awaits them in the Member State.
- The establishment of focal points in some selected third countries, e.g. to provide information about job opportunities and on conditions and procedures for obtaining the appropriate permits.

Adaptation of migration procedures:

- Replacing generic highly-skilled routes by more specialised routes for exceptionally talented individuals, qualified workers and employees of international companies and ensuring that (highly) qualified third country nationals are granted with clearly differentiated permits compared to other non-qualified migrants.
- Using premium services to speed up the processing time for (highly) qualified third-country nationals. Fixing a salary threshold in order for the salaries to be at an achievable level, or to avoid excessive pressure on some sectors.
- Maintaining an open, employer-driven system for labour immigration that minimises bureaucracy while preventing wage-dumping and exploitation of foreign workers by untrustworthy employers.

Introduction of incentives to attract (highly) qualified migrants:

- Tax advantages to attract and retain (highly) qualified third country nationals. Improved family reunification rights in accordance (at least) with the provisions of the Blue Card.
- Focussing the policies not only on attracting (highly) qualified third-country nationals but also on effectively retaining them.

Customisation of labour market practices:

- Ensuring that (highly) qualified third country nationals are employed in sectors showing a shortage of domestic supply. This also implies a better and more efficient shortage/needs analysis; and
- Involvement of national institutions in scrutinising whether applicants are of the right calibre for talent routes as such institutions can identify exceptionally talented applicants well

Use of evaluations:

- The establishment of a system for the regular evaluation of policies, strategies and schemes in order to determine the obstacles existing for attracting (highly) qualified third-country nationals to the territory and to identify measures to remove such obstacles.

In addition, the EMN Study highlighted a number of **existing challenges and barriers** of Member States' policies to attract highly skilled third-country nationals⁷²:

- Characteristics which are inherent to the Member State's culture, history and traditions (language, public debate related to immigration, community conflicts, etc.);
- Economic, social and educational factors (economic crisis, salaries/wages, working conditions, etc.);
- Immigration rules and measures (bureaucracy, lack of information, waiting time to process visa applications in the Member State etc.).

While the first two cannot be addressed through immigration policy, the findings of the study on the third area are particularly relevant for the overview and evaluation of national schemes

⁷² EMN Study, *Ibid.*, pp. 25-27.

for highly skilled third-country nationals. The EMN Study provided some more detail on the challenges and barriers of the immigration rules and measures:

- **Salary thresholds** have differing impacts in the Member States. In some (Germany and Luxembourg), the thresholds can act as a possible deterrent as, in some cases, these prove to be very difficult to achieve, especially for younger individuals. In other Member States (France, Italy, Latvia, Lithuania and Slovenia), the salary thresholds are achievable but are not considered as being competitive for attracting third-country nationals to their territory. Moreover, in Finland, the income level is considered to be low compared to the cost of living.
- Similarly, **working conditions (limited services to employees and career opportunities)** are perceived as a factor **lowering the attractiveness** of Member States to (highly) qualified third-country nationals, **and limited access to public services** (e.g., information provided in English).
- Immigration rules and procedures are also considered to create **practical problems** in the majority of Member States (Belgium, Czech Republic, Estonia, France, Germany, Greece, Italy, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Slovenia, Slovak Republic, Spain, Sweden, United Kingdom). **Bureaucracy** and more specifically the **recognition of diplomas and qualifications** and the **direct and indirect costs of the application process** were cited as the most common barriers. A survey conducted among service users in the United Kingdom showed that about two thirds of applicants said that the application process was longer than expected. Those who wish to reduce waiting time may use paid for premium services, where a decision can be issued within 24 hours of an appointment in most cases.
- **Geographic limitation of residence permits for work and residence** has been identified as a barrier in Spain.
- The **diversity of residence permits** for work purposes have resulted in a **fragmentation** of the policy aimed at attracting (highly) qualified third country nationals, creating confusion amongst the target group in France.
- **Excessive times to process visa applications** in the Member States has also been identified as a barrier for (highly) qualified third country nationals wishing to work in the EU (Germany, Spain and Sweden). The **delays** are mainly linked to the time taken for the **labour market tests** required for some occupations, the **involvement of various offices in the visa issuing** process, the use of paper forms instead of an electronic system linked to a database, as well as the burdensome registration process or shortages of staff at immigration authorities.
- **A lack of provision of information and guidance (or awareness thereof)** to (highly) qualified third country nationals is also considered as an obstacle in some Member States (Belgium, Estonia, Finland, Italy, Lithuania, Luxembourg, the Netherlands and the United Kingdom), for example with regard to information on schooling possibilities, social and medical care, taxation, family reunification rights, and the specific documentary requirements of these.

The national evaluations undertaken by some Member States have outlined that the challenges and barriers existing have led to the following impacts:

- The shortage occupations lists do not necessarily keep pace with current needs (France, Ireland); in Ireland, it is noted that proactive policy measures may not have been developed rapidly enough to respond to persistent skills demand, particularly in ICT and health sectors.

- Initially agreed targets for (highly) qualified third country nationals entering the Member States have not been reached for some categories of permits (France, Netherlands);
- Policies aimed at attracting (highly) qualified third country nationals have ultimately had a limited impact on migration flows, mainly regarding the “skills and talents” residence permit (France) or have not been flexible enough to satisfy the internationalisation needs of national enterprises (Spain).

Besides a qualitative evaluation of how well the targeted group of highly skilled workers is reached, an attempt can be made to measure the effectiveness of national schemes in attracting highly-skilled workers quantitatively through the **number of relevant permits granted** and the retention rate of admitted highly skilled workers.

Table 1 (section 8) shows the number of EU Blue Cards and national permits targeting highly skilled issued 2012-2014. However, these statistics only give a rough picture and some caveats apply. As indicated above, the Blue Card Directive was implemented late by most Member States, some even as late as the end of 2013, so the available statistics for 2012, 2013 and 2014 only offer a partial picture. Also, the national permits that are included in the statistics vary across Member States and in some cases the personal scopes of the national schemes are very different from the EU Blue Card, sometimes including also investors, entrepreneurs, intra-corporate transferees etc. Some Member States appear to have issued no national permits to the highly skilled according to the Eurostat statistics, but this may not be accurate as these workers may have been admitted under a general labour migration scheme so that differentiated statistics are not available.

Apart from these somewhat problematic statistics on issued national permits to highly skilled, there is little data available on the overall effectiveness of the national schemes. For instance, there's no specific data on the retention rate of admitted highly skilled workers.

Member States have usually not set a precise target of how many permits they wish or expect to be granted annually when setting up a scheme for the highly skilled. However, in Austria, when the Red-White-Red was introduced in July 2011, social partners estimated the annual number cards to be issued at around 8 000. So far the numbers have been around 1 000 per year, which is far below the estimate but still higher than what was issued before the scheme was introduced⁷³. Around half of Red-White-Red Card holders apply for an extension in the form of a Red-White-Red Card Plus after one year⁷⁴. In France, when the "skills and talents" residence permit was introduced in 2006, the estimations were set at 2 000 issued permits a year, while the actual numbers have been much lower with only some hundreds issued annually. The French national authorities estimate that the procedure may be still too lengthy and the list of required documents excessive. France is in the process of reviewing its immigration legislation and a new "talent passport" is being developed (target for adoption in 2016), bringing the different categories of highly skilled migrants under one umbrella⁷⁵.

⁷³ According to Austrian statistics, numbers of issued RWR Cards have grown from 600 permits in 2011 to 1 640 permits in 2014 (the latter may also contain renewals, as numbers are higher than Eurostat figures in Table 1). Bundesministerium für Inneres, *Establishment and Residence Statistics* (Niederlassung und Aufenthalt).

⁷⁴ Information received from Austrian Ministry of Labour, Social Affairs and Consumer Protection.

⁷⁵ Information received from French Ministry of the Interior.

Among the national schemes the Dutch system appears successful in absolute numbers and has seen a consistent year-on-year growth⁷⁶. The scheme has increased the share (now up to 70 %) of highly qualified workers among all labour migrants coming to the Netherlands⁷⁷. The overall approach of the Dutch scheme is that admission conditions for low and medium skilled workers are relatively strict, whereas the scheme for the highly qualified is flexible and open. In addition, the residence permit for the highly qualified is complemented by permit categories such as the ‘orientation year’ for recent graduates from Dutch or top international universities⁷⁸ which allows them to search a job in the Netherlands with few conditions attached.

Overall, as demonstrated in the problem definition and baseline scenario of the impact assessment, Member States and the EU as a whole face already face significant labour shortages in particular sectors that cannot be filled by the existing EU workforce, and these shortages are projected to exacerbate sharply in coming years. From this picture it is very clear that the current overall inflow of highly skilled workers, via national parallel schemes and the EU Blue Card, is by far not sufficient to address the existing and, if maintained at the current level, certainly not the projected future labour shortages in the EU.

Also in an international comparative perspective, the overall EU-wide number of permits issued for the highly skilled (EU Blue Cards and national permits together) remains low in comparison with third-country competitor schemes (see Annex 8).

6. Interaction Between the National Schemes and the EU Blue Card

In many Member States, the EU Blue Card is being used in parallel with other national schemes for the issuing of permits to (highly) qualified third-country nationals wishing to migrate to their territory.

Yet, in the 2013 EMN Study, many Member States⁷⁹ identified a number of benefits arising from the provisions of the EU Blue Card Directive⁸⁰.

Firstly, the Study found that the EU Blue Card Directive influenced the concepts used in the Member States, by setting out common definitions for both “highly qualified employment” and “higher professional qualifications”, especially when Member States had no prior concepts and definitions⁸¹. A number of Member States considered the introduction of a definition of highly qualified third-country nationals which did not exist in national legislation prior to the transposition of the Directive, as the main benefit. This enabled some of these Member States to form their own national policy in line with the EU acquis. The development and detail of concepts relating to (highly) qualified workers in the Member States can be

⁷⁶ According to information from the Dutch Immigration Service, there was an increase of 30 % from 2013 to 2014 (from 5 800 to 8 540 permits). These figures, however, do not correspond to Eurostat data in Table 1, which may be explained by different statistical methods and definitions (are status changers included or not etc.)

⁷⁷ Information from exchanges between the Commission and MS via EMN; Information provided by IND and Eurostat [migr_resocc].

⁷⁸ Consultations with the Immigration Service, the Ministry for Social Affairs and Employment, and the Ministry for Security and Justice.

⁷⁹ Belgium, Czech Republic, Germany, Estonia, France, Greece, Hungary, Italy, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Slovenia and Sweden.

⁸⁰ EMN Study, *Ibid.*, p. 28.

⁸¹ EMN Study, *Synthesis Report - Attracting Highly Qualified and Qualified Third Country Nationals*, European Migration Network, 2013, p. 14..

associated with the level of maturity of national policy and the Blue Card Directive has arguably taken this policy area forward in several Member States.

In addition, the following main benefits were also identified by several Member States: the facilitation of intra-EU mobility; providing the possibility to change jobs; the possibility of temporary unemployment⁸²; the facilitated access to long-term residence; and the facilitation of family reunification.

Finally, the Directive also improved, simplified or speeded up the administrative process in several Member States.

In addition to the benefits of the EU Blue Card, one of the obstacles identified by a number of Member States in the EMN Study was that the salary threshold for the EU Blue Card is set at a very high level, which does not reflect the realities of the national labour markets, particularly where general salary levels are high. Even though the EU Blue Card introduced advantages to the national systems in the majority of Member States that did not yet have a highly skilled system, Austria and the Netherlands indicated that the EU Blue Card, as implemented in their national legislation, was no more advantageous than their national parallel schemes for highly skilled workers that were already in place⁸³.

The statistics indicate that national residence permits for the highly skilled remain more widely issued than EU Blue Cards – even though the comparison is difficult due to different scopes of the schemes. Nevertheless, while the numbers for national highly skilled permits in EU25 have increased from 19 755 in 2012, 21 940 in 2013, to 24 922 in 2014, the numbers of EU Blue Cards have risen even more sharply from 3 664 in 2012, 12 964 in 2014, to 13 852 in 2015 (see statistics in Annex 12). However, due to the described shortcomings of the statistics, it cannot simply be concluded that these permits are additional. Because of the widely diverging systems and definitions across Member States, highly skilled third-country nationals who may previously have been “hidden” in the statistics of general labour migration schemes, may now be more inclined to opt for an EU Blue Card.

Czech Republic, France, Italy, Luxembourg, Austria and Romania issued more than 100 EU Blue Cards in 2014, while Germany issued 87,5 % of all EU Blue Cards in 2014. Multiple explanations are possible for the wide variations between Member States in the number of Blue Cards granted and the distribution between EU Blue Cards and national permits.

First of all, the size of the Member State, its population and its GDP size clearly play a role. Furthermore, its economic situation, unemployment rate, competitiveness and economic growth are likely to have an impact on its attractiveness. In addition, social (salaries, working conditions, etc.) and educational factors (educational system, rate of highly educated in the population, numbers of foreign students) come into play. Also, factors that cannot be controlled easily by government policies play a role, such as the Member State’s culture,

⁸² The introduction of the possibility of temporary unemployment can be considered as a real added value of the EU Blue Card since this did not exist in many Member States prior to the transposition of the Directive into national law. This flexibility allows (highly) qualified third-country nationals to stay in the EU territory in order to look for another employment if their work contract is terminated, which helps to enhance the attractiveness of the EU for such workers.

⁸³ In Austria, the advantage of an EU Blue Card compared to the national Red-White-Red card is limited. Slight advantages only arise when it comes to intra-EU mobility. In the Netherlands, the national Highly Skilled Migrants Scheme has a lower threshold than the EU Blue Card because it does not include an educational requirement and has a lower salary criterion.

history and traditions (language, public debate related to immigration, community conflicts, etc.).

Finally, the wide variations between Member States in Blue Cards issued and within Member States in Blue cards and national permits, are also explained by the policy choices made by Member States that sometimes apply and promote the EU Blue Card in considerably different ways than their national schemes.

While there are certain inherent factors to the EU Blue Card scheme which limit its potential target group and impede its effective marketing, as explained in Annex 5, some Member States clearly prefer their national schemes for highly skilled as they consider these better adapted to their national labour market situation, easier to administer and to promote to potential applicants than the EU scheme.

However, the successful German Blue Card example shows the potential of not having a competing national scheme, but only complementary schemes. While Germany was very reluctant during the negotiations on the Blue Card Directive, afterwards the German authorities made the conscious policy choice to make full use of the Blue Card to streamline and reform its national system for highly skilled workers. In fact, the current Blue Card Directive allows for a high level of flexibility and leaves much leeway to Member States to adapt it to their national policy preferences.

In the public consultation carried out for the purposes of the Blue Card review, out of 559 respondents to the question, 53 % (296) was in favour of a unified EU-wide scheme, while 34 % (191) favoured parallel national schemes. Out of the 296 in favour of a unified EU-wide scheme, 33 % considered that that a unified EU-wide scheme improves the clarity and simplicity for potential highly qualified migrants, 24 % found that a EU-wide scheme having offers easier mobility between EU Member States for non-EU highly qualified migrants to react to labour market changes, 22 % considered that it improves the attractiveness of the EU compared to having many national parallel schemes and 21 % that many parallel national schemes results in diminished visibility of the EU on the international scene. In contrast, of the 191 respondents who favoured parallel national schemes 30 % considered that these allow to better align national policy preferences with national needs, 24 % thought that these offer more options for potential migrants, and 22 % found that these allow Member States to differentiate themselves from other Member States and improve their relative attractiveness (multiple answers were possible).

The overview of national schemes shows that many of the same elements are generally present in the national schemes as in the EU Blue Card (Table 2 in section 8). There are no major differences in the rights provided for by the schemes apart from intra-EU mobility, which can only be provided for by the EU Blue Card. However, it seems that admission conditions in the national schemes are generally more favourable and inclusive, and there is more room for case-by-case assessments and flexible interpretations of the rules than within the EU scheme. This contributes to swift processing of applications and overall attractiveness of the policy. In some cases, Member States seem to favour their national schemes by providing more extensive rights than what is attached to the EU Blue Card: e.g. in Austria the Red-White-Red Card provides for quicker access to the Red-White-Red Card Plus and in Spain, labour market access is wider in the national scheme.

The relationship between the EU Blue Card and the national schemes is complex. Member States are in greatly varying positions when it comes to attracting the highly qualified yet an

EU instrument should be relevant for all countries applying the Directive. The interaction between the EU scheme and national schemes is different depending on each of the national solutions adopted. In Germany, the national permit categories do not compete with but complement the EU Blue Card, which is the principal permit issued to the highly qualified. In countries such as Austria, the Netherlands and Spain, where the national scheme is clearly in competition with the EU Blue Card, there are also complementary instruments to address groups of migrants not covered by the EU Blue Card. Addressing these groups is relevant for the attractiveness and competitiveness as a whole; these groups can involve innovative entrepreneurs, recent graduates on their way to meeting the standards of highly skilled, highly qualified job seekers and medium-skilled workers in shortage occupations. Therefore, the competitive and complementary elements in relation to the EU Blue Card exist in parallel within the national systems.

There are also many Member States without a specific national permit designed for the highly qualified, e.g. in Sweden there is one permit for all skills levels. In a way, in this case, there is some competition with the EU Blue Card but there should be room for a targeted approach on top of the general one. The effectiveness of these schemes is difficult to evaluate because permits issued to the highly qualified within such a general scheme are not disaggregated in statistics. Indeed, there are many zeros in the national permit column in Table 1 for those countries without a specific scheme.

Member States have different labour market structures and situations and their preferred design for the measures to attract a skilled workforce may differ accordingly. This is reflected in the various national schemes they have adopted and continue to run in parallel with the EU Blue Card. However, when only focussing on national schemes, the attractiveness to highly skilled third-country nationals of access to the wider EU labour market through flexible intra-EU mobility options is lost. In addition, one clear and simple EU-wide scheme has a significantly higher global branding potential, than several dozen individual schemes of Member States. Thus, a focus on national schemes also loses out on enhanced global visibility. In the current situation the national schemes compete with each other and with the EU Blue Card, and the overall number of permits issued across Member States to highly skilled third-country nationals remains low in international comparison.

7. Example of a Point-Based System: The United Kingdom

Legal and policy framework

The United Kingdom (UK) does not apply the Blue Card Directive, but has a national scheme with major differences compared to the approaches discussed previously in this Annex. Examining the UK system becomes particularly interesting if the EU chooses to consider introducing a point-based system in the long term. The Tier visa system is the main immigration route for TCNs to come to the UK to work, study, invest or train. The system categorises applicants according to five 'tiers'. In order to be eligible for a visa in any of the five tiers, the applicant has to pass a points-based assessment. In work visa applications, points are generally awarded according to the applicant's ability, experience and age. The applicant must reach a score above a minimum threshold to be successful. The minimum number of points required varies for each tier. The system was phased in between 2008 - 2010, replacing the previous work permits and entry schemes. Since 2011 the UK offers only one channel for skilled migrants: the Tier 2 visa.

To be eligible for Tier 2, the applicant must have a skilled job offer, and a certificate of sponsorship from an organisation that is a licensed sponsor registered with the UK Border Agency. For this registration to be accepted, the employer has to meet certain requirements for the particular category of Tier 2 and accept certain responsibilities to assist with immigration control. All applications for a sponsor licence must be accompanied by a number of supporting documents, and meet a list of eligibility and suitability criteria. The employer has to show that it has the human resource and recruitment systems in place to meet the sponsor duties and it can offer a genuine vacancy that meets the criteria of the category concerned. Evidence of previous non-compliance by the employer is also taken into account. A sponsor licence is valid for four years.⁸⁴ The 'Certificate of Sponsorship' is a unique reference number that links the TCN to the specific job and employer (there is no paper certificate) and serves as a guarantee that the applicant is able to undertake a specific job and intends to do so. The sponsor has a number of record keeping and reporting duties for the applicants that it sponsors. The UK Border Agency must be informed e.g. in case of longer absences from work, resignation or dismissal of the migrant, as well as any other significant changes in the circumstances. The sponsor also has to report if the migrant may be engaging in criminal activity.⁸⁵

Tier 2 includes four different categories, namely: (1) *General* (subject to annual limit of 21 700, excl. in-country visa changes); (2) *Minister of Religion*; (3) *Sports and Creative workers* and (4) *Intra Company Transferees* (ICT). Points are awarded under a points-based system for a number of parameters: qualifications (this ranges from GCSE A-Level equivalents to doctoral degrees), expected future earnings, type of sponsorship, English language skills and available maintenance. The applicant must score a minimum of 50 points for attributes, 10 points for the English language requirement, 10 points under the maintenance requirement and be over 16 years old. Applicants must not be in breach of immigration laws for any period of overstaying, except in some specific situations. Before entering the UK under the General scheme, applicants must hold a minimum of £ 945 in savings over the last 90 days, or proof of support by their sponsor for the first month.⁸⁶ The job must pay £20 800 or the appropriate rate for the occupation (whichever is higher). The appropriate rates are set at the 25th and 10th percentiles of UK earnings for the occupation, for experienced and new employees respectively. Applicants that reach a salary of at least £ 155 300 or more are in principle not affected by the annual cap limit on Tier 2 General visas.⁸⁷

Moreover, experience remains an important factor. For example, welding traders need at least 3 years of experience on the job whereas chefs need 5 years of experience (and the job cannot be fast food or a standard fare outlet) and s/he has to earn a minimum of £29 570 per year (after housing and food deductions).⁸⁸

Concerning social rights of migrants, workers under the Tier 2 scheme must be paid the same as a UK resident would be in that job type. However, they have no access to public funding or benefits for the whole duration of the visa. As family members the Tier 2 visa covers husband, wife or partner, child under 18, and child over 18 if they are already in the UK as a

⁸⁴ UK visas and immigration, [Tier 2 and 5 of the Points Based System – Guidance for sponsors, version 11/15](#), p 26.

⁸⁵ Workpermit.com, [The Five Tier Points-Based Immigration System, Tier 2: Sponsorship Licence](#).

⁸⁶ UK Visas and Immigration, [Tier 2 of the Points Based System – Policy Guidance](#), 2015.

⁸⁷ UK Visas and Immigration, [Tier 2 of the Points Based System – Policy Guidance](#), 2015

⁸⁸ UK Home Office Science, [‘Determining labour shortages and the need for labour migration from third countries in the UK’](#), European Migration Network Focused Study, 2015.

dependant. Each dependant must have £ 630 available to them in addition to the £ 945 required for the applicant him/herself, before applying.⁸⁹

There are different routes to access a Tier-2 visa, namely the following:

- The **Shortage Occupation List (SOL)**: This channel allows TCN workers to apply for jobs that are listed as shortage occupations at national level. There are currently 32 different occupation groups listed, which are reviewed by the Migration Advisory Committee (MAC) in order to reflect market and policy changes on employment and skills set in need.
- The **Resident Labour Market Test (RLMT)**: The RLMT allows migrants to take up jobs that have passed the labour market test. The announcement has to be published for a minimum of 28 days before being opened up to TCN workers. The RLMT allows determining if and where there is a shortage of specific skills within the UK.
- The **Intra-company Transfer (ICT)**: This channel is not designed to fill labour shortages and there is no cap for this group.

The Tier 2 General visa (SOL and RLMT) applicants are capped at 20 700 grants per year, which are allocated on a monthly basis through restricted Certificates of Sponsorships. There are 2 550 certificates available each April, and 1 650 certificates are made available each subsequent month. Places are allocated on a point basis. If the cap is close to being reached, SOL applicants will be given priority over RLMT applicants. Furthermore, the sponsor can be exempt from the RLMT in case the applicant is already present under a Tier 4 visa (Students) and applies to switch to a Tier 2 visa whereby s/he provides a Certificate of Sponsorship and a UK recognised degree.⁹⁰

The application needs to be submitted within 3 months after the Certificate of Sponsorship has been issued. If it is granted, entry clearance is allowed as from 14 days before the job starts. If the application is rejected, an administrative review can be carried out within 28 days after rejection (which can only happen once). The applicant can reside in the UK on a Tier 2 (General) visa for a maximum of 5 years and 14 days, or the time indicated on the Certificate of Sponsorship plus 1 month (whichever is shorter). The visa can be extended for another 5 years, as long as the total stay is not more than 6 years.⁹¹ It is also possible to switch to a Tier-2 (General) visa from another visa category. Whether the applicant can apply from the UK or only from abroad depends on the visa s/he is switching from.⁹²

Key statistics

Between 2013 and 2014, there was an increase with 16% in sponsored visa applications for Tier 2 visas.⁹³ Visas issued to skilled workers with a job offer under Tier 2 (including dependants) increased by 13 % from 80 000 in 2013 to 90 700 in 2014. Out of these, 29 627 visas were issued under SOL and RLMT; 60 481 visas were for ICTs and 617 visas fell under the category of “others”.⁹⁴

⁸⁹ OGL, [‘Tier 2 \(General\) Visa](#), 2015.

⁹⁰ UK Visas and Immigration, [‘Tier 2 of the Points Based System – Policy Guidance](#), 2015.

⁹¹ UK Government, Visas and Immigration, [Tier 2 \(General\) visa](#).

⁹² UK Government, Visas and Immigration, [Tier 2 \(General\) visa, Switch to this visa](#).

⁹³ UK Home Office, [United Kingdom Annual Policy Report 2014](#). Prepared for the European Migration Network, 2015.

⁹⁴ UK Home Office Science, [‘Determining labour shortages and the need for labour migration from third countries in the UK’](#), European Migration Network Focused Study, 2015.

In June 2015, the cap for Tier 2 General migrants was reached for the first time since its introduction in 2010. This led the MAC to undertake an urgent review on the key aspects of the Tier 2 system.⁹⁵ The final number in September 2015 was 92 859, which is mainly due to in-country extensions from previous ICT visas⁹⁶. The statistics used by the government cannot distinguish between in country extensions and switching of categories (a detailed breakdown on numbers of visas granted can be found in Annex 1 Table 5). Looking at the nationalities of the skilled worker applications, India, US, Australia, China and Japan respectively make up 77 % of applicants. India accounts for over half (55 %) of the migrant workers. There has also been an increase in the number of migrants from South Asia and Oceania coming to the UK. From 2013-2014, the number of South Asian citizens arriving for work related reasons doubled and 91 % had a definite job in place⁹⁷. Rejection rates in the past year were very low. Almost all (97 %) of skilled worker applications were granted. Similarly, the vast majority (95 %) of applications for extension of stay for skilled workers were granted. Looking at the permanent settlement in the UK, a fifth of the 2008 cohort of highly skilled worker visas were granted settlement five years later and a further 8 % still have valid leave to remain (this data must be used tentatively as the UK visas system and categories of skilled workers has changed since 2008).⁹⁸

8. Tables on Issued Permits and Details of National Schemes

Table 1: Number of issued EU Blue Cards and national permits for the highly skilled

	2012		2013		2014	
	Blue Cards	National schemes	Blue Cards	National schemes	Blue Cards	National schemes
BE	0	95	5	73	19	2 484
BG	15	0	14	0	21	0
CZ	62	69	72	69	104	46
DE	2 584	210	11 580	11	12 108	13
EE	16	0	12	0	15	0
EL	0	0	n/a	0	n/a	0
ES	461	1 231	313	1 480	39	2 137
FR	126	3 037	371	2 667	597	2 567
HR	in force: 2013	n/a	10	565	7	0
IT	6	1 695	87	1 543	165	1 066
CY	0	600	0	385	0	469
LV	17	106	10	82	32	122
LT	in force: 2013	0	26	0	92	0
LU	183	21	236	0	262	0
HU	1	0	4	0	5	0
MT	0	0	4	0	2	0

⁹⁵ Evershed, *UK Immigration e-briefing: Migration: Tier 2 under review*, 2015.

⁹⁶ Salt, J. , *International Migration and the UK - Annual Report of the UK SOPEMI Correspondent to the OECD*, Migration Research Unit, University College London, 2014.(Available online at:

⁹⁷ Office for National Statistics. *Migration Statistics Quarterly Report*, May 2015.

⁹⁸ Office for National Statistics. *Migration Statistics Quarterly Report*, May 2015.

NL	1	5 514	3	7 046	0	7 123
AT	124	1 158	108	1 228	128	1 083
PL	2	206	16	387	46	691
PT	2	313	4	767	3	989
RO	46	0	71	0	190	0
SI	9	0	3	0	8	0
SK	7	0	8	0	6	0
FI	2	749	5	971	3	1 120
SE	in force: 2013	4 751	2	4 666	0	5 012
EU25	3 664	19 755	12 964	21 940	13 852	24 922
DK	not applicable	4 088	not applicable	5 730	not applicable	5 698
IE	not applicable	1 408	not applicable	1 707	not applicable	2 438
UK	not applicable	8 070	not applicable	3 081	not applicable	2 478
EU28		33 321		32 458		35 527

Sources: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr_resbc1]; Last updated on 12/02/2016 and extracted on 28/04/2016; Data national schemes: Eurostat, Remunerated activities reasons: Highly skilled workers, First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc], Last update on 27/04/16, extracted on 28/04/2016,

Table 2: Overview of national schemes in Member States applying the EU Blue Card⁹⁹

MS Relevant scheme(s)	Demand-driven (D) or supply-driven (S)	Qualifications	Salary threshold (in addition to minimum wage or market conformity testing)	Labour market test	Quota	Duration of first permit	Access to employment outside the original contract	System of recognised employers	Access to permanent residence facilitated
EU Blue Card	D	<i>Unregulated professions:</i> 3 years of post-secondary education or 5 years of equivalent professional experience <i>Regulated professions:</i> fulfilling the conditions for exercising that profession in the MS concerned	Y (based on average salary)	Y (optional)	Y (optional)	1-4 years or length of work contract + 3 months	After 2 years (before that requires prior authorisation)	N	Y (periods in different MS cumulated, longer absences allowed)
AT Red-White-Red Card	D	Depends on the permit what level, points	Y (based on a social security threshold)	Y/N (depending on the scheme)	N	1 year	After 1 year (by obtaining RWR+)	N	Y (after 1 year access to Red-White-Red Plus)
BE Work permit B for highly skilled	D	Higher education diploma	Y (based on wage indexes)	N	N	1 year	N	N	N
BG (no scheme known)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

⁹⁹ The information included in this table has been mainly gathered from Member States through the European Migration Network contact points. The main purpose is to compare schemes targeted to the highly qualified, but if a particular Member State has indicated a general scheme to be compared with the EU Blue Card, those schemes have been included as well. The fact that no scheme has been presented for a specific Member State means that according to the information available to the Commission, the country in question does not have a scheme in place specifically for highly qualified workers, apart from the EU Blue Card. They may still be admitted through a general scheme for labour migrants.

CY (a) Highly skilled scheme (b) TCNs employed in companies of foreign interest	D	Academic/professional qualifications	(a) N (minimum wage based on collective agreements etc.) (b) Y (based on wage index)	(a) Y/N (depending on the salary) (b) N	N	1 or 2 years	(a) After 1 year (b) Immediate access to companies of foreign interest	N	N
CZ Employee Card, a general scheme for all skills levels	D	No minimum level	N (minimum wage)	Y (with some exceptions)	N	3-24 months	Y (change of employer requires prior consent from authorities)	N	N
DE A range of permits for HQW	D	Usually a university degree	N	N (for HQW)	N	Up to 3 years depending on the category	After 2 years in most cases	N	Y (for certain categories)
EE Permit for top specialists	D	No minimum level	Y (based on average salary)	Y (with some exceptions)	Y	Up to 2 years	Y (as long as conditions set in the residence permit are fulfilled)	N	N
EL Three categories of mid/high qualified	D	Depending on category, education or professional experience	N	N	N	Up to 2 years	N	N	Y (for certain categories)
ES Permit for HQW	D	No specific level required, case-by-case assessment	N (case-by-case assessment)	N	N	1-2 years	Y (changes need to be notified and new position must be highly qualified)	Y	Y (longer absences are allowed without effect on renewal)
FI Permit for specialists	D	Higher education normally required	Y (higher than average salary)	N	N	Up to 1 year	Y (change of employer within the same field is allowed)	N	N

FR Permit for "skills and talents"	D	Qualifications necessary for the specific project	N (resources necessary for the project)	N	N	3 years	Y (the professional activity has to remain the same)	N	N
HR (no scheme known)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
HU General scheme for workers	D	No minimum level	N (Cannot be over 80% lower than salary normally paid in corresponding position)	Y	Y	Up to 2 years	N	N	N
IT Extra-quota permits for certain professionals	D	Qualifications required for certain professions	N (similar salary to what is paid in corresponding positions)	N	Y (there are permits inside and outside the quota)	Up to 2 years	After 2 years in most cases	Y	N
LT (no scheme known)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
LU (no national scheme since the introduction of EU Blue Card)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
LV General scheme for TCN workers	D	No minimum level	N (average salary)	Y (with some exceptions)	N	Up to 5 years	N	N	N
MT (no scheme known)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
NL Permit for HQW	D	No minimum level	Y (administratively determined figure, index-linked)	N	N	Up to 5 years	Y (position has to be highly qualified and salary threshold met)	Y	N

PL General scheme for workers	D	No minimum level	N (has to correspond to salary in a comparable position)	Y (with the exception of shortage occupations)	N	Up to 3 years	Y (the work permit can be amended at the holder's request)	N	N
PT Residence permit for academic research and/or highly skilled activity	D	Y	N	Y	N	1 year	Y	N	N
RO (No scheme known)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SE General scheme for workers	D	No minimum level	N (enough for subsistence)	N (except for 10-day advertisement of position)	N	Up to 2 years	After 2 years change of employer is possible within the same occupation	Y	N
SI Personal work permit	D	HQW implies higher education	N	Y	N	Up to 1 year	Y	N	N
SK General work permit	D	HQW implies Bachelor level	N (minimum wage or requirements of collective agreements)	Y (with some exceptions)	N	Up to 2 years	Y (change of employer requires a new labour market test)	N (some employers with investment certificates can be exempt from acquiring work permits for their employees)	N

9. Country Fiches of Selected Member States

This Chapter presents in detail the national schemes in six selected Member States having relevant systems in place to attract highly qualified workers, namely: Austria, France, Germany, Italy, Spain and the United Kingdom. The fiches have been prepared in January 2016 by an external contractor (ICF International) as a part of a study to support the Impact Assessment. The contractor remains responsible for the accuracy of the data and any analysis included in the fiches.

COUNTRY FICHE: AUSTRIA

Key Points to note:

The Red-White-Red (RWR) Card was introduced in 2011 to attract qualified and highly qualified TCNs across five categories: (1) very highly qualified workers; (2) qualified workers in shortage occupations; (3) other key workers; (4) graduates of Austrian universities and colleges of higher education and (5) self-employed key workers.

The system is points-based, except for graduates and self-employed key workers. The applicants earn points based on specific criteria (special qualifications and skills, work experience, language skills and age).

Applications are submitted through a 'one-stop-shop' process, whereby the applicant submits a single application for the residence and the work permit.

Candidates in the two categories of the (1) very highly qualified workers and (4) graduates have the possibility to apply for a six-month visa for the purpose of job search before applying for a RWR Card.

The RWR Card is issued for 12 months and the holder is bound to one employer. The RWR Card holder can file an application for a RWR Card Plus after 10 months, which grants full access to the labour market.

Although the RWR Card scheme has led to an increase of third-country nationals coming to Austria, the country has still the lowest number of permanent labour migrants relative to the population.

There is competition between the RWR Card and the EU Blue Card. One category under the RWR Card, (1) very highly qualified workers are comparable with third-country nationals in the sense of the EU Blue Card.

The introduction of the EU Blue Card served as a catalyst for the RWR Card and has contributed to expedite its adoption.

Overview of the scheme

Austria introduced the Red-White-Red (RWR) Card and the RWR Card Plus scheme on 1 July 2011. The goal of the scheme was not only to attract HQW, but also to attract workers in the medium-qualified segment for shortage occupations. The EU Blue Card was introduced at the same time¹⁰⁰. The RWR scheme is points-based and includes five different categories:

Very highly qualified workers;

Qualified workers in shortage occupations;

Other key workers;

Graduates of Austrian universities and colleges of higher education;

Self-employed key workers.

The RWR Card is advertised as a flexible immigration scheme, which aims to facilitate the immigration of qualified third-country workers and their families with a view to permanent settlement in Austria, based on personal and labour-market related criteria¹⁰¹.

Design of the scheme

The following general requirements under the Austrian settlement and residence legislation need to be fulfilled for any residence permit¹⁰²:

Adequate means of subsistence: regular monthly income equal to standard rates of the General Social Insurance Act (ASVG) which are EUR 872,31 (for singles), EUR 1 307,89 (for couples) and EUR 134,59 (for each additional child);

Health insurance coverage;

Adequate accommodation according to local standards.

The requirements that need to be fulfilled when applying for the RWR Card differ across the five categories of TCNs.

(1) Very highly qualified workers may apply for a six-month visa for the purpose of job search or directly for a RWR Card if they reach a minimum of 70 points according to the specific criteria (special qualifications and skills, work experience, language skills, age) shown in figure 1.1.

¹⁰⁰ OECD (2014), “Recruiting immigrant workers: Austria 2014 Executive Summary”, http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/recruiting-immigrant-workers-austria-2014/executive-summary-english-deutsch_9789264226050-3-en#page1 (accessed 1 December 2015).

¹⁰¹ Federal Government of Austria (2015), “Permanent immigration - Red-White-Red Card”, available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card.html> (accessed 30 November 2015).

¹⁰² Ibid.

Eligibility criteria for very highly qualified workers

Eligibility criteria for very highly qualified persons	Points
Special qualifications and skills	Maximum of allowable points: 40
Graduation from an institution of higher education, minimum duration of programme: four years	20
- in the subjects mathematics, informatics, natural sciences or technology (MINT subjects)	30
- Post-doctoral qualification (habilitation) or PhD	40
Gross salary of previous year earned in a senior management position with a company listed on the stock exchange or a company for which the Austrian foreign trade office in charge issued a positive report about its activities or business segment:	
- €50,000 to 60,000	20
- €60,000 to 70,000	25
- More than €70,000	30
Research and innovation activities (Patent applications, publications)	20
Awards (recognised prizes)	20
Work experience (adequately reflecting applicant's qualification or senior management position)	Maximum of allowable points: 20
Work experience (per year)	2
Six months of work experience in Austria	10
Language skills	Maximum of allowable points: 10
German or English language skills for the elementary use of the language on a basic level – (A1 level)	5
German or English language skills for the intensified elementary use of the language – (A2 level)	10
Age	Maximum of allowable points: 20
Up to 35 years of age	20
Up to 40 years of age	15
up to 45 years of age	10
Studies in Austria	Maximum of allowable points: 10
Second part of diploma programme (Diplomstudium) or half of the required total ECTS points	5
Completed diploma programme (Diplomstudium) or Bachelor's and Master's degree programme	10
Sum total of maximum allowable points:	100
Required minimum:	70

Source: <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/very-highly-qualified-workers.html> (accessed 1 December 2015)

(2) Qualified workers in shortage occupations may apply if they are able to provide proof of completed training in a shortage occupation under the regulation and if they have received a binding job offer in Austria and the prospective employer is willing to remunerate them with the minimum pay stipulated by law, regulation or collective agreement. The list of shortage occupations is issued each year by the Federal Ministry of Labour, Social Affairs and Consumer Protection in consultation with the Federal Ministry Science, Research and Economy in accordance with the developments on the Austrian labour market. For 2016 these are the following¹⁰³:

Milling machinists

Metal turners

Technicians with a higher level of training for mechanical engineering

Roofers

Graduate engineers in mechanical engineering

Technicians with a higher level of training (engineer) for power engineering technology

Graduate power engineers

Graduate nurses who started with their complementary training in Austria until the end of 2015 and have completed it at the time of application.

According to the points-based system applicants must reach a minimum of 50 points according to the specific criteria set out in figure 1.2 (qualifications, work experience according to qualification, language skills, age):

¹⁰³ Federal Government of Austria (2015), “Shortage occupations list 2016”, available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/skilled-workers-in-shortage-occupations/shortage-occupations-list-2016.html> (accessed 21 December 2015).

Eligibility criteria for qualified workers in shortage occupations

Eligibility criteria for skilled workers	Points
Qualification	Maximum of allowable points: 30
Completed vocational education/training in the shortage occupation	20
General eligibility for admission to a university	25
Completion of a programme with a minimum duration of three years at an institution of tertiary education	30
Work experience according to qualification	Maximum of allowable points: 10
Work experience (per year)	2
Work experience in Austria (per year)	4
Language skills	Maximum of allowable points: 15
German: elementary use of the language on a basic level (A1 level), or English: independent use of the language (B1 level)	10
German: intensified elementary use of the language (A2 level), or English: intensified independent use of the language (B2 level)	15
Age	Maximum of allowable points: 20
Up to 30 years of age	20
Up to 40 years of age	15
Sum total of maximum allowable points:	75
Required minimum:	50

Source: <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/qualified-workers-in-shortage-occupations.html> (accessed 1 December 2015)

(3) Other key workers may apply if they earn the statutory minimum salary plus holiday and Christmas pay, which is EUR 2 790 gross monthly for key workers over 30 years of age and EUR 2 325 gross monthly pay for key workers under 30 years of age in 2015. Applicants must reach at least 50 points of the specific criteria in figure 1.2 (same as for the qualified workers in shortage occupations). However, the qualification criteria differ as shown in figure 1.3:

Eligibility criteria for other qualified workers (difference to qualified workers in shortage occupations)

Eligibility criteria for key workers	Points
Qualifications	Maximum of allowable points: 30
Completed vocational education/training or special know-how or skills* in the prospective occupation	20
General eligibility for admission to a university	25
Completion of a programme with a minimum duration of three years at an institution of tertiary education	30

* Key workers with special know-how or skills do not have to furnish proof that they have completed formal training (e.g. musicians, designers or professional athletes)

Source: <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/other-key-workers.html> (accessed 1 December 2015)

(4) Graduates of Austrian universities and colleges of higher education may apply, if they completed a Diploma programme (Diplomstudium) at least from the second part onward or a master's programme at an Austrian public university, university of applied sciences or accredited private university. They may reside in Austria for a further 6 months for the purpose of searching for employment, provided that they fulfil the general requirements under the Austrian settlement and residence legislation (see above). If, within these 6 months, graduates are able to furnish proof of an employment offer from a specified employer under a work contract which corresponds to their level of qualifications, they will be issued a RWR Card, provided that the employer pays the locally customary gross minimum salary comparable to a salary Austrian graduates (junior employees) would receive, but in any case a minimum of EUR 2 092,50 a month, plus special payments (holiday and Christmas pay). This rule does not apply to graduates who have only obtained a bachelor's degree in Austria and who work less than full time (40hrs). For graduates, there is no point system¹⁰⁴.

(5) Self-employed key workers may apply if their self-employed occupation creates macroeconomic benefit in Austria going beyond its own operational benefit. This may be the case if the intended occupation involves a sustained transfer of investment capital to Austria, creates new jobs or secures existing jobs in Austria, the settlement of the key worker involves the transfer of know-how the introduction of new technologies, or the key worker's company is of considerable significance for the entire region. For self-employed key workers, there is no points-based selection¹⁰⁵.

¹⁰⁴ Federal Government of Austria (2015), "Students and graduates", available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/students-and-graduates.html#c2973> (accessed 1 December 2015).

¹⁰⁵ Federal Government of Austria (2015), "Self-employed key workers", available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/self-employed-key-workers.html> (accessed 1 December 2015).

Under the RWR Card the Austrian government applies a labour market test only for other key workers. In this case the Public Employment Service (AMS) verifies whether no equally qualified person registered as a jobseeker at the AMS can be placed¹⁰⁶.

For all categories but that of the self-employed, a binding job offer is necessary when applying for the RWR Card. Only very qualified workers and graduates have the possibility to obtain a jobseeker visa to enter (or to stay in) Austria and search for a job before applying for the RWR card¹⁰⁷.

Application Procedure¹⁰⁸

The application must be made either in person at the competent settlement authority (if eligible to stay in Austria) or at the Austrian embassy in the home country. The employer has also the possibility to submit an application.

For the Jobseeker Visa the following documents must be submitted: valid travel document (e.g. passport), birth certificate or similar document, photo not older than 6 months, evidence of locally customary accommodation (e.g. lease contract, preliminary agreement on tenancy rights or ownership evidence), evidence of health insurance covering all risks (compulsory health insurance or equivalent insurance policy), evidence of adequate means of subsistence (payslips, pay certificates, employment contracts, insurance benefit certificates, evidence of retirement or other pension or insurance benefits, investment capital or sufficient own assets). Additional documents required under the points system are documents confirming (i) special qualifications and skills, (ii) work experience, (iii) language skills and (iv) periods of study in Austria.

Applications from (1) very highly qualified workers, (2) qualified workers in shortage occupations, (3) other key workers and (4) graduates of Austrian universities and colleges of higher education are circulated from the competent settlement authority ('Niederlassungsbehörde') to the relevant branch of the AMS. The AMS verifies the specific admission requirements and shares its findings with the competent settlement authority. If the applicant meets the criteria proposed, and if the workplace is according to the qualification of the applicant, the settlement authority checks the other legal requirements (general requirements for the granting of residence permits), and if everything is fulfilled issues the RWR Card. Applications from (5) self-employed key workers are received by the competent settlement authority and sent to the office of AMS. The AMS publishes an opinion on the overall economic benefits of self-employed key workers. If the opinion is positive and the self-employed key workers fulfil the general requirements for the granting of residence permits, the RWR card is issued.

¹⁰⁶ Public Employment Service (AMS, 2015), "Die Zulassung ausländischer Schlüsselkräfte", available at <http://www.ams.at/service-arbeitsuchende/auslaenderinnen/zugangsberechtigungen/zulassung-auslaenderischer-schluesselkraefte> (accessed 21 December 2015).

¹⁰⁷ Public Employment Service (AMS, 2015), "Das "Jobseeker" Visum", available at <http://www.ams.at/service-arbeitsuchende/auslaenderinnen/zugangsberechtigungen/jobseeker-visum> (accessed 21 December 2015).

¹⁰⁸ Unless otherwise indicated, all information is from: <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card.html> (accessed 1 December 2015).

The application costs include the Jobseeker Visa (for (1) very HQW and (4) graduates) EUR 100, the RWR Card EUR 100 and the costs of personalisation (photography and signature) EUR 20. For the recognition of qualifications the costs are EUR 150. There are additional fees and administration costs (not specified).

The competent settlement authority must decide on the issuance of the RWR card within eight weeks. According to an interviewed representative of the Federal Ministry of Interior, the actual processing time is usually also 8 weeks. The applicant must pick up the residence permit in person at the relevant branch of the settlement authority. Information on the duration of the individual process can be obtained from the competent authority. The duration of the proceedings depends in particular on whether the documents are complete¹⁰⁹.

TCNs who hold a RWR Card may apply for a RWR Card Plus, if they were employed in accordance with the criteria decisive for eligibility for a minimum of ten months during the preceding twelve months. If the holder of a RWR Card applies for a RWR Card again, the conditions for extending the permit are the same as for receiving the RWR Card for the first time.

Rights granted under the scheme

The RWR Card entitles the holder to fixed-term settlement and employment by a specified employer. In case of a change of employer within the first year a new RWR card must be requested. A change of employer is only possible after receiving the RWR Card plus or an Austrian long-term residence permit (according to Directive 2003/109/EC)¹¹⁰. There is no facilitation for permanent residence compared to other permits (the prerequisite of five years continuous residence must be fulfilled in any case). Family reunification is possible for the nuclear family and registered partners. Family members shall obtain the RWR Card plus, provided they meet the general granting requirements. The RWR Card plus grants its holders free access to the labour market and is valid for 1 year¹¹¹.

Statistical overview

Despite the fact that the scheme has attracted more HQW, Austria has still the lowest number of permanent labour migrants among the European OECD countries relative to the

¹⁰⁹ Interview with the representative of the Federal Ministry of Interior on 3 December 2015.

¹¹⁰ European Commission (2003), “Directive concerning the status of third-country nationals who are long-term residents”, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0109&from=EN> (accessed 30 November 2015).

¹¹¹ Federal Government of Austria (2015), “Red-White-Red Card plus”, available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/red-white-red-card-plus.html> (accessed 1 December 2015).

population¹¹². Table 1.1 shows the key statistics of the RWR card compared to the EU Blue Card as of November 2015¹¹³.

Key statistics of the RWR Card compared to the EU Blue Card

Statistics November 2015	RWR Card	RWR Card Plus	EU Blue Card
Valid residence permits (as of November 2015)	1 626	89 949	259
Disaggregated by gender	449 female 1 177 male	45 636 female 44 313 male	83 female 176 male
Disaggregated by nationality (top 10)	(1) Bosnia-Herzegovina: 345 (2) Serbia: 179 (3) Russian Federation: 140 (4) Ukraine: 118 (5) India: 106 (6) USA: 103 (7) China: 78 (8) Canada: 67 (9) Turkey: 51 (10) FYROM: 36	(1) Turkey: 20,409 (2) Serbia: 17,470 (3) Bosnia-Herzegovina: 11 248 (4) Kosovo: 8 750 (5) FYROM: 4,960 (6) Russian Federation: 3 636 (7) China: 2 069 (8) Nigeria: 2 026 (9) India: 2 020 (10) Ukraine: 1 697	(1) Russian Federation: 68 (2) Ukraine: 37 (3) India: 24 (4) Brazil: 20 (5) USA: 17 (6) Serbia: 13 (7) Bosnia-Herzegovina: 12 (8) China: 8 (9) Turkey: 8 (10) Japan: 7
Disaggregated by age	0-14: 0 15-18: 1 19-24: 189 25-29: 583 30 -34: 432 35-39: 240 40-44: 91 45-49: 47 50-54: 25 55-59: 12 60-64: 4 >=65: 2	0-14: 35 602 15-18: 3 361 19-24: 6 218 25-29: 9 977 30 -34: 11 151 35-39: 8 662 40-44: 6 289 45-49: 3 863 50-54: 2 410 55-59: 1 343 60-64: 622 >=65: 451	0-14: 0 15-18: 0 19-24: 1 25-29: 19 30 -34: 82 35-39: 72 40-44: 40 45-49: 17 50-54: 17 55-59: 7 60-64: 4 >=65: 0
Permits issued 2015 (until 30 November 2015)	1 110 very highly qualified workers: 51 qualified workers in shortage occupations: 176 other key workers: 822 graduates of Austrian universities and colleges of	3 327	109 ¹¹⁴

¹¹² OECD (2014), "Recruiting immigrant workers: Austria 2014 Executive Summary", available at http://www.keepeek.com/Digital-Asset-Management/oced/social-issues-migration-health/recruiting-immigrant-workers-austria-2014/executive-summary-english-deutsch_9789264226050-3-en#page1 (accessed 1 December 2015).

¹¹³ Unless otherwise indicated, all data is from the Austrian Ministry of Interior statistical overview of settlement and residence permits as of November 2015 (latest available data): http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/2015/Niederlassungs_und_Aufenthaltsstatistik_November_2015 (accessed 26 January 2016).

¹¹⁴ Only one of the 109 Blue Cards issued until 30 November 2015 has been issued for a Blue Card holder coming from another Member State. See Federal Ministry of Interior (2015), "Niederlassungs- und Aufenthaltsstatistik November 2015", p. 27, http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/2015/Niederlassungs_und_Aufenthaltsstatistik_November_2015.pdf (accessed 26 January 2016).

Statistics November 2015	RWR Card	RWR Card Plus	EU Blue Card
	higher education: 34 self-employed key workers: 27		
Disaggregated by gender (for 2015)	254 female 856 male	2 049 female 1 278 male	35 female 73 male
Ratio total number of HQW permits / general employment permits (as of November 2015)	91 834 / 438 137		
Relative number compared to size of the workforce	Workforce: 3 929 642; Employment permits issued 438 137 = 11 % of the total workforce ¹¹⁵		

Source:

http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/2015/Niederlassungs_und_Aufenthaltsstatistik_November_2015.pdf (accessed 26 January 2016)

In Austria 7 693 TCNs have become naturalized in 2014¹¹⁶ and in total 273 662 have a permanent residence status as of November 2015¹¹⁷. Around 11 % of TCNs (of a total number of 436 893 TCNs residing in Austria) are unemployed¹¹⁸.

Regarding intra EU mobility, the RWR Card holders do not have this possibility, in contrast to EU Blue Card holders who can apply for an EU Blue Card in another MS than Austria. According to a representative from the Federal Ministry of Labour, Social Affairs and Consumer protection an application for an EU Blue Card in Austria is more likely to succeed, if the applicant has already had an EU Blue Card from another MS (as it is assumed that the applicant already fulfils the basic requirements)¹¹⁹.

If TCNs with a RWR Card lose their job they can stay in the country for a reasonable amount of time. As soon as the RWR Card holder becomes unemployed a process of retracting the card starts that can take up to 3 months. If the RWR Card holder finds another job that allows for issuing a RWR Card then the process is being redirected to issuing a new RWR Card. If this is not the case the RWR Card is withdrawn¹²⁰.

Comparative overview Red-White-Red Card and the EU Blue Card

Compared to the EU Blue Card, the number of HQW attracted by the RWR Card is considerably higher. However, the number is much lower than anticipated during the

¹¹⁵ AMS (2016), "Arbeitsmarktdaten Online - labour market data - general overview", available at <http://iambweb.ams.or.at/ambweb/> (accessed 26 January 2016).

¹¹⁶ Statistics Austria (2015), „Zahl der Einbürgerungen im Jahr 2014 um 3,7% gestiegen“, available at http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/einbuengerungen/080905.html (accessed 21 December 2015).

¹¹⁷ Federal Ministry of Interior (2015), "Niederlassungs- und Aufenthaltsstatistik November 2015", available at http://www.bmi.gv.at/cms/BMI_Niederlassung/statistiken/files/2015/Niederlassungs_und_Aufenthaltsstatistik_November_2015.pdf (accessed 26 January 2016).

¹¹⁸ Statistics Austria (2014), "Arbeitsmarktsituation von Migrantinnen und Migranten in Österreich 2014", available at http://www.statistik.at/web_de/services/publikationen/3/index.html?includePage=detailedView§ionName=Arbeitsmarkt&pubId=717 (accessed 1 December 2015) Information on how many TCNs change employer, move countries and how many get permanent residence status was not possible to obtain.

¹¹⁹ Interview with representative from the Federal Ministry of Labour, Social Affairs and Consumer protection, 2 December 2015.

¹²⁰ Interview with representative from the Federal Ministry of Interior, 3 December 2015.

introduction phase of the scheme. During the introduction phase of the scheme, there was no numerical goal, but the social partners¹²¹ in Austria calculated with around 8 000 RWR Card holder per year¹²². The introduction of the RWR Card coincided with the opening of the Austrian labour market for the EU-8 countries, which migrated in large numbers to Austria. Over 75 % of the total permanent immigration to Austria is due to the free movement of EU citizens which counterbalances the rather low number of RWR Card holders¹²³. Nevertheless, according to the interviewed representatives from the Federal Ministries, the scheme does attract TCN HQWs in segments where labour shortages exist.

There are two important distinctions between the RWR Card and the EU Blue Card that can contribute to the attractiveness of the RWR Card:

In contrast to the EU Blue Card the RWR Card covers a broader spectrum of TNCs, including qualified workers in shortage occupations and entrepreneurs¹²⁴.

The salary threshold for the RWR Card is considerably lower compared to the EU Blue Card. The salary threshold is different for each category of RWR Card holders, but it is generally set according to the average salary in the occupation (for differences see the mapping sheet). In contrast, the salary threshold for the EU Blue Card is 1,5 times the average gross annual salary. The Austrian government made the strategic decision not to include the option of a lower salary threshold (1,2 times higher than the average gross annual salary for shortage occupations) in order to focus the issuance of the EU Blue Card permits to very highly qualified TCNs¹²⁵.

The RWR Card is seen as the main permit for the highly qualified and qualified workers. The EU Blue Card functions as an addition to the RWR Card for very highly qualified workers¹²⁶. Further distinctions of the RWR Card and the EU Blue Card are:

Years of experience can only be used as an addition to formal qualification, to balance a lack of points due to the incomplete fulfilment of other requirements (e.g. language level). For EU Blue Card applicants, on the other hand, professional experience is not taken into account, in

¹²¹ Social partnership is a specific concept in Austria whereby several partners including the government, the association of employers and employees as well as the association of unions together make decisions regarding labour issues in the country.

¹²² Federal Ministry of Labour, Social Affairs and Consumer protection (2010), “Die Rot-Weiß-Rot-Karte – das neue Zuwanderungssystem. Bessere Qualifikation, höheres Wirtschaftswachstum, raschere Integration“, http://www.sozialministerium.at/cms/site/attachments/3/6/0/CH0016/CMS1291897740667/101209_rotweissrotcard_layoutiert.pdf (accessed 26 January 2016).

¹²³ OECD (2014), “Recruiting immigrant workers: Austria 2014 Assessment and Recommendations”, available at http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/recruiting-immigrant-workers-austria-2014/assessment-and-recommendations-english-deutsch_9789264226050-4-en#page1 (accessed 1 December 2015).

¹²⁴ Federal Government of Austria (2015), “Permanent immigration - Red-White-Red Card”, available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card.html> (accessed 1 December 2015).

¹²⁵ Interview with representative from the Ministry of Labour, Social Affairs and Consumer protection, 2 December 2015.

¹²⁶ Ibid.

spite of the possibility to recognise experience under Article 2(g) of the EU Blue Card Directive.¹²⁷

Whereas labour market tests are obligatory for the EU Blue Card, under the national scheme labour market tests are only carried out for certain categories of workers.¹²⁸

The RWR Card scheme is a point based system for 1) very highly qualified workers, 2) qualified workers in shortage occupations, and 3) other key workers. The Blue Card, on the other hand, is issued based on cumulative criteria.

Disadvantages of the RWR Card compared to the EU Blue Card include the initial shorter validity of the permit. Whereas the EU Blue card is issued for two years, the RWR Card is initially only issued for one year. It is debatable, however, if this amounts to a substantial disadvantage, as some applicants might resent the fact of being bound to one employer for two years and might prefer to apply for a RWR Card Plus which then grants free labour market access.¹²⁹

To be eligible for long term residency, holders of the RWR Card must have lived in Austria for at least 5 years. While EU Blue Card holders must also fulfil the condition of 5 years of residence; they can accumulate periods spent as Blue Card holders in different Member States.¹³⁰

In terms of labour rights and the right to family reunification there are no differences between the EU Blue Card and the RWR Card. Family members of EU Blue Card holders and RWR Card holders both receive the RWR Plus Card and have full access to the labour market.¹³¹

EVALUATION OF THE SCHEME

Coherence, complementarity and competition between national scheme and EU Blue Card

According to the interviewed representatives of the Federal Ministry of Labour and of the Federal Ministry of the Interior, the competition between the EU Blue Card and the RWR Card scheme is limited. Only one category under the RWR Card, namely the group of very highly qualified workers would likely be eligible for the EU Blue Card. Hence, these stakeholders characterise the schemes as complementary to the Blue Card, as it attracts a

¹²⁷ Federal Government of Austria (2015), “EU Blue Card”, available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/eu-blue-card.html> (accessed 3 December 2015).

¹²⁸ Public Employment Service (AMS, 2015), “Die Blue Card für Drittstaatsangehörige“, available at <http://www.ams.at/service-arbeitsuchende/auslaenderinnen/zugangsberechtigungen/blue-card-drittstaatsangehoerige> (accessed 21 December 2015).

¹²⁹ Interview with representative from the Federal Ministry of Labour, Social Affairs and Consumer protection, 2 December 2015.

¹³⁰ Federal Government of Austria (2015), “EU Blue Card”, available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/eu-blue-card.html> (accessed 3 December 2015).

¹³¹ Federal Government of Austria (2015), “Family reunification”, available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/family-reunification.html> (accessed 3 December 2015).

much wider range of TCNs and sets different salary thresholds. In light of the partial yet existent overlap, however, a certain amount of competition is incontrovertibly taking place.

The interviewed representatives of the Federal Ministries confirmed that the EU Blue Card is coherent with national policies in the fields of migration, integration education and labour policies. Concerning integration requirements, EU Blue Card holders, as a category expected to integrate easily, are not under any specific obligations¹³².

Efficiency, effectiveness and impact of the national scheme and the EU Blue Card

Effectiveness

The introduction of the RWR Card scheme has led to the increase of HSWs coming to Austria, although this number was much lower than anticipated. There have been no targets in policy documents on the number of HSWs to be attracted. However, the social partners expected around 8 000 HSWs per year¹³³, thus a considerably higher number than the actual average, which fluctuates around 1 000 HSWs per year since the introduction of the scheme¹³⁴. Around half of the RWR Card holders apply for the RWR Card Plus after the first year (e.g. 1 177 RWR Cards were issued in 2013 and 706 RWR Plus Card permits were issued a year later as extensions)¹³⁵. The identified reasons for extending the permit, changing to another permit, or leaving the country are mainly personal.¹³⁶ The RWR Card is being promoted through the online portal ‘migration.gv.at’ where information is accessible in English and German. Furthermore, the Federal Ministry of Labour and the Federal Ministry of the Interior offer information on their homepages and through leaflets in different languages. The Federal Ministry of the Interior also provides information during events and conferences. Interviewed stakeholders find that promotion could be further strengthened through a better involvement of employer associations such as the Chamber of Commerce and the Federation of Austrian Industries¹³⁷.

Although the RWR Card attracts less HSWs than initially expected, the scheme is generally considered effective. The new points based system is credited, in particular, for taking into account a wider range of criteria, including applicants age and language skills. A recent evaluation study of the Austrian immigration system conducted by the OECD has influenced

¹³² Interview with representative from the Federal Ministry of Interior, 3 December 2015.

¹³³ Federal Ministry of Labour, Social Affairs and Consumer protection (2010), “Die Rot-Weiß-Rot-Karte – das neue Zuwanderungssystem. Bessere Qualifikation, höheres Wirtschaftswachstum, raschere Integration“, http://www.sozialministerium.at/cms/site/attachments/3/6/0/CH0016/CMS1291897740667/101209_rotweisrote_ard_layoutiert.pdf (accessed 26 January 2016).

¹³⁴ Interview with representative from the Federal Ministry of Labour, Social Affairs and Consumer protection, 2 December 2015.

¹³⁵ Interview with representative from the Federal Ministry of Interior, 3 December 2015.

¹³⁶ Ibid.

¹³⁷ Ibid.

the decision of the Austrian government to increase and improve the promotion of its national scheme.¹³⁸

Conversely, the EU Blue Card is regarded as less attractive and less effective by the national administrators. Since its introduction, in the same year as the RWR Card, the EU Blue Card attracted around 100 very highly qualified workers per year. Until 30 November 2015, 109 EU Blue Cards were issued. This compares with 51 RWR Cards for very highly qualified workers and a total of 1 110 RWR Cards until 30 November 2015. The introduction of the EU Blue Card led to an expedited introduction of the RWR Card in Austria. According to the representative of the Federal Ministry of Labour, the social partners perceived the focus of the EU Blue Card as too narrow for the needs of the Austrian labour market, where highly qualified and medium qualified workers are equally in demand. According to the representative from the Federal Ministry of the Interior there are two main reasons for the low effectiveness of the EU Blue Card compared to the RWR Card:

The RWR Card is specifically tailored to the needs of the Austrian labour market (as described above) and is open to a broader range of HSWs, due, among other factors, to the lower salary threshold.

The RWR Card has been better promoted by the Austrian authorities.

According to the interviewed representative of the Federal Ministry of Labour, focusing only on changes in the current provisions of the EU Blue Card will not enhance its attractiveness. The Directive 2014/66/EU on intra-corporate transfer (ICT)¹³⁹ might have a deterrent effect on the number of EU Blue Cards issued in Austria, as employers might opt for these permits rather than the EU Blue Card. The employees would be bound to an employer and would not have the option to switch to a RWR Plus Card after two years as is the case now with the EU Blue Card¹⁴⁰.

Efficiency

The administrative cost for the EU Blue Card and the RWR Card are judged to be reasonable. Because no specific department at the competent residence authorities deals exclusively with residence permits for HQWs, no exact statistics about the cost of issuing these permits are available¹⁴¹. For now there are only preliminary plans for introducing special counters for

¹³⁸ OECD (2014), “Recruiting immigrant workers: Austria 2014”, available at http://www.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-austria-2014_9789264226050-en;jsessionid=2i12tvlnfh8jh.x-oecd-live-02 (accessed 1 December 2015).

¹³⁹ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p. 1–22.

¹⁴⁰ Interview with representative from the Federal Ministry of Labour, Social Affairs and Consumer protection, 2 December 2015.

¹⁴¹ The budget of the Federal Ministry of interior was EUR 2,577, including expenses for staff of EUR 1,923 (both in million EUR). The budget of the Federal Ministry of Labour was EUR 7,039, including expenses for staff of EUR 84 (both in million EUR). See: <https://www.bmf.gv.at/budget/das-budget/budget-2014-2015.html> (accessed 6 January 2016).

HQWs¹⁴². There is no evidence that the administrative procedure itself has deterred any TCNs from applying either for the RWR Card or the EU Blue Card. To the contrary, the application procedure has been simplified when the RWR card was introduced¹⁴³. HQWs apply at a ‘one-stop-shop’ at the competent residence authority in Austria, or at the Austrian embassy abroad. The residence authority is sending the application to the AMS that conducts the labour market test, where necessary, and sends the results back to the residence authority that informs the applicant of the decision. Thereby the applicant is only in contact with the residence authority, which enhances the efficiency of the process¹⁴⁴.

Impact

The impact of the EU Blue Card on Austria has been limited in terms of the number of permits issued. As described above, however, the introduction of the Blue Card has served as a catalyst that accelerated the adoption of the RWR Card.¹⁴⁵

The introduction of the RWR Card has contributed to a higher number of HQWs compared to the previous ‘key workers’ directive in Austria. Around half of the RWR Cards issued each year are extended as RWR Cards Plus. The impact on the competitiveness of Austria is seen as limited by the interviewed representatives of the Federal Ministries. The number of RWR Cards issued is small and thus Austria needs to further increase its attractiveness for HQWs¹⁴⁶.

¹⁴² Comment: the lack of official statistics on administrative cost and other statistics concerning the permit holders themselves has been criticized in the 2014 evaluation of the Austrian immigration system conducted by the OECD. See OECD (2014), “Recruiting immigrant workers: Austria 2014.”, available at http://www.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-austria-2014_9789264226050-en;jsessionid=2i12tvlnfh8jh.x-oecd-live-02http://www.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-austria-2014/executive-summary-english-deutsch_9789264226050-3-en (accessed 1 December 2015).

¹⁴³ Interviews with representatives from the Federal Ministry of Labour and Federal Ministry of Interior

¹⁴⁴ Interview with representative from the Federal Ministry of Labour, Social Affairs and Consumer protection, 2 December 2015.

¹⁴⁵ Interview with representative from the Federal Ministry of Interior, 3 December 2015.

¹⁴⁶ Ibid.

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Federal Government of Austria (2015), “Very highly qualified workers”, available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/very-highly-qualified-workers.htm> (accessed 1 December 2015)

Federal Government of Austria (2015), “Shortage occupations list 2016”, available at <http://www.migration.gv.at/en/types-of-immigration/permanent-immigration-red-white-red-card/qualified-workers-in-shortage-occupations/shortage-occupations-list-2016.html> (accessed 21 December 2015)

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COUNTRY FICHE: GERMANY

Key Points to note:

The main scheme in Germany for attracting and retaining highly qualified TCNs is the EU Blue Card (“Blaue Karte EU”).

There are other complementary schemes for the purpose of employment of third-country nationals encompassing qualified and highly qualified third-country nationals (defined in Sections 18 – 21 Residence Act).

A residence permit for qualified skilled workers *seeking* employment was introduced in 2012 and gives third-country nationals the possibility for job search within a six-month period.

There is no competition between the national residence permits in Germany and the EU Blue Card. On the contrary, it is observed that the schemes are coherent and complementary to the EU Blue Card. They are characterised as complementary, since the national residence permits and the EU Blue Card do not attract the same third-country nationals.

The administrative costs for the EU Blue Card and the national permits are regarded as reasonable.

The impact of the EU Blue Card on Germany has been substantial in terms of the absolute number of permits issued. However, the overall impact of the EU Blue Card on attracting highly qualified TCNs is described as limited.

OVERVIEW OF THE NATIONAL PERMITS

Since its introduction in 2012, the EU Blue Card is the main scheme for highly qualified third-country nationals (TCNs) in Germany¹⁴⁷. Germany has only minor national schemes for highly qualified TCNs. In general, the German labour migration system is open for migration of qualified and highly-qualified TCNs. There have been several legislative reforms in the past few years that contributed to a simplification of the application process for highly qualified TCNs that want to enter Germany for employment purposes. The system is demand-driven and based on market needs. It is implemented in the ‘demography strategy’ of the German federal government¹⁴⁸.

In order to work in Germany TCNs need a residence title for the purpose of employment. There are several residence titles for qualified and highly qualified TCNs listed in Part 4, Residence for the purpose of economic activity, sections 18-21 of the Residence Act (“Aufenthaltsgesetz”). The German immigration legislation does not solely focus on highly qualified TCNs. The following Sections 18-21 of the Residence Act include qualified TCNs as well¹⁴⁹:

Section 18: Employment;

Section 18a: Residence permit for the purpose of employment for qualified foreigners whose deportation has been suspended;

Section 18b: Settlement permit for graduates of German universities;

Section 18c: Residence permit for qualified skilled workers seeking employment;

Section 19: Settlement permit for highly qualified foreigners;

Section 19a: EU Blue Card;

Section 20: Research;

Section 21: Self-employment.

¹⁴⁷ Interview with representatives of the Federal Ministry of Interior, 17 December 2015.

¹⁴⁸ Federal Ministry of Interior (BMI, 2015), “Arbeitsmigration”, available at http://www.bmi.bund.de/DE/Themen/Migration-Integration/Zuwanderung/Arbeitsmigration/arbeitsmigration_node.html (accessed 22 December 2015).

¹⁴⁹ Federal Ministry of Justice and Consumer Protection (BMJV, 2015), “Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory. Residence Act. (Federal Law Gazette I p. 162)”, available at http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0042 (accessed 15 December 2015).

The residence titles are supposed to attract TCNs in specific sectors, where qualified or highly qualified labour is needed¹⁵⁰. The following section describes the national permits for highly qualified TCNs, excluding the EU Blue Card under Section 19a.

Design of the national permits

The following general requirements under section 5 of the German Residence Act need to be fulfilled for any residence permit¹⁵¹:

Secured means of subsistence;

No grounds for expulsion;

Passport obligation pursuant to Section 3 is met;

Adequate visa (if necessary).

TCNs that meet these general requirements and can present a valid job offer (except self-employed applicants) can receive a residence permit for the purpose of employment. Generally, a labour market test is carried out by the Federal Employment Agency that verifies whether no equally qualified person registered as a jobseeker can be placed¹⁵². Thus TCNs may only be employed after the consent of the Federal Employment Agency, except managers and those engaged in scientific, research and development activities¹⁵³. The further requirements differ across the residence permits¹⁵⁴.

Residence permit for employment (§ 18 Residence Act)

This residence permit is the general permit for TCNs who do not meet the conditions of the EU Blue Card or exercise a specific (qualified or non-qualified) profession as laid down in the regulation (“Beschäftigungsverordnung”, e.g. ICTs, teachers, au pairs)¹⁵⁵.

¹⁵⁰ Interview with representatives of the Federal Ministry of Interior, 17 December 2015.

¹⁵¹ Federal Ministry of Justice and Consumer Protection (BMJV, 2015), “Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory. Residence Act. (Federal Law Gazette I p. 162)”, available at http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0042 (accessed 15 December 2015)

¹⁵² Federal Employment Agency (2015), “Zulassung zum deutschen Arbeitsmarkt“, available at <https://www.arbeitsagentur.de/web/content/DE/BuergerinnenUndBuerger/ArbeitundBeruf/ArbeitsJobsuche/ArbeitsJobsuche/ArbeitsJobsuche/Detail/index.htm?dfContentId=L6019022DSTBAI750887> (accessed 22 December 2015).

¹⁵³ Federal Office for Migration and Refugees (BAMF, 2013), “Studying and Working in Germany. A brochure on the legal requirements of residence for third-country nationals”, http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Broschueren/bildung-und-beruf-in-deutschland.pdf?__blob=publicationFile#page=7 (accessed 1 December 2015).

¹⁵⁴ Unless otherwise indicated, the information regarding permit requirements stem from: Federal Ministry of Justice and Consumer Protection (BMJV, 2015), “Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory. Residence Act. (Federal Law Gazette I p. 162), available at http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0042 (accessed 15 December 2015).

¹⁵⁵ Federal Ministry of Justice and Consumer Protection (BMJV, 2015). “Beschäftigungsverordnung – BeschV. § 2 Hochqualifizierte, Blaue Karte EU, Hochschulabsolventinnen und Hochschulabsolventen“, available at http://www.gesetze-im-internet.de/beschv_2013/_2.html (accessed 26 January 2016).

Residence permit for the purpose of employment for qualified foreigners whose deportation has been suspended (18a Residence Act)

A TCN whose deportation has been suspended for reasons of international law or on humanitarian grounds may be granted a certificate confirming the suspension of deportation (“Duldung”). This certificate is not a residence permit. However, the TCN has the possibility to apply for a residence permit under 18a Residence Act. This residence permit may be issued to a TCN whose deportation has been suspended (“geduldeter Ausländer”)¹⁵⁶ and who has the prospect of a job in the following three cases: (1) the TCN has completed a vocational qualification or higher education studies in Germany; (2) the TCN has been continuously employed for two years in Germany with a foreign higher education qualification, recognized in Germany and which is appropriate to the employment carried out, or (3) the TCN was employed as a qualified worker continuously for three years in a position that requires a vocational qualification. The permit will only be issued, if the federal employment agency grants its approval. Other requirements include having sufficient living space, a sufficient command of German and generally complying with the laws in Germany.

Settlement permit for graduates of German universities (18b Residence Act)

TCNs who have completed their studies at a German university or a comparable German educational establishment may be granted a settlement permit. The permit is only granted, if the graduate has had a residence permit as described in Sections 18 (general employment), 18a (employment for qualified foreigners whose deportation has been suspended), 19a (EU Blue Card) or 21 (self-employment) for two years. Further the graduate must have a job in accordance with the earned degree. Other requirements include contributions into the statutory pension scheme for at least 24 months and sufficient command of German, sufficient living space and compliance with German laws.

Residence permit for qualified workers seeking employment (18c Residence Act)

A TCN who lives outside Germany, who has a German university degree or a recognised or equivalent foreign higher education qualification, and who can secure subsistence, may be granted a residence permit for the purpose of seeking employment according to the earned qualification for duration of a maximum of 6 months. Also TCNs living in Germany with a residence permit for employment may apply for the residence permit for seeking employment after the end of their employment or research project¹⁵⁷. This residence permit is solely for the purpose of seeking employment, cannot be prolonged and does not entitle the holder to pursue economic activities. A labour market test is not carried out.

¹⁵⁶ Federal Ministry of Justice and Consumer Protection (BMJV, 2015), “Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory. Residence Act. (Federal Law Gazette I p. 162). § 18a Aufenthaltserlaubnis für qualifizierte Geduldete zum Zweck der Beschäftigung“, available at http://www.gesetze-im-internet.de/aufenthg_2004/_18a.html (accessed 8 January 2016).

¹⁵⁷ Federal Office for Migration and Refugees (BAMF, 2015), “Research stays in Germany Information on entry and stay of researchers from non-EU countries (section 16 to 21 – especially section 20 – Residence Act)”, available at http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Flyer/forschungsaufenthalte.pdf?__blob=publicationFile (accessed 23 December 2015).

Settlement permit for highly qualified foreigners (19 Residence Act)

In exceptional cases, a settlement permit for highly qualified TCNs can be obtained. The goal is to attract particularly qualified TCNs by offering them immediately a settlement permit¹⁵⁸. Such highly qualified TCNs are researchers with special technical knowledge, teaching personnel in prominent positions or scientific personnel in prominent positions. The labour market test may be waived in certain cases. As seen below in table 1.1, the figures are rather low with only 168 permits issued in 2014¹⁵⁹, whereby only 22 such persons entered Germany in 2014. The remaining 146 were already residents in Germany¹⁶⁰.

Research (20 Residence Act)

TCNs can apply for a residence permit for research purposes, if they have a hosting agreement with a research institute recognized by the Federal Office for Migration and Refugees¹⁶¹, and if they have secured means of subsistence. The permit transposes Directive 2005/71/EC¹⁶². It is issued for at least one year or, if the project ends earlier, for the duration of the project. No labour market test is carried out¹⁶³.

Self-employment (21 Residence Act)

Entrepreneurs may be issued a residence permit for self-employment, if there is an economic interest or a regional need for the business, and if their business creates a positive effect on the economy. Entrepreneurs must have secured their financing. The following criteria must be fulfilled: viability of the underlying business idea, business experience of the applicant, amount of initial investment, effects on employment and education situation, and contribution to innovation and research. TCNs who graduated from a German university or have a residence permit for researchers can immediately receive a self-employment permit, if the

¹⁵⁸ Interview with representatives of the Federal Ministry of Interior, 17 December 2015.

¹⁵⁹ Federal Office for Migration and Refugees (BAMF, 2014), "Wanderungsmonitoring: Erwerbsmigration nach Deutschland. Jahresbericht 2014", available at https://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/wanderungsmonitoring-2014.pdf?__blob=publicationFile (accessed 5 December 2015).

¹⁶⁰ Federal Office for Migration and Refugees (BAMF, 2015), "Das Bundesamt in Zahlen 2014 Asyl, Migration und Integration", available at http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2014.pdf.jsessionid=2A1967DD36CB6B577537842063F8A3B1.1_cid368?__blob=publicationFile (accessed 23 December 2015).

¹⁶¹ The full list of accredited research organisations is available at Federal Office for Migration and Refugees (BAMF, 2015), "Anerkennung von Forschungseinrichtungen zum Abschluss von Aufnahmevereinbarungen", available at <http://www.bamf.de/DE/DasBAMF/Aufgaben/Forschungseinrichtungen/forschungseinrichtungen-node.html> (accessed 23 December 2015).

¹⁶² Council of the European Union (2005), "Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research".

¹⁶³ Federal Office for Migration and Refugees (BAMF, 2015), "Research stays in Germany Information on entry and stay of researchers from non-EU countries (section 16 to 21 – especially section 20 – Residence Act)", available at http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Flyer/forschungsaufenthalte.pdf?__blob=publicationFile (accessed 23 December 2015).

work is related to the university education or previous research. A residence permit for self-employment is issued for three years¹⁶⁴.

Application Procedure

The application must be made in person either at the German embassy in the home country or at the proper Immigration Authority office (if eligible to stay in Germany). The required documents include a valid passport; health insurance; sufficient financial resources; employment contract/offer of employment (not for the residence permit for qualified skilled workers seeking employment).

Applications are circulated to the Federal Employment Agency. Exemptions include applications for a residence permit for researchers, for the purpose of job search, for highly qualified workers (in some cases) and self-employed. The Federal Employment Agency verifies the specific employment-related admission requirements and shares its findings with the competent authority. If the applicant meets the criteria proposed, and if the position corresponds to the qualifications of the applicant, the authority checks if the applicant fulfils the general requirements for the granting of residence permits and issues the residence permit¹⁶⁵.

The application costs include a fee of €60 for visas of any category. A reduction of, or exemption from visa fees is possible in certain cases¹⁶⁶. The fees for permits are either €100 for residence permits valid up to one year or €110 for residence permits valid over a year and for the EU Blue Card. Extension fees are €65 for an extension for up to three months, or €80 for an extension over the three months¹⁶⁷. The fees for a permanent residence permit are €250 for highly qualified under Section 19 Residence Act, €200 for self-employed under Section 21 Residence Act, and €135 for all other permanent residence permits¹⁶⁸.

There is no maximum processing time set out explicitly in the legislation, but after three months applicants may go to court in order to obtain the sought permit. Since the respective local immigration authorities are in charge of granting permits, the processing times differ between the respective authorities and they usually amount to several weeks¹⁶⁹. The applicant

¹⁶⁴ Federal Office for Migration and Refugees (BAMF, 2013), “Studying and Working in Germany. A brochure on the legal requirements of residence for third-country nationals”, http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Broschueren/bildung-und-beruf-in-deutschland.pdf?__blob=publicationFile#page=7 (accessed 1 December 2015).

¹⁶⁵ Ibid.

¹⁶⁶ Federal Foreign Office (2015), “Visa regulations”, available at http://www.auswaertiges-amt.de/sid_515D4272179C93ABBDAB649B57299FE2/EN/EinreiseUndAufenthalt/Visabestimmungen_node.html#doc480844bodyText4 (accessed 23 December 2015).

¹⁶⁷ Municipal Immigration Departments Düsseldorf (Kommunale Ausländerbehörde Landeshauptstadt Düsseldorf, 2015), “Gebühren für elektronische Aufenthaltstitel (eAT)“, available at http://www.duesseldorf.de/auslaenderamt/aufenthalt/eat_gebuehren/index.shtml (accessed 23 December 2015).

¹⁶⁸ Make it in Germany (2015), “Citizens of other states”, available at <http://www.make-it-in-germany.com/en/for-qualified-professionals/working/guide/visa#citizens-of-other-states> (accessed 01 December 2015).

¹⁶⁹ Interview with representatives of the German Ministry of Interior, 17 December 2015.

must pick up the residence permit in person at the relevant authority. The conditions for extending the permits are the same as for the initial permit.¹⁷⁰

Rights granted under the national permits

The above described residence permits entitle the holder to fixed-term settlement and employment by one employer. A change of employer is possible without permission after two years in most cases¹⁷¹.

Researchers, under Section 20 of the Residence Act, may work in the same field alongside their research activities. Permanent residence is facilitated in case of permits issued under Section 18b and Section 19 of the Residence Act, as these represent immediate settlement permits¹⁷².

Family reunification is possible for the nuclear family and registered partners. Family members can obtain a residence permit to create or preserve family unity. The requirements include sufficient living space, means of subsistence, and basic German skills¹⁷³. The duration is linked to the duration of the sponsor's permit (main applicant). Since September 2013, all those coming to join a member of their family also have full labour market access¹⁷⁴.

Statistical overview

The available national residence permits in Germany attract a certain number of highly qualified TCNs. However, the EU Blue Card remains the main scheme for attracting these TCNs. The residence permit for qualified workers seeking employment (18c Residence Act), the settlement permit for highly qualified foreigners (19 Residence Act), and the residence permit for the purpose of research (20 Residence Act) might attract similar TCNs as the EU Blue Card and are thus used for comparison. The following table 1.1 shows the key statistics of the main national residence permits compared to the EU Blue Card. In 2014 a total of 64 518 permits were issued, whereby the highest number of permits was issued under section 18 of the Residence Act (Employment)¹⁷⁵, after the approval of the Federal Employment Agency amounting to a total of 34 630 permits in 2014 (whereby 16 181 permits were issued to TCNs who entered Germany 2014 and the remaining 18 449 were issued to TCNs who

¹⁷⁰ Municipal Immigration Departments Düsseldorf (Kommunale Ausländerbehörde Landeshauptstadt Düsseldorf, 2015), "Aufenthaltserteilung zur unselbständigen Erwerbstätigkeit", available at <http://www.duesseldorf.de/buergerinfo/33/03/33ae05.shtml> (accessed 23 December 2015).

¹⁷¹ Exchanges between the European Commission and Member States via the European Migration Network (EMN).

¹⁷² Federal Ministry of Justice and Consumer Protection (BMJV, 2015), "Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory. Residence Act. (Federal Law Gazette I p. 162)", available at http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0042 (accessed 15 December 2015).

¹⁷³ Federal Office for Migration and Refugees (BAMF, 2013), "Studying and Working in Germany. A brochure on the legal requirements of residence for third-country nationals", http://www.bamf.de/SharedDocs/Anlagen/EN/Publikationen/Broschueren/bildung-und-beruf-in-deutschland.pdf?__blob=publicationFile#page=7 (accessed 1 December 2015).

¹⁷⁴ Exchanges between the European Commission and Member States via the European Migration Network (EMN).

¹⁷⁵ Section 18 is the general employment permit for TCNs, as described in paragraph 0.

changed from other permits). The second highest number of permits was 11 848 permits issued under section 19a of the Residence Act (EU Blue Card)¹⁷⁶.

Key statistics of the national residence permits compared to the EU Blue Card

Statistics 2014	18c Residence Act (qualified workers seeking employment)	19 Residence Act (highly qualified)	19a Residence Act (EU Blue Card)	20 Residence Act (Researchers)	Total (including remaining permits set out in 18 and 21 Residence Act)
Total number of permits issued in 2014 ¹⁷⁷	186	168	11 848 ¹⁷⁸	694	64 518
Entry in 2014 ¹⁷⁹	93	31 ¹⁸⁰	4 673	397 ¹⁸¹	31 020
Disaggregated by nationality (top 5, entry in 2014) ¹⁸²	N/A	(1) USA: 6 (2) India: 4 (3) China: 4 (4) Turkey: 3 (5) Australia: 3	(1) India: 1,116 (2) Russian Federation: 512 (3) Ukraine: 440 (4) USA: 377 (5) China: 307	(1) China: 86 (2) USA: 53 (3) India: 41 (4) Japan: 31 (5) Brazil: 23	(1) India: 8 220 (2) USA: 7 487 (3) China: 7 349 (4) Japan: 3 844 (5) Bosnia and Herzegovina: 3 493
Relative number compared to size of the workforce 2014 ¹⁸³	Workforce: 38,9 million (1,8 million employment permits issued) = 4,6 % of total workforce				

Source: Eurostat, 2014 and

<http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen->

¹⁷⁶ Federal Office for Migration and Refugees (BAMF, 2014), “Wanderungsmonitoring: Erwerbsmigration nach Deutschland. Jahresbericht 2014“, available at https://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/wanderungsmonitoring-2014.pdf?__blob=publicationFile (accessed 5 December 2015).

¹⁷⁷ Ibid.

¹⁷⁸ Around 60% have already been residents in Germany and changed from other permits to the EU Blue Card. See Federal Office for Migration and Refugees (BAMF, 2014), “Wanderungsmonitoring: Erwerbsmigration nach Deutschland. Jahresbericht 2014“, available at https://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/wanderungsmonitoring-2014.pdf?__blob=publicationFile (accessed 5 December 2015).

¹⁷⁹ Ibid.

¹⁸⁰ Federal Office for Migration and Refugees (BAMF, 2015), “Das Bundesamt in Zahlen 2014 Asyl, Migration und Integration“, available at http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2014.pdf;jsessionid=2A1967DD36CB6B577537842063F8A3B1.1_cid368?__blob=publicationFile (accessed 23 December 2015).

¹⁸¹ Ibid.

¹⁸² Ibid.

¹⁸³ Eurostat, 2014

[2014.pdf;jsessionid=2A1967DD36CB6B577537842063F8A3B1.1_cid368?_blob=publicationFile](#) (accessed 23 December 2015)

In Germany 89 314 TCNs were naturalized in 2013. In total 6 233 have gained a permanent residence status during 2014¹⁸⁴. Around 13% of TCNs (of a total number of 8,1 million¹⁸⁵ TCNs residing in Germany) were unemployed at the end of 2014¹⁸⁶.

Regarding intra-EU mobility, TCNs with the residence permit under Section 20 of the Residence Act (researchers) are free to stay in other Member States for research purposes for up to three months¹⁸⁷. TCNs holding the other residence permits do not have this possibility, in contrast to EU Blue Card holders who can apply in another Member State.

If TCNs holding one of the national residence permits lose their job, they can stay in the country for a reasonable amount of time. In general a residence permit can be withdrawn, if the reason for obtaining the permit is not valid anymore (including situations of unemployment). However, the actual process is at the discretion of the different immigration authorities. There are no precise legal requirements, since all aspects of the individual case are considered. The decision in each individual case depends, for example, on the chances of finding subsequent employment or the acquired rights to unemployment benefits. Regarding job loss of EU Blue Card holders, the three-month period set by the Directive is applied¹⁸⁸.

Comparative overview national residence permits and the EU Blue Card

Compared to the EU Blue Card, the number of highly qualified TCNs attracted by national residence permits is considerably lower. The permits attract specific TCNs mainly with the goal to fill sectorial gaps. There are no quotas or targets formulated, neither for the national permits, nor for the EU Blue Card as the system of attracting highly qualified TCNs is strongly demand-driven. Every TCN that fulfils the requirements may apply for and obtain a permit¹⁸⁹.

There are several distinctions between the national permits and the EU Blue Card:

¹⁸⁴ Federal Office for Migration and Refugees (BAMF, 2014), "Wanderungsmonitoring: Erwerbsmigration nach Deutschland. Jahresbericht 2014", available at https://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/wanderungsmonitoring-2014.pdf?_blob=publicationFile (accessed 5 December 2015)

¹⁸⁵ Federal Statistical Office (2015), "Ausländische Bevölkerung", available at <https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Bevoelkerung/MigrationIntegration/AuslaendischeBevoelkerung/Tabellen/AufenthaltsrechtlicherStatus.html> (accessed 23 December 2015)

¹⁸⁶ Federal Employment Agency (2014), "Analyse des Arbeitsmarktes für Ausländer Dezember 2014", available at <https://statistik.arbeitsagentur.de/Statistischer-Content/Statistische-Analysen/Analytikreports/Zentrale-Analytikreports/Monatliche-Analytikreports/Generische-Publikationen/Analyse-Arbeitsmarkt-Auslaender/Analyse-Arbeitsmarkt-Auslaender-201412.pdf> (accessed 23 December 2015). Information on how many TCNs change employer or move between Member States was not possible to obtain.

¹⁸⁷ Federal Ministry of Justice and Consumer Protection (BMJV, 2015), "Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory. Residence Act. (Federal Law Gazette I p. 162), available at http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0042 (accessed 15 December 2015) (accessed 15 December 2015)

¹⁸⁸ Interview with representatives of the German Ministry of Interior, 17 December 2015

¹⁸⁹ *ibid*

The EU Blue Card was transposed as the main permit for highly qualified TCNs since its introduction in 2012. Germany is a good example showing that an implementation of the Directive according to the needs of the national labour markets is possible, since the EU Blue Card Directive leaves freedom for Member States to adapt it as necessary¹⁹⁰.

A broad range of TCNs may apply for the EU Blue Card, including recent graduates, if they fulfil the conditions in Germany¹⁹¹.

The duration of the EU Blue Card is maximum four years at the time of first issuance (but renewable), or the duration of the employment contract plus three months. The Blue Card holder is bound to one employer for the first two years¹⁹².

The EU Blue Card is the only residence permit with a salary threshold, EUR 49 600 in general and EUR 38 688 in shortage professions (natural scientists, mathematicians, engineers, physicians and academic specialists in information and communications technology)¹⁹³. The shortage professions are defined in the German Employment Ordinance (Section 2 subs. 2)¹⁹⁴ as occupations belonging to Groups 21 (Science and engineering professionals), 221 (Medical doctors) and 25 (Information and communications technology professionals) of the International Standard Classification of Occupations (ISCO)¹⁹⁵.

Where the general salary threshold of EUR 49 600 is met, the issuance of the EU Blue Card is not subject to the labour market test. In shortage professions, where the salary threshold of EUR 38 688 is met, only a test securing the comparability of the working conditions is applied.¹⁹⁶

Regarding long term residency, holders of the national residence permits (except holders of the settlement permits) must have at least five years of continuous residence in Germany before being eligible to apply for a long term residence permit. In contrast, after only 33 months working on the basis of the EU Blue Card, having paid into pension funds or similar insurance services, and showing simple German language skills (A1 level CEFR), the EU Blue Card holder may receive long-term residence in Germany. After proof of sufficient

¹⁹⁰ *ibid*

¹⁹¹ Federal Ministry of Justice and Consumer Protection (BMJV, 2015), “Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory. Residence Act. (Federal Law Gazette I p. 162), available at http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.html#p0042 (accessed 15 December 2015)

¹⁹² Federal Office for Migration and Refugees (BAMF, 2015), “Blaue Karte EU”, available at <http://www.bamf.de/DE/Migration/Arbeiten/BuergerDrittstaat/BlaueKarte/blaue-karte-node.html> (accessed 5 December 2015)

¹⁹³ Federal Office for Migration and Refugees (BAMF, 2015), “EU Blue Card FAQs”, available at <http://www.bamf.de/EN/Infothek/FragenAntworten/BlaueKarteEU/blaue-karte-eu-node.html> (accessed 23 December 2015)

¹⁹⁴ Federal Ministry of Justice and Consumer Protection (BMJV, 2015). “Beschäftigungsverordnung – BeschV. § 2 Hochqualifizierte, Blaue Karte EU, Hochschulabsolventinnen und Hochschulabsolventen“, available at http://www.gesetze-im-internet.de/beschv_2013/_2.html (accessed 26 January 2016)

¹⁹⁵ A complete list of groups is available here: <http://ec.europa.eu/eurostat/documents/1978984/6037342/ISCO-08.pdf> (accessed 26 January 2016).

¹⁹⁶ Federal Office for Migration and Refugees (BAMF, 2015), “EU Blue Card FAQs”, available at <http://www.bamf.de/EN/Infothek/FragenAntworten/BlaueKarteEU/blaue-karte-eu-node.html> (accessed 23 December 2015).

German language skills (B1 level CEFR), the EU Blue Card holder can receive the permanent residence permit already after 21 months. The long-term residence permit lifts the salary threshold. Compared to most other permit categories, the permanent residence permit can be obtained faster, and with less language skills¹⁹⁷.

Furthermore, EU Blue Card holders are able to cumulate the time spent in another Member State (at least 18 months) to apply for long term residency on the basis of the EU long-term residence directive¹⁹⁸.

In terms of rights at the labour market and family reunification there are no differences between the EU Blue Card and the national permit holders, as the duration is linked either to the duration of the EU Blue Card or the national permit and the family members have unlimited access to the labour market¹⁹⁹.

¹⁹⁷ Federal Office for Migration and Refugees (BAMF, 2015), “Blaue Karte EU”, available at <http://www.bamf.de/DE/Migration/Arbeiten/BuergerDrittstaat/BlaueKarte/blaue-karte-node.html> (accessed 5 December 2015).

¹⁹⁸ Interview with representatives of the Federal Ministry of Interior, 17 December 2015.

¹⁹⁹ Exchanges between the European Commission and Member States via the European Migration Network (EMN).

EVALUATION OF THE NATIONAL SCHEME

Coherence, complementarity and competition between national permits and EU Blue Card

Before the introduction of the EU Blue Card in 2012 in Germany there have been discussions about the introduction of a national permit. However, the EU Blue Card was adapted to the national labour market and is now the main permit for highly qualified TCNs. As an additional permit, the residence permit for qualified skilled²⁰⁰ workers seeking employment (Section 18c Residence Act) was introduced to enable highly qualified TCNs to search for a job in Germany, and after finding a job to apply for the EU Blue Card or another residence permits for employment. There are no plans to introduce further permits or schemes for highly qualified TCNs.

According to the interviewed representatives of the Federal Ministry of Interior the competition between the Blue Card and the national permits is basically non-existent. The residence permits described in table 1.1 could attract the same TCNs as the EU Blue Card. However, the numbers of permits issued are lower in comparison to the EU Blue Card and the stakeholders characterise them as complementary to the EU Blue Card.

In terms of coherence with the migration and labour policies and interventions in the field of education, integration and economic policies at the national level, the interviewed representatives of the Federal Ministry of Interior confirmed that the EU Blue Card is coherent with the regulations at the national level. Concerning integration policies, there are no special requirements (or offers) specifically for EU Blue Card holders. The permit holders may participate in the offered integration courses on a voluntary basis²⁰¹.

After the EU Blue Card was introduced a high number of TCNs changed status from another permit to the EU Blue Card – about half of the EU Blue Cards issued were to TCNs already present in Germany under another residence permit. Since 2013 the number of new EU Blue Cards granted as a first permit has been increasing²⁰².

Efficiency, effectiveness and impact of the national permits and the EU Blue card

Effectiveness

The introduction of the EU Blue Card has led to the increase of numbers of highly qualified TCNs coming to Germany, contributing to the highest number of EU Blue Cards issued since its introduction, compared to the other EU Member States that transposed the directive.

The national residence permits and the EU Blue Card are promoted mainly through the online portal ‘make-it-in-germany.com’ whereby information is given in English, German and Spanish as well as shorter information in other languages such as French, Serbian and

²⁰⁰ Interview with representatives of the Federal Ministry of Interior, 17 December 2015.

²⁰¹ Interview with representatives of the Federal Ministry of Interior, 17 December 2015.

²⁰² Exchanges between the European Commission and Member States via the European Migration Network (EMN).

Turkish²⁰³. The portal was introduced by the Ministries of Labour and Social Affairs and Economic Affairs and Energy as well as the Federal Employment Agency in 2012. Also the Federal Ministries of Foreign Affairs and the Interior as well as the Office for Migration and Refugees have been involved in the development of the online portal. The Office for Migration and Refugees has further extensive information about the possible residence permits for employment purposes available at the homepage²⁰⁴.

The representatives of the Federal Ministry of Interior explained that there has been a high number of EU Blue Cards issued. However, since the introduction, the EU Blue Card has not contributed to a substantial increase of the total number of TCNs entering Germany for employment purposes. The higher number is rather due to the favourable economic conditions in Germany and not necessarily to the EU Blue Card, especially when taking into account that a high number of the EU Blue Cards issued are for TCNs already residing in Germany²⁰⁵.

The aspect of intra-EU Mobility is negligible, as only 112 of EU Blue Cards were issued to TCNs coming from another Member States until 31 March 2015 (out of 22 000 in total up to this date)²⁰⁶.

Efficiency

The administrative cost for the EU Blue Card and the national permits are regarded as reasonable. There is no specific department at the competent immigration authorities dealing with residence permits for highly qualified TCNs. Therefore, there are no exact statistics about the cost of issuing these permits²⁰⁷. There is no evidence that the administrative procedure for application has had a deterrent effect for TCNs to apply either for the national scheme or the EU Blue Card. In contrast, the procedure for application has been simplified when the EU Blue Card was introduced. TCNs apply at a ‘one-stop-shop’ at the competent immigration authority in Germany (or at the German embassy abroad, if a visa to enter the country is needed). The authority is sending the application to the Federal Employment Agency that conducts the labour market test and sends the results back to the authority that informs the applicant of the decision. The applicant is only in contact with the authority.

²⁰³ Make it in Germany (2015), “Mein Willkommensportal! Lernen Sie Deutschland anhand Ihrer Interessen kennen“, available at <http://www.make-it-in-germany.com/> (accessed 25 November 2015).

²⁰⁴ Federal Office for Migration and Refugees (BAMF, 2015), “Migration to Germany - Welcome to Germany”, available at <http://www.bamf.de/EN/Startseite/startseite-node.html> (accessed 25 November 2015).

²⁰⁵ Interview with representatives of the Federal Ministry of Interior, 17 December 2015.

²⁰⁶ Ibid, Latest available figures for Germany.

²⁰⁷ The budget of the Federal Ministry of Interior in 2014 was EUR 5.9 billion in total, whereby the migration budget (including integration courses and other integration measures) was EUR 336 million (see: Federal Ministry of Interior (BMI, 2014), “Haushalt”, available at http://www.bmi.bund.de/DE/Ministerium/BMI-Vorstellung/Haushalt/haushalt_node.html, 6 January 2016).

The expenses (in EUR 1,000) of Federal Office for Migration and Refugees (which functions under the Federal Ministry of Interior) amounted in 2014 to a total of EUR 159,277, including expenses for remuneration of staff: EUR 58,335; fringe benefits of staff: EUR 41,737; administration expenses (without IT): EUR 16,975; remuneration of temporary staff: EUR 7,823; training and further education: EUR 1,706 (see Federal Ministry of Finance (2015), “Bundeshaushalt 2014. Ausgaben: Bundesamt für Migration und Flüchtlinge“, available at <http://www.bundeshaushalt-info.de/#/2014/soll/ausgaben/einzelplan/0633.html>, 6 January 2016).

‘Welcome centres’ for highly qualified TCNs have been implemented in the immigration authorities in bigger cities and regions²⁰⁸.

Impact

The impact of the EU Blue Card on Germany has been substantial in terms of number of permits issued. However, the interviewed representatives from the Ministry of Interior do not necessarily link this to the transposition of the EU Blue Card Directive. There was already a trend towards an opening of the labour market in Germany, and the EU Blue Card can be seen as a vehicle for legislative changes (e.g. the introduction of the residence permit for qualified skilled workers seeking employment).

The EU Blue Card has been integrated into the larger developments, but there is no significant independent ‘impact’. The EU Blue Card brand can contribute to a stronger awareness and use of the EU Blue Card. However, if companies are interested in employing highly qualified TCNs from abroad, they will also accept other legislative provisions. This is not necessarily bound to the EU Blue Card directive²⁰⁹.

²⁰⁸ Interview with representatives of the Federal Ministry of Interior, 17 December 2015.

²⁰⁹ Ibid.

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COUNTRY FICHE: FRANCE

Key Points to note:

Highly-qualified TCNs (HQW TCNs) in France can apply for a number of residence permits. The most relevant one for comparison with the EU Blue Card is the *Carte de séjour compétences et talents* ('Residence permit for competences and talents') created in 2006 to attract foreign talent. Nine different types of profiles can apply, including independent professionals (artists, authors, etc.), athletes, investors and employees²¹⁰. It provides certain advantages that are not available under other residence permits. Under this residence permit, the TCN is required to present a project (definition of project includes paid employment) which makes "a significant or lasting contribution, through their skills or talents, to France's economic development or to its intellectual, scientific, cultural, humanitarian or athletic prestige, and directly or indirectly, to that of their own country"²¹¹.

In the period 2008-2011, less than 300 *Residence permits for competences and talents* were issued on average per year. Since the introduction of the scheme in 2006 up to 2012, a total number of 1,364 TCNs. This figure has been considered far from the targets set - 2,000 residence permits per year.

In France, work-related (including highly qualified) migration has been relatively small despite efforts to boost it. This has been accounted to a number of reasons, including lengthy administrative procedures; lack of flexibility of certain residence permits and difficulties with the recognition of foreign qualifications for regulated professions.

In revision of its legal migration policy, France has planned to introduce in 2016 a so-called '*talent passport*' which aims to streamline the immigration of qualified TCNs and make France more attractive for TCN skilled workers.

²¹⁰ 9 distinct categories: young graduates, scientists, highly qualified workers, investors, executive officers, entrepreneurs, inter-company transferees, and artists, as well as foreign workers with an international reputation in a scientific, literary, intellectual, educational or sporting field.

²¹¹ <http://www.immigration.interieur.gouv.fr/Immigration/L-immigration-professionnelle/La-carte-de-sejour-competences-et-talents>

OVERVIEW OF THE SCHEMES

This section outlines the policy context in France which led to the development of residence permits for HQW TCNs.

Design of the scheme

The policy to attract international talents commenced in 2006 when the concept of ‘selective’ immigration was enshrined in the *Law on Immigration and Integration* adopted on 24th July 2006. This was followed by the design of two residence permits targeted at qualified TCNs: the temporary residence permit for seconded employees²¹² and the *Residence permits for competences and talents*²¹³. The latter is the main scheme comparable to the EU Blue Card. Other residence permits which qualified TCNs can apply to in France are also considered in this Country Fiche but those are not looked at in as much detail.

The focus of France’s policies for attracting foreign talents has traditionally been put on ‘circular’ migration rather than on a ‘settlement’ migration²¹⁴. The policy has not aimed to fill in any specific labour shortages. As highlighted by representatives of the Ministry of Interior consulted, France has had a high fertility rate by European standards, coupled with a high unemployment rate, especially amongst young graduates. Those two factors do not place France in a position where its immigration policy has focused on filling gaps in the qualified labour force unlike other EU Member States.

With regard to policy measures for filling labour shortages, a national list of shortage occupations was drawn in 2008²¹⁵. Professions include a variety of sectors (mainly finance, IT, construction, electricity and electronics) and mostly require low to medium-level of qualifications²¹⁶. The list does not concern highly qualified workers specifically and most professions included in this list would not meet the EU Blue Card salary threshold. Finally, according to the Ministry of Interior’s preparatory document to the 2014 reform, this list needed to be re-examined with social partners and regional authorities as it was no longer

²¹² *Carte de séjour temporaire salarie en mission.*

²¹³ *Carte de séjour compétences et talents.*

²¹⁴ Ministère de l’intérieur, Secrétariat général à l’immigration et à l’intégration, *Les données de l’immigration professionnelle et étudiante, Document préparatoire au débat au Parlement*, April 2013 and confirmed by interviews with Ministry of Interior officials.

²¹⁵ *Liste des métiers caractérisés par des difficultés de recrutement, fixée par l’Arrêté du 18 janvier 2008 relatif à la délivrance, sans opposition de la situation de l’emploi, des autorisations de travail aux étrangers non ressortissants d’un État membre de l’Union européenne, d’un autre État partie à l’Espace économique européen ou de la Confédération suisse.*

²¹⁶ The decree of 18 January 2008 sets regional lists of shortage occupations applicable to TNCs. Thirty jobs are concerned, six at national level: - Executives in audit and accounting, - IT research & development engineer (*informaticiens d’études*), IT experts, building engineers, construction site managers, foremen.

relevant to current needs²¹⁷. Separate lists of labour shortages also exist as part of bilateral agreements with certain third countries²¹⁸.

Since 2006, the labour migration policy in France remains oriented towards attracting foreign talents. The National Pact for growth, competitiveness and employment²¹⁹ adopted by the government on 6th November 2012, aimed amongst other objectives, to attract international talent²²⁰. This reflects the objective to increase work-related migration compared to immigration for family reunification reasons and to improve the admission procedures of work-related migrants²²¹. For example, since 2011, in the prefectures of 8 departments, dedicated offices were established to provide information to holders of the residence permits ‘competences and talents’ and ‘seconded employees’ on all procedures required (work permit, medical examinations, residence permits etc.)²²².

However, the policy to attract foreign talents has had limited results. Reasons invoked in the Ministry of Interior’s preparatory document to the 2014 reform²²³ relate to:

the multiplicity of work-related residence permits in France (in terms of duration, application procedures and eligibility criteria), which can create confusion amongst employers and potential migrants;

low number of employment opportunities for foreign workers, especially in the context of the economic crisis;

employers’ preference to hire job applicants which are well integrated in French society as reflected by the possession of a French qualification;

²¹⁷ Ministère de l’intérieur, Secrétariat général à l’immigration et à l’intégration,, *Document préparatoire au débat au Parlement*, April 2013 <http://www.immigration.interieur.gouv.fr/Info-ressources/Documentation/Rapports-publics/Document-preparatoire-au-debat-sans-vote-sur-l-immigration-professionnelle-et-etudiante>

²¹⁸ France has signed several agreements on the joint management of migratory flows which includes provisions on immigration for professional reasons. Those provisions establish a list of occupations for which labour market tests are not needed. Qualified occupations (IR, finance) are included in those lists (alongside less skilled occupations, e.g. catering or security). Signed agreements are: *Accord franco-sénégalais* 2006, *Accord franco-gabonais* 2007, *Accord franco-congolais* 2007, *Accord franco-béninois* 2007, *Accord franco-tunisien* 2008, *Accord franco-mauricien* 2008, *Accord franco-capverdien* 2008, *Accord franco-burkinabé* 2009, *Accord franco-camerounais* 2009 (to be ratified). Point de contact français du Réseau européen des migrations (REM), *Note d’information Première étude ciblée 2013, Attirer les talents étrangers en France : bonnes pratiques et enseignements tirés*, Juillet 2013.

²¹⁹ *Pacte national pour la croissance, la compétitivité et l’emploi*.

²²⁰ Point de contact français du Réseau européen des migrations (REM), *Note d’information Première étude ciblée 2013, Attirer les talents étrangers en France : bonnes pratiques et enseignements tirés*, Juillet 2013.

²²¹ Ministère de l’intérieur, Secrétariat général à l’immigration et à l’intégration, *Les données de l’immigration professionnelle et étudiante, Document préparatoire au débat au Parlement*, April 2013 <http://www.immigration.interieur.gouv.fr/Info-ressources/Documentation/Rapports-publics/Document-preparatoire-au-debat-sans-vote-sur-l-immigration-professionnelle-et-etudiante>

²²² <http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/diplomatie-economique-et-commerce-exterieur/renforcer-l-attractivite-de-la-france/article/l-action-du-maedi-pour-attirer>

²²³ Ministère de l’intérieur, Secrétariat général à l’immigration et à l’intégration, *Les données de l’immigration professionnelle et étudiante, Document préparatoire au débat au Parlement*, April 2013 <http://www.immigration.interieur.gouv.fr/Info-ressources/Documentation/Rapports-publics/Document-preparatoire-au-debat-sans-vote-sur-l-immigration-professionnelle-et-etudiante>

work-related migration in France has mainly been seen as a secondary channel for labour force rather than as a substantial source of labour, or part of internationalisation strategies of multinational companies (e.g. via inter-company transfers);

a certain disconnection between the length of residence permits and that of work contracts.

A 2013 European Migration Network (EMN) study highlighted additional issues, such as the complexity of procedures and poor information and support provision on applications in administrations (*préfectures*).²²⁴

Such assessments prompted a recent reform of France's legal migration policy. The *Law on the rights of migrants*²²⁵ was adopted at first reading on 23 July 2015²²⁶ and is to be implemented in 2016. The reform is part of the current government's priorities²²⁷ in the field of migration which are:

to improve the admission and integration of legal migrants;

to improve the attractiveness of France by facilitating the mobility of international talent;

to fight illegal migration with respect to fundamental rights.

One of the flagship initiatives of this reform is the so-called '*talent passport*'²²⁸ which aims to streamline qualified work-related immigration and to make France more attractive for TCN skilled workers. It groups different work-related residence permits under one umbrella title. The '*talent passport*' will be open to a variety of profiles: from investors, researchers, and artists to qualified employees.²²⁹ By grouping a number of residence permits under the umbrella term '*talent passport*', the rationale is to have more visibility for employers and potential migrants under one single initiative²³⁰. Under the '*talent passport*' the duration of all residence permits has been extended to 4 years, thus removing annual administrative renewal processes as is the case with some other permits, and simplifying possibilities to transition to a permanent resident status. The reform also foresees simplifying access to work for foreign qualified students in France.

The law also aims to improve the reception of TCNs in the *prefectures* (the local administrative centres where applications to residence permits are processed). The '*Strategic Council of attractiveness*'²³¹ released a report in January 2015 listing a series of planned or ongoing initiatives to 'attract international talent'²³². One of the planned initiatives is the creation of a dedicated resources centre to inform and guide '*talent passport*' holders and

²²⁴ Point de contact français du Réseau européen des migrations (REM), *Note d'information Première étude ciblée 2013, Attirer les talents étrangers en France : bonnes pratiques et enseignements tirés*, Juillet 2013.

²²⁵ Projet de loi de réforme relatifs l'un au droit des étrangers

²²⁶ <http://www.gouvernement.fr/action/le-droit-des-etrangers-et-la-reforme-de-l-asile>

²²⁷ <http://www.gouvernement.fr/action/le-droit-des-etrangers-et-la-reforme-de-l-asile>

²²⁸ Passeport talents.

²²⁹ <http://www.gouvernement.fr/action/le-droit-des-etrangers-et-la-reforme-de-l-asile> , webpage updated on 23 December 2015.

²³⁰ Interview with Ministry of interior.

²³¹ Conseil stratégique de l'attractivité.

²³² http://sayouitofrance-innovation.com/wp-content/uploads/2015/06/CSA_PDF_global_FR.compressed.pdf

their families on how to settle in. It would provide guidance on residence and work-related procedures managed by various administrative bodies and will operate via a personal account. Users would only need to submit the required information once to the various public authorities.

Application procedure

Written applications are submitted at the embassy or consulate in the country of origin. The application requires a number of supporting documents²³³. The application should broadly demonstrate:

Presentation of the applicant's project meeting the criteria set forth by the National Commission of Competences and Talents;

Proof that the applicant is capable of carrying out this project.

The application will be reviewed and accepted/rejected based on:

The project's interest/quality;

The applicant's motivation/commitment;

The applicant's skills and qualifications; and

The means to carry out the project.

An acceptance or rejection letter is received approximately two to three months after sending the application. If accepted, before issuing a temporary visa, the candidate is required to come in for an interview at the consulate/embassy, mainly to review the application and intentions for going to France.

Comparative overview of national schemes and the EU Blue Card

There are a number of resident permits which allow a HQW TCN to enter into France depending on their specific profile. Those permits are detailed along with the EU Blue Card in the table below.

The three closest to the Blue Card are:

Residence permit for competences and talents: It is granted to TCNs capable of contributing to the economic development and influence of France and his/her country of origin, and showcase their ability to do so. Nine different types of profiles can apply.

Residence permit for seconded employees: The permit concerns employees sent to France within inter-company transfers. They must come for an assignment of duration of at least 3 months and bring specific expertise²³⁴.

²³³ <http://www.consulfrance-washington.org/spip.php?article519>

Temporary residence permit for employment which can be issued to all skill levels of workers²³⁵.

Finally, since 2011, foreign scientists or researchers can also apply for a one year visa²³⁶. On average, 2,000 foreign scientists receive it each year²³⁷.

Table 1.1 below provides a comparative overview of work-related residence permits which HQW TCNs can apply to in France and which are now to be grouped under the ‘*passport talents*’.

Overview of work-related residence permits HQW TCN can apply to in France

	EU Blue Card	Temporary residence permit for employment	Temporary residence permit for seconded employees	Residence permits for competencies and talents
Planned to be included under the ‘passport talents’ initiative	Yes	No	Yes	Yes
Residence permit duration	1 to 3 years	1 years	3 years	3 years
Job offer required	Yes – at least 1 year contract	Yes – at least 1 year contract	Intra-company transfer The candidate must already be an employee (at least for 3 months) of the company	No but the candidate must come to France to implement a project which will develop the country’s attractiveness and demonstrate s/he has resources to do so
Salary threshold	At least 1.5 times the average reference annual gross salary - 53.331 euros in 2015 (monthly net wage of 3.300 euros)	At least the same salary as other employees filling a similar post	At least 1.5 times the minimum salary (monthly net wage of 1.700 euros)	Ability to demonstrate s/he has resources to implement his/her project
Qualifications	Qualification demonstrating 3 years of higher studies OR 5 years	Coherence between job requirement and	No	Ability to prove talents and competences to implement their project,

²³⁴ REM - *Étude ciblée - Attirer les talents étrangers en France*, 2013.

²³⁵ REM - *Étude ciblée - Attirer les talents étrangers en France*, 2013.

²³⁶ *Visa de long séjour valant titre de séjour portant la mention « scientifique-chercheur ».*

²³⁷ Source : Application de gestion des ressortissants étrangers en France (AGDREF) / Département des statistiques, des études et de la documentation (DSED) cited in REM - *Étude ciblée - Attirer les talents étrangers en France*, 2013.

	EU Blue Card	Temporary residence permit for employment	Temporary residence permit for seconded employees	Residence permits for competencies and talents
	of equivalent work-related experience	qualification level		e.g. publications, research work, sports, etc
Labour market test	No	Yes unless the position is for a job under the List of shortage occupations (<i>Liste de métiers sous tension</i>)	No	No
Work permit required	Yes	Yes	Yes but cannot work outside of the company transfer	No Permit holders have to exercise the professional activity for which they obtained the permit.
Residence renewal	Possible if conditions of first permit are respected	Possible if conditions of first permit are respected	Only if the ‘mission’ which justified the employee’s transfer has to be extended	Possible if conditions of first permit are respected
Family rights	Automatic granting of “family and private life” residence permit for family members – of same length of residence permit as the Blue Card holder and granting access to work	Granting of 1 year ‘visitor’ residence card (i.e. no access to work) to family members Following 18 months in France, family members can apply to “ <i>regroupement familial</i> ” (family reunification) procedure	Automatic granting of “family and private life” residence permit for family members – of same length of residence permit as the sponsor	Automatic granting of “family and private life” residence card for family members – of same length as the residence permit of the sponsor

Source: Comparative table of the main residence permits dedicated to professional immigration, 24 April 2014 : <http://www.immigration.interieur.gouv.fr/Immigration/L-immigration-professionnelle/Tableau-comparatif-des-cartes-de-sejour-dediees-a-l-immigration-professionnelle>

STATISTICAL OVERVIEW

Work-related migration has been relatively small in France. It represented 9 % of the total 193,000 new residence permits delivered in 2012²³⁸.

²³⁸ Point de contact français du Réseau européen des migrations (REM), *Note d'information Première étude ciblée 2013, Attirer les talents étrangers en France : bonnes pratiques et enseignements tirés*, Juillet 2013.

Between 2008 and 2011, the largest number of residence permits delivered for work reasons were the *residence permit for seconded employees* and *residence permit for researchers*. According to national stakeholders consulted, approximately 2,500 to 3,000 *residence permits for seconded employees* are granted on a yearly basis.

As indicated in the Ministry of Interior's preparatory document to the 2014 reform, the *residence permit for competences and talents* did not meet its objectives²³⁹. Since its creation in 2006 and up until the end of 2012, only 1,364 permits were granted to TCNs²⁴⁰. This represents an average of 200 cards a year when the initial estimations were of 2,000 permits a year²⁴¹. In comparison, every year, the number of EU Blue Cards granted has doubled which indicates a progressive take-up of EU Blue Cards.²⁴²

Figures on work-related residence permits granted in France (2009-2014)

	2009	2010	2011	2012	2013	2014
Total number of first work-related residence permits granted to TCNs considered as qualified or highly qualified ²⁴³	4,354	4,549	4,914	N/a	N/a	N/a
- Male	3,163	3,359	3,602	N/a	N/a	N/a
- Female	1,191	1,190	1,312	N/a	N/a	N/a
Temporary residence permit for employment ²⁴⁴	N/a	N/a	N/a	N/a	N/a	Approx. 5,000
Residence permit for seconded employees ²⁴⁵	N/a	N/a	2,854	2,710	N/a	2,319

²³⁹ Ministère de l'intérieur, Secrétariat général à l'immigration et à l'intégration, *Les données de l'immigration professionnelle et étudiante, Document préparatoire au débat au Parlement*, April 2013 <http://www.immigration.interieur.gouv.fr/Info-ressources/Documentation/Rapports-publics/Document-preparatoire-au-debat-sans-vote-sur-l-immigration-professionnelle-et-etudiante>

²⁴⁰ REM - *Étude ciblée - Attirer les talents étrangers en France*, 2013, quoting Secrétariat général à l'immigration et à l'intégration, *Les données de l'immigration professionnelle et étudiante, Document préparatoire au débat au Parlement*, avril 2013.

²⁴¹ Ministère de l'intérieur, Secrétariat général à l'immigration et à l'intégration, *Les données de l'immigration professionnelle et étudiante, Document préparatoire au débat au Parlement*, April 2013 <http://www.immigration.interieur.gouv.fr/Info-ressources/Documentation/Rapports-publics/Document-preparatoire-au-debat-sans-vote-sur-l-immigration-professionnelle-et-etudiante> and interviews with officials from the Ministry of interior.

²⁴² Employers fill in the application file for their employee.

²⁴³ Ibid.

²⁴⁴ 2014 data (temporary figures) provided by France within exchanges with the Commission via the EMN.

²⁴⁵ 2011 and 2012 data from <http://www.immigration.interieur.gouv.fr/Immigration/L-immigration-professionnelle/La-carte-de-sejour-temporaire-portant-la-mention-salarie-en-mission> and 2014 data (temporary figures) from SMEG questionnaire.

Residence permit for competences and talents ²⁴⁶	368	319	289	284	N/a	N/a
Residence permits for researchers ²⁴⁷	N/a	N/a	N/a	N/a	N/a	3,278
EU Blue Card holders (primary) ²⁴⁸	N/a	N/a	N/a	175 (incl. 49 renewals)	504 (incl. 133 renewals)	846 (incl. 245 renewals)
Total EU Blue Card holders (primary and family members incl.) ²⁴⁹	N/a	N/a	N/a	N/a	N/a	889

Currently there is no data in France on the intra-EU mobility of holders of the EU Blue Card²⁵⁰. This is also due to the 18 months threshold required, considering that the EU Blue Card was effectively implemented in France from 2012. The first notifications would then have been received around 2014. One official consulted²⁵¹ mentioned he had not received any notifications of this from another EU Member State when this is required under the provisions of the EU Blue Card Directive, yet mobility may nonetheless have occurred.

Rights granted under the schemes

This section highlights the main differences between the national scheme and the EU Blue Card.

Rights given to family members: The national permits for HQW TCNs and the EU Blue Card grant facilitated access to family reunification whereby family members are allowed to access work (without requiring a special authorisation). There is also no need to go through the standard family reunification process in France (which requires a prior 18 months stay in France before making the request).

The ease to change from temporary resident status to permanent resident status: In France, the holder of an EU Blue Card has access to an EU long-term residence permit after five years uninterrupted stay in the EU, provided the EU Blue Card holder has resided continuously in France for the last two years. During the required five years of continuous residence, a maximum absence of 12 consecutive months and 18 months in total is allowed. Under national schemes, opportunities to change to a permanent resident status differ. In

²⁴⁶ 2014 data (temporary figures) provided France within exchanges with the Commission via the EMN.

²⁴⁷ 2014 data (temporary figures) provided France within exchanges with the Commission via the EMN.

²⁴⁸ 2012 and 2013 data provided by France within exchanges with the Commission via the EMN- not clear of figures only include primary BC holders or whether family members are also included.

2014 data: *Cartes bleues européennes accordées, renouvelées ou retirés pour 2014 en France, et leurs membres de famille*. MI/DGEF/DIMM/SDST/BDCRP - Données AGDREF provisoires - Le 4 juin 2014.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Ibid.

France, a TCN can apply for French nationality following five years of residency²⁵². This duration can be reduced to two years under certain conditions²⁵³, e.g. when the TCN has successfully completed two years of study at an academic level institution in France, or, if they “contribute to France’s influence” (*rayonnement*)²⁵⁴. This in turn can depend on conditions under which the TCNs’ entry residence permit can be renewed. In addition, an underlying rationale to permits for qualified TCNs was circular migration and a return to the country of origin, rather than facilitating access to permanent residence.

Administrative procedures: Currently, in comparison to the EU Blue Card, more supporting documents are required to apply for the *Residence permit for talents and competences*. The average duration of the processing of applications is higher for the *Residence permit competences and talents* (2 to 3 months) than for the EU Blue Card (1-2 months for issuing of the work permit and visa; 1-2 weeks for issuing the EU Blue Card). This is also determined by the maximum processing time: 4 months for the *Residence permit for talents and competences* as opposed to 3 months for the EU Blue Card. The shortcomings of the national schemes are being addressed with the introduction of the ‘*talent passport*’ which extends the duration of residence permits to four years. Under the *passport talents*, the duration of residence permits will be extended to 4 years thus reducing the regularity of administrative procedures, and simplifying opportunities to change to a permanent resident status (5 years on territory requirement). These changes are supposed to act as incentives for 'foreign talents' to choose France as a country of destination²⁵⁵. The *Law on the rights of migrants*²⁵⁶ also introduces a new one-year long residence permit for entrepreneurs or those working in certain professions²⁵⁷.

EVALUATION OF THE NATIONAL SCHEME

Coherence, complementarity and competition between national scheme and the EU Blue Card

There is no information on the extent to which persons eligible to the EU Blue Card apply for the *Temporary residence permit for employment* instead. Considering the lack of criteria within the *Temporary residence permit for employment* regarding the level of qualifications, and the fact that some rights are weaker (e.g. family rights, see Table 1.1), it is likely that highly qualified TCNs do not choose *Temporary residence permit for employment*. As indicated in a 2013 EMN study, the *Temporary residence permit for employment* covers a very large public and applies more to those qualified TCNs who do not meet the eligibility criteria of the other available permits (EU Blue Card or *Residence permit for seconded*

²⁵² <https://www.service-public.fr/particuliers/vosdroits/F2213>

²⁵³ Other conditions are detailed at <https://www.service-public.fr/particuliers/vosdroits/F2213>

²⁵⁴ Adding information on this criteria is available at <https://www.service-public.fr/particuliers/vosdroits/F15830>

²⁵⁵ Ibid

²⁵⁶ Projet de loi de réforme relatifs l'un au droit des étrangers.

²⁵⁷ Article 9, Art. L. 313-10.
http://www.legifrance.gouv.fr/affichLoiPreparation.do;jsessionid=0B8EED9DF9D790B693DF9F88502A7631.tpdila20v_2?idDocument=JORFDOLE000029287359&type=contenu&id=2&typeLoi=proj&legislature=14

*employees or residence permit for talents and competences*²⁵⁸. It is often granted to TCNs having graduated from higher level studies in France or TCNs with little professional experience²⁵⁹. According to interviewees²⁶⁰, the EU Blue Card aims at attracting TCNs with higher competences than those eligible under the other residence permits, and with the aim of retaining them for a longer period of time.

The *residence permit for competences and talents* could have targeted a similar population to the EU Blue Card, to the extent that employees can also apply and provided they meet the EU Blue Card salary threshold. According to interviewees²⁶¹, the main ‘comparative’ advantage of the national permit is that it is granted for a longer period than the EU Blue Card. This advantage will soon no longer apply as the future *passport talents* plans to extend all residence permits to four years.

With regard to coherence of the national schemes and the EU Blue Card, the salary threshold for the EU Blue Card – which is almost twice as high as that of the *Residence permit for seconded employees* (see table 1.1) - ensures that there is no overlap in eligible populations²⁶².

Finally it is to be noted that the *Law on the rights of migrants*²⁶³ introduces provisions to make access to residency and work for foreign students and entrepreneurs easier.

Efficiency, effectiveness and impact of the national scheme and the EU Blue Card

As already mentioned above, work-related (including highly qualified) migration has been relatively small in France, despite efforts to boost it. This, according to French authorities²⁶⁴ can be broadly explained by: (1) the length of administrative procedures, (2) the lack of flexibility in certain residence permits (*e.g. researchers*) and (3) issues with the recognition of foreign qualifications for regulated professions.

According to one source of information²⁶⁵, reasons for the low take-up of the *residence permit for talents and competences* relate to:

Reported difficulties for TCNs to understand differences with existing residence permits targeting similar profiles;

The requirements that holders of the permit work exclusively in relation to the ‘development of a project’. However many project developers need to have ‘side-jobs’ (unrelated to their project) in order to sustain themselves and deliver their projects, and this is not allowed.

²⁵⁸ Point de contact français du Réseau européen des migrations (REM), *Note d'information Première étude ciblée 2013, Attirer les talents étrangers en France : bonnes pratiques et enseignements tirés*, Juillet 2013.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Ibid.

²⁶³ Projet de loi de réforme relatifs l'un au droit des étrangers.

²⁶⁴ Interviews with two representatives of the French Ministry of Interior on 4 December 2015.

²⁶⁵ Céline Savarino, Migration Conseil, *Carte Compétences et talents : à quand son retour ? Les raisons du faible succès rencontré par ce titre de séjour*, avril 3, 2013.

The criteria to meet for development projects proposed to be eligible under the *residence permit for talents and competences* were to be specified by the *National Commission for competences and talents*, which was to meet twice a year; however, this has not happened as regularly. Some have argued that the criteria are too restrictive or simply not known by potential applicants. This has reportedly resulted in a large number of rejected projects.

Lack of knowledge of the existence of this card in certain *prefectures*, resulting in delays in issuing or renewing them.

Considering the number of EU Blue Card holders in comparison to holders of the *Residence permits for talents and competences*, the EU Blue Card is more successful. As already mentioned above, the *residence permit for talents and competences* failed expectations. Its low take-up puts its relevance into question. This is now being addressed with the introduction of the ‘talent passport’ in 2016.

No data exists on the cost-effectiveness, or level of administrative burden, of managing the different permits presented²⁶⁶.

To assess the relevance, effectiveness and added value of the EU Blue Card, in comparison to existing schemes and to the future *passport talents*, French officials consulted²⁶⁷ mentioned that beyond the attractiveness of any particular scheme, employment prospects as well as long term residence possibilities are key determinants of migrants’ choices in countries of destination. France’s economic situation and unemployment rate (i.e. factors external to the design and implementation of any specific schemes) should therefore also be considered when assessing its policies to attract ‘foreign talents’.

²⁶⁶ According to information provided by the Ministry of Interior on 6 January 2016.

²⁶⁷ Interviews with two representatives of the French Ministry of Interior on 4 December 2015.

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COUNTRY FICHE: ITALY

Key Points to note:

The EU Blue Card has introduced a general scheme for highly qualified workers (HQW) that did not exist previously in Italy.

HQWs can enter Italy 1) through the EU Blue Card scheme (extra-quotas), 2) through the annual quotas dedicated to HQWs, and 3) through extra-quotas special entries pursuant to Art.27 of the Law 186/1988 (Testo Unico). .

Labour migration quotas are set annually according to the economic circumstances. In 2014, the quotas allocated to entries from outside Italy for non-seasonal work were as low as 5,500 and were specifically allocated.

Recently, the government has allocated some places in the quotas specifically for HQWs, especially entrepreneurs, investors and independent workers.

The art. 27 (entries outside the quotas) has 17 sub-categories (including seconded managers and professionals, translators and interpreters and professional nurses).

Employers can sign agreements with the Ministry of Interior and Labour for Art. 27 and the EU Blue Card which speed up the application process by establishing a system of trusted employers. By signing the agreements, employers (also via employers' associations) commit to comply with the rules; in turn, the Ministry does not make case-by-case controls, but only random controls.

Most permits on art. 27 are allocated to seconded managers and HQW and sub-contracted workers.

The Ministry of Interior is committed to review the EU Blue Card to enhance its effectiveness; however, the demand for highly qualified foreign workers seems limited, due to the economic crisis and the production structure (largely based on SMEs) of the Italian economy.

The EU Blue Card is coherent with initiatives to increase the competitiveness of the economy through labour migration (e.g. Start-Up Visa).

The EU Blue Card and the art. 27 are not competitive schemes, as they have different scopes and rationales. The number of EU Blue Cards issued increased in 2015 (around 600), but in general national authorities judge that it is too early to evaluate its effectiveness. Simplifying agreements between employers and the Ministries of Labour and Interior are currently being developed for the EU Blue Card.

1. OVERVIEW OF THE SCHEME

DESIGN OF THE SCHEME

The main labour migration channel in Italy is regulated by a *quota system*, in place since the adoption of Law 186/1988 (Testo Unico). A Flow Decree is issued every year by the

government²⁶⁸, which allocates places by categories of migrants according to certain (but not pre-established – i.e. the professions may change over time) criteria²⁶⁹. These criteria vary annually and may cover nationality, types of professions and conversions to other permits. Highly qualified migrants can apply within the quotas as ‘general’²⁷⁰ employees and ‘general’ self-employed; however, specific quotas defined in the Flow Decree²⁷¹ (annually on average 3,500) for HQWs are also available.

In 2014²⁷², the Flow Decree set the quotas at 17,850 places, most of which (12,350) are for conversions from other residence permits for TCNs already residing in Italy and 5,500 for entries from outside the country, divided as follows:

2,400 for specifically defined highly qualified workers;

1,000 for TCNs who participated to training courses organised by Italy in the country of origin;

100 for TCNs of Italian origins;

2,000 for workers participating in the EXPO 2015.

In 2016, the quotas will be (no official decree has yet been published) set to zero for entries from outside the territory (meaning that no permits will be issued to workers from third countries entering from outside Italy), because no demand has been identified and quotas from the previous year have gone partially unfilled²⁷³. Quotas for conversions from other residence permits will be issued instead. Residence permits issued under quotas are not considered a national parallel scheme because they are not identified as a scheme *specifically designed* for HQWs. Quotas are the main entry channel for TCNs from outside the country and include all types of jobs and skill levels. A sub-set of quotas can be allocated to specific professions (since 2004, domestic workers, construction workers, transportation workers, managers have been included), or specific countries (citizens of South American countries with Italian origins, citizens from countries Italy has agreements with and who participated in training courses organised by Italy in the countries of origin), but this is not consistent over

²⁶⁸ The Flow Decree is issued at the end of each year but it is valid for the same year. For example, the Decree is issued in December 2014 but the provisions are valid for the past year – 2014. It was supposed (according to the 1988 Act) to be a multiannual programme, but in fact it has never worked multi-annually. The system is perceived as a sort of regularisation system.

²⁶⁹ Every year, two decrees are issued: for seasonal and non-seasonal flows (art. 3 of the Legislative Decree 286/1988 (Testo Unico)). In the remainder of the text, only decrees for non-seasonal flows are considered.

²⁷⁰ ‘General’ entries, migration routes and quotas refer to those not specifically set for highly skilled.

²⁷¹ In the 2014 Decree (GU Serie Generale n.300 del 29-12-2014) the quotas included 2400 places for entrepreneurs doing a business of interest for the Italian economy, making a relevant investment in Italy, that sustain and increase the revenues; freelance professionals; managers; artists world-wide renowned or highly qualified; innovative start-uppers (linked to the recently introduced Start Up Visa).

²⁷² Decree of the President of the Council of Ministries, dated 11th December 2014, http://www.immigrazione.biz/upload/decreto_flussi_11_12_2014.pdf, viewed on 6th January 2016.

²⁷³ Interview with the Ministry of Interior, 17th November 2015. The decree was supposed to be published in December 2015, but as for 8th January 2016, it has not been published yet.

years (for instance, since 2004, a quota was allocated to managers in 2004²⁷⁴, 2005²⁷⁵, 2006²⁷⁶, 2007²⁷⁷ and 2014²⁷⁸). Moreover, the interpretation of "manager" by the government in 2004, 2005, 2006 and 2014 included mainly entrepreneurs and self-employed workers.

Besides this general quota-based immigration regime, the Italian legislation has foreseen the possibilities of *entries outside the quotas* limited to certain categories of workers (art. 27 of 186/1988 Act) since its entry into force in 1988. The art. 27 'entries outside the quotas' have been identified as the Italian *national parallel scheme* for highly qualified workers, although it presents considerable differences compared to the EU Blue Card. It concerns several categories at different skill levels. HQWs are mainly involved in cases of workers' secondment (letter a); this means that once TCNs are on the territory on secondment, they can apply for the conversion of the permit into a work permit outside the secondment upon the first renewal, for which quotas are always available. Other forms of entry that are not regulated by the Flow Decrees are volunteers (art. 27-bis), researchers (art. 27-ter) and the Blue Card (art. 27 quarter).

The categories included under article 27 are the following:

Managers or highly qualified personnel seconded in Italy (let. A)²⁷⁹;

University language teachers (let. B);

University professors in charge of an academic assignment in Italy (let. C);

Translators and interpreters (let. D);

Domestic help in specific cases (let. E);

Trainees and workers seconded for professional training (let. F);

Skilled workers seconded in Italy (let. G);

Maritime workers (let. H);

Employees transferred due to contract work (let. I);

²⁷⁴ Decree of the President of the Council of Ministries, dated 13th December 2003, <http://www.boorea.it/allegati/Decreto%20flussi%20migratori%202004.pdf>, viewed on 8th January 2016.

²⁷⁵ Decree of the President of the Council of Ministries, dated 17th December 2004, <http://www.dottrinalavoro.it/wp-content/uploads/2015/02/flussi05DPCMextracom.pdf>, viewed on 8th January 2016.

²⁷⁶ Decree of the President of the Council of Ministries, dated 17th December 2006, http://img.poliziadistato.it/docs/decreto_extracom.pdf, viewed on 8th January 2016.

²⁷⁷ Decree of the President of the Council of Ministries, dated 30th October 2007, http://www1.interno.gov.it/mininterno/site/it/sezioni/servizi/old_servizi/legislazione/immigrazione/0988_2007_1_1_30_decreto_flussi_2007.html, viewed on 8th January 2016.

²⁷⁸ Decree of the President of the Council of Ministries, dated 11th December 2014, http://www.immigrazione.biz/upload/decreto_flussi_11_12_2014.pdf, viewed on 6th January 2016.

²⁷⁹ This letter will probably be modified in reception of the Directive of Intra-Corporate Transferees, which is at the moment (Interview with the Ministry of Interior, 17th November 2015). Under discussion at the national level.

Workers employed in circuses or travelling shows abroad; artists and technicians working in lyrical dramas, theatres, ballets and concerts; dancers, artists and musicians employed in entertainment facilities, theatres, radio or TV channels, within cultural or folk events (lett. L-M-N-O);

Professional athletes (let. P);

News correspondents (let. Q);

Foreign workers that, according to international agreements in force in Italy, carry out researches or occasional work in the framework of exchange or youth mobility programs or placed au pair (let. R);

Professional nurses (art. 27, let. R-bis);

For the comparison with the EU Blue Card, a number of categories (which could potentially be covered under the EU Blue Card) included in the following analysis are: managers or highly qualified personnel seconded in Italy (let. A), translators and interpreters (let. D), trainees and workers seconded for professional training (let. F), skilled workers seconded in Italy (let. G) and professional nurses (let. R-bis).

APPLICATION PROCEDURE

For entries based on art. 27, there are no common requirements to all sub-categories. Employers that hire seconded managers and highly qualified personnel (let. A) should have a *link* with the previous employers of these workers (intra-corporate link). The requirements on such a link, originally interpreted in a restrictive sense, have been loosened, and now not only branches but also joint ventures are included²⁸⁰.

There is no educational qualification requirement, except for interpreters and translators (let. D) and nurses (let. R-bis): for the former, the approved certification from the embassy; for the latter, the formally recognised degree is required. Nurses also need to pass an exam of Italian language and professional rules.

There is no particular salary threshold set; however, the salary for all relevant categories should be equivalent to the salary offered by the company for the same position. This is normally (i.e. in case of no previous agreement between the employer and the Ministry) monitored by the Direzione Territoriale del Lavoro (Territorial Labour Authority, branches of the Ministry of Labour at the provincial level) prior to issuing each permit.²⁸¹

There is no experience requirement, except for managers and highly qualified personnel (let. A), who should have worked for at least 6 months in the company before being seconded. A binding job offer is required, although artists and managers can also work on a freelance basis. No labour market test is carried out, and this is the case for all migration categories in

²⁸⁰ Interview with the Ministry of Labour, 4th December 2015.

²⁸¹ See a list of the branches here: Ministry of Labour and Social Policy (Italy) Website; <http://www.lavoro.gov.it/DTL/AL/Pages/DPLAlessandria.aspx?t=DTLNotizieHome>, 8 January 2016

Italy, including quotas entries. Finally, regardless of the entry scheme, the migrant who loses the job has the right to stay in the country as a job seeker for at least one year²⁸².

According to the general application procedure, the employer needs to file a permit request online to the Sportello Unico (One-Stop Shop of the Police²⁸³), that checks the general eligibility of the migrant to come to Italy. If no security-related obstacles arise, the Sportello Unico electronically forwards the request to the Direzione Territoriale del Lavoro, which will check the compliance of the proposed contract with the national legislation. Other documents that are checked are the social insurance, the employer's guarantee that the workers have adequate housing²⁸⁴, to pay for the migrant's possible return, and to communicate any changes in the employment terms. Once the compliance is certified within 20 days, the request is accepted and both the TCN and the employer are notified by the online system. If no reply has been produced in 20 days, an automatic positive response is issued. The TCN can therefore request the visa and enter the Italian territory. Within 8 days after the entrance, the TCN has to present him/herself at the Sportello Unico to sign the 'contratto di soggiorno' (residence contract) and the request for residence permit.

The procedure described above applies to all entries within the quotas, outside the quotas and EU Blue Cards. It takes up to 60 days according to the legislation, although a Ministry of the Interior interviewee confirms that the processing time varies in practice²⁸⁵.

For article 27 permits and EU Blue Card a *simplified procedure* has been introduced recently. Employers can sign an agreement (memorandum of understanding) with the government in which they certify that they comply with the labour and migration legislation and will continue to do so. Once employers have been certified by the government, they enjoy simplified procedures in case they want to hire a migrant worker. Especially, the checks by the Direzione Territoriale del Lavoro which take up to 20 days are only made on an ad-hoc basis and not automatically. The employers only communicate the terms of employment, but do not have to receive the approval case-by-case, because the employer is committed to complying with the legislation. Ex-post checks are undertaken randomly as is envisaged in the agreement that employers have signed. This facilitated procedure may halve the time of the application procedure. At the moment, agreements have been signed only for art. 27²⁸⁶. Agreements for the EU Blue Card which are explicitly foreseen by the law (art. 27 quarter, 8) are currently under discussion²⁸⁷.

²⁸² Art. 22, 2 of the Legislative Decree 286/1988 (Testo Unico).

²⁸³ Ministry of Interior (Italy) Website, <http://www.interno.gov.it/it/temi/immigrazione-e-asilo/modalita-dingresso/sportello-unico-limmigrazione>, viewed on 8th January 2016.

²⁸⁴ The employer's guarantee that the employees have housing does not necessarily require them to provide housing to their employees but to make sure that their employees have where to live (this can be done by requesting and verifying their tenancy agreements/address).

²⁸⁵ Art. 5, 9 of the Legislative Decree 286/1988 (Testo Unico) and Interview with the Ministry of Interior, 17th November 2015.

²⁸⁶ The list of employers that have signed the memorandum of understanding (protocolli di intesa) can be found here http://www1.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/0885_20_07_11_26_link_ai_patronati_e_associazioni_-_decreto_flussi.html viewed 6th December 2015.

²⁸⁷ Interview with the Ministry of Interior, 17th November 2015.

The permit based on art. 27 can be renewed if the same conditions are met and for the same employer; however, TCNs may stay on the territory with that permit only up to 4 years (except nurses and professors, who can be hired on open-ended contracts). The TCNs²⁸⁸ can continue to stay on the territory, only if they convert their permits into another permit through the quotas specifically allocated for conversions²⁸⁹.

In Italy, all permits are valid for 2 years (including quotas, Blue Card, art. 27) if the contract is open-ended, otherwise for 1 year. The costs are 80 euros for 1-year permits, 100 euros for 2-year permits and 200 euros for managers and highly qualified personnel²⁹⁰.

RIGHTS GRANTED UNDER THE SCHEME

With regard to labour market mobility, the permit of art. 27 is bound to the sector the migrant works in. However, the person can change employer and permit after the first renewal²⁹¹. The transfer for managers and highly qualified personnel shall not exceed 4 years; professors and nurses can have open-ended contracts and trainees cannot stay for more than 2 years. Migrants entering within the quotas can change employers, under the obligation of notifying the change.

To be granted family reunification, the worker should have a minimum annual salary (5,831€ in 2014) and a job offer of at least one year. Family members holding a family permit have access to employment²⁹².

2. STATISTICAL OVERVIEW

In 2012 (only year in which statistics for art. 27 have been found²⁹³), the total approval granted to requests for article 27 were 3 354 out of 4 410 applications²⁹⁴. The numbers by category, according to the same study, are as follows (in the brackets are the applications submitted):

a. Managers and highly specialised personnel: 1 142 (1 322);

b. University lecturers: 1 (1);

²⁸⁸ Except seconded managers and highly qualified personnel, who cannot be convert their permit but can be hired after the posting period (Interview Ministry of Interior 17th November 2015).

²⁸⁹ Quotas for conversions are allocated every year and in general they are not underspecified with respect to the need (Interview Ministry of Labour, 4th December 2014).

²⁹⁰ Decree of the Ministry of Interior 6th October 2011, http://img.poliziadistato.it/docs/Decreto_6_10_2011_Contributo_rilascio_e_rinnovo_permesso_soggiorno.pdf

²⁹¹ Except seconded managers and highly qualified personnel, who come to Italy in the framework of their contract as seconded personnel (Interview Ministry of Interior 17th November 2015).

²⁹² Art. 30, 2 of the Legislative Decree 286/1988 (Testo Unico).

²⁹³ The source of 2012 data is the EMN Focused Study 2013, Attracting Highly Qualified and Qualified Third country Nationals, <http://www.emnitaly.cnr.it/eng/wp-content/uploads/2015/02/Attracting-Highly-Qualified-and-Qualified-Third-Country-Nationals-2013.pdf>, viewed on 8th January 2016.

²⁹⁴ EMN Italy, Focussed Study 2013, Attracting Highly Qualified and Qualified Third country Nationals (Based on data from the Ministry of Interior); <http://www.emnitaly.cnr.it/eng/wp-content/uploads/2015/02/Attracting-Highly-Qualified-and-Qualified-Third-Country-Nationals-2013.pdf>

- c. Professors and researchers: 35 (38);
- d. Translators and interpreters: 14 (67);
- e. House help: 53 (157);
- f. Trainees: 228 (375);
- g. Workers with temporary specific positions: 703 (816);
- h. Subcontracted workers: 1 069 (1 334);
- i. Occasional and au pair workers: 41 (221);
- j. Nurses 68 (79);

There are no statistics available per entry scheme on migrants' labour market integration and mobility. Therefore, only overall statistics can be provided. In 2013, 100,712 TCNs acquired Italian citizenship²⁹⁵. This amounts to 2 % of non-EU citizens residing in Italy at the time²⁹⁶. In 2015 (up to December) in Italy there were 2 248 747 long-term residents from a total number of 3 929 916 immigrants (i.e. 57 %).

The unemployment rate of foreigners (EU and non-EU) has increased considerably during the years following the economic crisis,: in 2014, this amounted to 16,1% for foreigners and 11,5% for Italians (Istat²⁹⁷). The unemployment rate for foreigners is higher also for those with tertiary education: in 2014, the total unemployment rate for highly educated was 7,8%; for Italian graduates this was 7,5%, whereas for foreigners (EU and non EU) it was 12.9% (Istat)²⁹⁸.

Statistics on the sectors where immigrants on art. 27 work are not available.

²⁹⁵ Eurostat, migr-acq.

²⁹⁶ Eurostat, migr_acqs.

²⁹⁷ "tasso di disoccupazione"; <http://dati.istat.it/>, viewed on 8th Decemebr 2016.

²⁹⁸ "tasso di disoccupazione"; <http://dati.istat.it/>, viewed on 8th Decemebr 2016.

3. COMPARATIVE OVERVIEW BETWEEN THE NATIONAL SCHEME AND THE EU BLUE CARD

It should be noted that the permits under Art. 27 and the EU Blue Card are not comparable due to different objectives and target groups of TCNs. Art. 27 was not conceived as a scheme to attract HQWs, but rather as a secondary migration channel to accommodate the needs of specific sectors experiencing shortages (nurses); requiring international personnel (artists, translators and interpreters, sportsmen), or of specific international employers (seconded workers). Secondments, moreover, were conceived by the legislation as temporary working relationships (renewals only up to 4 years for managers and highly qualified personnel). However, the art. 27 has created a facilitated entry scheme for migrants fulfilling specific criteria, who may, once on the national territory, more easily apply for conversions into the 'general' work permits within the established quotas.

In 2012, the total approval granted to requests for article 27 were 3 354 (see section above). It is worth to note that the biggest categories are managers and highly qualified personnel and subcontractor workers. Besides the EU Blue Card (6 issued in 2012), the other main entry channel was through quotas as allocated by the Flow Decree. These were as follows²⁹⁹:

2 000 for highly qualified freelancers and entrepreneurs

100 for Latin American workers with Italian ancestors

4 000 conversions from seasonal employment into subordinate employment

6 000 conversions from study and internship into subordinate employment

1 000 conversions from study and internship into self-employment

500 conversions for LTR in other EU countries into subordinate

250 conversions for LTR in other EU countries into self-employment

Compared to the total population that entered for the first time *from abroad* for work purposes³⁰⁰ (art 27 + BC + Flow Decree), art 27 amounted to 62 % and categories a, b, c, d, f, g, and r to 41 %. Many of the workers who actually entered through the art. 27 could not have entered through other channels (except for freelancers), whereas the EU Blue Card requires the fulfilment of additional conditions (meeting salary threshold, that in Italy is particularly low – 25 000 Euros in 2015, and presenting qualifications).

However, according to Istat, the number of work-related permits issued in 2012 was 70,898³⁰¹. Subtracting from this number the EU Blue Cards issued, the available quotas for non-seasonal (mainly conversions), and seasonal workers, art. 27 permits issued, 18,688

²⁹⁹ Decree of the President of the Council of Ministries, dated 16th October 2012, http://www1.interno.gov.it/mininterno/export/sites/default/it/assets/files/24/2012_11_23_gazzettauff20121016_DPCM.pdf, viewed on 6th January 2016.

³⁰⁰ Renewals, conversions and seasonal employment excluded.

³⁰¹ Istat, permessi di soggiorno dei cittadini stranieri, viewed on 20th december 2015.

permits remained, which are probably the number of renewals. This shows that Italy mainly relies on the foreign labour force already present in the territory, and recruits from abroad only under specific circumstances, most of which relate to skilled employment.

The number of the EU Blue Card in 2012 was significantly low (6). However, the figures are rapidly increasing: 87 in 2013, 165 in 2014 and more than 600 in 2015³⁰².

As previously noted, for most of art. 27, there is a limit to the allowed renewals under the scheme. The foreign workers cannot apply for long term residence directly. So the art. 27 is not effective in itself to retain foreign workers, unless it is used as a bridging permit, that grants a privilege entry access, for which conversions are sometimes available. On the contrary, the EU Blue Card is more suitable to retain talent, as long-term residence is accessible without conversion³⁰³.

With regard to fast-track procedures, the cases under art. 27 benefit from the simplified procedure whereby employers (or employers' associations) sign agreements with the ministry to speed up the decision process. The processing time is therefore halved. The simplified procedure is currently under development for the EU Blue Card, whereas it will remain inapplicable to entries through quotas. The art. 27 is not a flexible scheme as the applicable categories are narrowly defined; however, no educational achievement is required and the interpretation of the link between companies (letter A) has recently been flexibly interpreted³⁰⁴.

Art. 27 imposes specific requirements on the type of employment, whereas the EU Blue Card imposes more requirements on the employee (degree, salary). Entries within the quotas impose limitations on the professions allowed (managers, freelancers, entrepreneurs and start-up entrepreneurs as defined by the requirements for the Start-Up Visa). Compared to the quotas, the Blue Card and art. 27 both allow unlimited regulated entries. They both benefit from fast procedures through the system of accredited employers. The art. 27 was foreseen as a temporary permit, whereas the EU Blue Card allows direct access to (and offers some facilitations for) the long-term residence. The major obstacles, as came up during the interviews, for the EU Blue Card is the qualification requirement, as many workers have acquired their qualifications through experience and professional courses (e.g. chefs). The major obstacle with regard to the art. 27 for detached workers is the link between the foreign and national company that, although less strictly interpreted, remains in place.³⁰⁵

EVALUATION OF THE SCHEME

Coherence, complementarity and competition between national scheme and the EU Blue Card

³⁰² Interview with the Ministry of Labour, 4th December 2014.

³⁰³ Art. 9 of the Legislative Decree 286/1988 (Testo Unico).

³⁰⁴ Interview with the Ministry of Labour, 4th December 2014.

³⁰⁵ Interview with the Ministry of Labour, 4th December 2014.

The Blue Card targets highly qualified workers, the art. 27 targets skilled and HQW in the context of detachment, workers in shortage occupations (e.g. nurses) and other categories. The objectives of the art. 27 and EU Blue Card are therefore not the same, but not in conflict either. The recent Italian legislative development is characterised by the efforts made by the Italian government (Ministry of Interior, of Labour and of Economic Development) in making the Italian migration policy faster and geared toward highly skilled and innovative entrepreneurs. The memorandum of understanding signed by employers and the Ministries establishes fast-track procedures for certified employers and is available for art. 27, while it is under development for the EU Blue Card. Furthermore, in 2014, a Start-Up Visa was implemented, with the aim of attracting young and innovative start-up entrepreneurs. Quotas do not serve the specific purpose of attracting highly qualified workers, although there are specific quotas allocated for freelancers, entrepreneurs and managers.

The art. 27 and the EU Blue Card are only partially overlapping in scope. University language teachers, university professors, translators and interpreters, and professional nurses may apply both for the EU Blue Card and for the art. 27. Managers or highly qualified personnel seconded to Italy may apply for the EU Blue Card, if they fulfil the relevant requirements. However, the most relevant EU Directive in this case would be the Intra Corporate Transferees Directive, currently being transposed at the national level. Many applicants under the art. 27 are highly unlikely to be eligible for the EU Blue Card. In *scope*, therefore, the art. 27 and the Blue Card are more complementary than competing.

With regard to the *requirements*, if on the one hand the Blue Card imposes restrictive requirements to the employee (salary threshold, educational qualification), the art. 27 imposes restrictive requirements on the type of employment (for managers and highly qualified personnel, eligible only if seconded). In principle, the scope of the quotas is much wider than the one of the EU Blue Card and art. 27, because it includes all self-employed, employees and seasonal workers. However, over time, the government has allocated specific quotas for specific professions and/or nationalities. Recently, entrepreneurs, freelancers and managers have acquired more and more importance compared to other categories, with regard to entries from *outside* the territory (excluding thus conversions to other permits). They only partially overlap with the Blue Card, which does not cover entrepreneurs and self-employed workers.

Efficiency, effectiveness and impact of the national scheme and the EU Blue Card

With regard to the effectiveness of the EU Blue Card in Italy, a recent change in the legislation waived the link between the type of qualification and the job position, and imposed only a recognition of the diploma by the embassy in the foreign country. Moreover, the memorandum of understanding that certifies certain (categories of) employers is still under development, and will make the EU Blue Card more attractive as the procedures will be fast-tracked. The figures of the EU Blue Card issued reveals that a significant increase is ongoing and in 2015 the numbers were more than two times as high than in 2014 (more than 600).

With regard to the salary threshold of the EU Blue Card, it is worth noting that in Italy this is particularly low (25,000 Euros in 2015³⁰⁶) in comparison to other EU Member States.

It has to be noted, however, that in Italy the need of HQW remains low. As emphasised by the representative of the major Italian employers' confederation Confindustria consulted, 90 % of the Italian economic structure is composed by SMEs that are less inclined to invest in highly qualified personnel from third countries than big enterprises. Confindustria does not invest efforts in lobbying for more open migration policies as this is not perceived as an economic need. The trade unions do not oppose or otherwise take an active role, as they do not perceive highly skilled migration as a significant issue in Italy. An example from the engineering sector paradigmatically shows the lack of interest of the Italian employers for highly qualified foreign workers. Italy, as many other EU countries, registers shortages in the ICT sector. An interview with the general director of the OICE³⁰⁷ revealed that the Italian engineering companies are not interested at all in recruiting from abroad, but rather in relocating Italian companies abroad, for instance in India, where the labour cost is lower than in Italy.

The art. 27 is considered an effective scheme by the Ministries, whereas the interview from Confindustria stressed that the definition of the intra-corporate link of the letter A) has been interpreted too narrowly. However, looking at the statistics by category of the art. 27, it is clear that most permits are issued to seconded managers and highly qualified personnel in multi-national companies.

There is not much evidence available about the efficiency of the EU Blue Card and the art. 27. The involvement of employers through specific agreements with the ministries allows migrants and employers to save time and fast-track the applications. It is worth to note that these agreements do not involve costs for employers, but only a declaration of commitment. Another aspect that had a negative impact on the efficiency of the EU Blue Card has been recently improved and concerns the requirement of presenting qualifications that are relevant for the job performed. This required a specific certification from the embassies in the countries of origin, which was not efficient in terms of time and resources. The 'relevant' qualification requirement has been reviewed, and a mere certification of the authenticity of the qualification has made the procedures more efficient³⁰⁸. With regard to the administrative costs for issuing residence permits, data is not available. The Ministry of Interior pointed out that the Sportello Unico deals with all immigration-related requests and that therefore singling out the cost for issuing residence permits, and specifically for art. 27, quotas and EU Blue Card, is impossible³⁰⁹. From the requirements, it can be noted that the administrative cost for

³⁰⁶ Own calculation based on Art. 27-quarter.4.c of the Legislative Decree 286/1988 (Testo Unico) and amount of minimum salary referred to in the legislation here <http://www.regione.toscana.it/-/domande-frequenti-sull-esenzione-dal-ticket-per-reddito>, and <http://www.integrazionemigranti.gov.it/Attualita/IlPunto/Documents/focus%20blu%20card.pdf>, viewed on 8th January 2016.

³⁰⁷ (Organizzazione ingegneri e consulenza tecnica economica - organisation of engineers and technical and economic consultants), member of Confindustria and of the European Federation of Engineering Consultancy Associations in Brussels, 3rd December 2015.

³⁰⁸ Interview Ministry of Interior, 17th November 2015.

³⁰⁹ Attempts to reach the Department of Public Security – Immigration and Borders Police have been carried out, but as for 6th January, we received no reply.

the EU Blue Card and art. 27 are similar, especially once the agreements to designate trusted employers are implemented also for the EU Blue Card. However, it can be assumed that quotas are less efficient as they involve more monitoring and consultations, as trusted employers are not available and territorial authorities must be consulted.

The impact of the EU Blue Card has been noticeable in Italy, as it opened up a migration channel for highly qualified workers outside the territory, which was lacking before its introduction. In general, in the last years, the quotas for entries outside the countries have been minimized, and the only access to Italy was the art. 27. Although the art. 27 responds to the demands of the internationalisation of the firms (e.g. seconded personnel), it covers a limited scope and limited numbers of renewals

Finally, notwithstanding the positive and innovative impact of the EU Blue Card, the demand of HQW in Italy is still low, as the number of the EU Blue Card issued and interviewees confirm.

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COUNTRY FICHE: THE NETHERLANDS

Key Points to note:

The labour migration policy in the Netherlands is aimed at strengthening the knowledge economy and attracting highly qualified workers (HQWs) and is restrictive for medium and low skilled migration.

The Highly Skilled Migrants Scheme in the Netherlands was introduced in October 2004. The main features of the scheme are the salary requirements which are set on an annual basis and the employer sponsorship.

In addition to the main scheme for attracting HQWs, a scheme for highly educated graduates for seeking employment – the so-called ‘Orientation year for highly educated persons’ – was introduced in January 2009.

Only a recognised employer can submit an application on behalf of a highly skilled migrant. The employer submits an application for a provisional residence permit (mvv) or/and a residence permit at the same time.

Access to the labour market is restricted to labour as a highly skilled migrant. The TCN (TCN) is not tied to the first employer and is possible to change employers, but if the second employment does not qualify as highly skilled, s/he may need to apply for a general combined residence and work permit for labour migration (GVVA),

The national scheme is seen as very effective by national stakeholders from the Immigration and Naturalisation Service (IND) and also judging from the absolute number of permits issued – about 8,500 permits issued in 2014 and as a share of the total residence permits issued for remunerated activities – 70%.

The EU Blue Card and the national scheme run in parallel and target the same category of TCN HQWs and hence, they can be considered as being in competition.

OVERVIEW OF THE SCHEME

The labour migration policy in the Netherlands is aimed at strengthening the knowledge economy and attracting highly qualified persons.³¹⁰ For those at the top end of the labour market, who provide an important positive contribution to the Dutch economy and culture, the labour migration policy is inviting. By contrast, the Dutch policy is highly restrictive for TCNs who are less highly educated and/or who earn a lower salary.³¹¹ This is also indicative from the share of residence permits issued for highly skilled migrants which accounts for 70 % of the total residence permits issued for remunerated activities.³¹²

The policy for highly qualified labour migrants came into being in the mid-2000s. A motivation in this direction was provided by the report “*Mobility without borders for highly skilled migrants: How can we draw talent to the Netherlands?*”³¹³ published by the Innovation Platform (established by the Ministry of Economic Affairs to encourage and initiate innovative development) in 2004. The report set out recommendations for improving the accessibility of the Netherlands with regard to international highly skilled workers. According to the Innovation Platform, the Netherlands was not performing well in this area in comparison with its neighbouring countries and more policy solutions were needed in order to attract and keep the most talented highly skilled migrants, for whom there is stiff competition from other countries.³¹⁴

In a letter to the Dutch House of Representatives dated 25th May 2004, the Minister at that time expressed the belief that the admission of highly skilled migrants from outside the European Union represented an absolute condition attached to the Netherlands' ambition in becoming a knowledge economy. This policy objective was subsequently translated into simplified admission procedures in order to expedite the entry of the required highly skilled workers into the Netherlands.

The Highly Skilled Migrants Scheme in the Netherlands was introduced in October 2004. The main features of the scheme are the salary requirements, which are fixed on an annual basis, and the employer sponsorship. If the agreed salary does not meet the regular market level, the application can be rejected. The Ministry of Social Affairs is responsible for assessing the market conformity.

³¹⁰ European Migration Network (EMN) study, National Report for the Netherlands (2013) “Attracting highly qualified and qualified third-country nationals” available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/attracting/19_netherlands_national_report_attracting_highlyqualifiedtcns_july2013_final_en.pdf

³¹¹ Ibid.

³¹² Information from exchanges between the Commission and MS via EMN; Information provided by IND; Statistics extracted from Eurostat [migr_resocc] December 2015.

³¹³ Innovation platform (2004) *Innovatieplatform Grensoverstijgende Mobiliteit kennismigranten: Hoe krijgen we het talent naar Nederland?* Den Haag: Innovatieplatform.

³¹⁴ European Migration Network (EMN) study, National Report for the Netherlands (2013) “Attracting highly qualified and qualified third-country nationals” available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/attracting/19_netherlands_national_report_attracting_highlyqualifiedtcns_july2013_final_en.pdf

In addition to the main scheme for attracting HQWs, a scheme for highly educated graduates for seeking employment – the so-called ‘Orientation year for highly educated persons’ – was introduced in January 2009. This scheme will not be reviewed in detail for the purposes of this Country Fiche.

Design of the scheme

This section provides an overview of the main features of the Highly Skilled Migrants Scheme.

Education requirements: Proof of education qualifications is not required under the Highly Skilled Migrants Scheme. Education is required under ‘Orientation year for highly educated persons’ whereby applicants should have obtained a Master's degree (or have a doctorate) at one of the top 200 universities or at an accredited degree programme in the Netherlands to qualify for a residence permit in view of the Highly Educated Migrants Scheme.

Salary requirements: To qualify as a highly skilled migrant, the applicant has to satisfy the criteria for the monthly gross income. For employees from the age of 30 upwards a higher income requirement applies than for employees under the age of 30, as well as for those who have graduated in the Netherlands. The amount of the salary thresholds is index-linked on a yearly basis. This income requirement does not apply if the TCN performs scientific research or if s/he is a physician in training to become specialist. In that case, the income must at least meet the provisions listed in the Dutch Minimum Wage Act (wml). Table 1.1 below provides the salary requirements set for 2015.

Experience: Relevant work experience is not required for obtaining the Highly Educated Migrants Permit.

Recognised employer (sponsorship system): The Dutch scheme is based on a system of ‘recognised sponsors’, which provides for simplified fast-track decision-making. The cost for being recognised as a trusted employer is € 5.116. The conditions for being recognised as a trusted employer include:

Registration in commercial register;

No bankruptcy or suspension of payment;

Employer is considered reliable;

With regard to SMEs, the government is investigating whether it would be possible for SME's to pay lower fees for becoming a recognised sponsor.

Other conditions: No labour market test is carried out and there are no numerical quotas for admission set. Furthermore, no priority lists of labour shortages are used. The TCN should not

be a risk to public order or national security and should be willing to undergo a tuberculosis test upon arrival in the Netherlands. Certain nationalities are exempt from this obligation.³¹⁵

Salary requirements for 2015

Type of knowledge migrant	Standard amount per month excluding holiday pay
Highly qualified migrant 30 years or older	€ 4,189
Highly qualified migrant younger than 30 years	€ 3,071
Highly qualified migrant after orientation year graduated/highly educated	€ 2,201
EU Blue Card applicant	€ 4,908

Source: IND website <https://ind.nl/EN/individuals/residence-wizard/work/highly-skilled-migrant/Pages/default.aspx#paragraph1>

Application procedure

Only a recognised employer can submit an application on behalf of a highly skilled migrant. The employer submits an application for a provisional residence permit (mvv – an authorisation for temporary stay) or/and a residence permit at the same time. The provisional residence permit is a special visa for stay of more than three months in the Netherlands. This is called the Entry and Residence Procedure (TEV).

The difference between the authorisation for temporary stay (mvv) and the residence permit is that an mvv should be obtained prior to entering the country while the residence permit can be obtained as soon as the TCN who has an mvv (or is exempt from it) enters the Netherlands. Not everyone needs a provisional residence permit to apply for a residence permit in the Netherlands. Nationals of Australia, Canada, Japan, Monaco, New Zealand, South Korea, the United States and the Vatican are exempt from the provisional residence permit (mvv) requirement.

Prior to applying for authorisation for temporary stay (mvv) and/or the residence permit, the company in question needs to be registered as a recognised employer. When applying for a residence permit, a labour contract indicating the salary needs to be included with the application. Recognised companies qualify for the fast-track procedure. This means that the Immigration and Naturalisation Service (IND) aims to decide within 2 weeks after having received an application for the TEV procedure or for a residence permit. The Netherlands has started with digital applications by recognised sponsors. The application fee for the applicant is € 870.

Rights granted under the scheme

³¹⁵ Foreign nationals who hold the nationality of one of the EU/EEA Member States, Australia, Canada, Israel, Japan, Liechtenstein, Monaco, New Zealand, Surinam, the United States and Switzerland are exempt from taking the tuberculosis test. <https://ind.nl/EN/business/employer/newsletters/Pages/Tuberculosis-test.aspx>

The residence permit is granted for the same duration as the employment contract, with a maximum duration of 5 years.

Labour market access: Access to the labour market of holders of the residence permits for highly qualified workers is restricted to labour as a highly skilled migrant. The TCN is not tied to the first employer and it is possible to change employers. However, change of employer is allowed as long as the salary threshold is met and the second employer is also a recognised sponsor. After three years all restrictions are lifted and the migrant has unlimited access to the labour market. If a TCN holding a work permit for general employment has found another employment as a highly skilled migrant, the purpose of stay may be changed to stay as a highly skilled migrant. The (future) employer will apply for this change of purpose. If TCNs find employment other than as a highly skilled migrant, they may also apply for a residence permit based on work as a labour migrant.

As highlighted above, the admission policy framework in the Netherlands for low and medium skilled labour from third countries is very restrictive, because the labour potential in the Netherlands and in the rest of the EU is considered to be sufficient to provide for these types of employment.³¹⁶ A revised Labour Act for Aliens entered into force on 1st January 2014 which contained several stricter enforcements, such as a more stringent testing of the prioritised labour supply (labour market test). The main rule of the Labour Act for Aliens is that an employer is prohibited from hiring a TCN to carry out activities without being in possession of a permission to hire TCNs (TWV)³¹⁷ or a permission for work and residence purposes (GVVA)³¹⁸.

Employers are generally required to obtain a permission to hire TCNs (TWV) before they can hire employees from outside the EU to work in the Netherlands. An exception is the highly skilled migrant category where the employer does not need to have a permission to hire TCNs.

Residence rights: During his/her stay with a residence permit, the highly skilled migrant is allowed three months to find another job if the employer has cancelled the contract ahead of schedule and the employee is not to blame. If they find a job which is not highly skilled they will need to apply for a work permit. After three years all restrictions are lifted and the migrants get unlimited access to the labour market. After five years the highly skilled migrant is eligible for long-term residence.

Family reunification is allowed for spouses, same sex partners, unmarried partners, and minor children. Family members are allowed to work for any employer and a work permit is not required.

³¹⁶ European Migration Network (EMN) study, National Report for the Netherlands (2015), 'Labour market shortages and migration' available at: ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20a_netherlands_determining_labour_shortages_final.pdf

³¹⁷ Tewerkstellingsvergunning (work permit).

³¹⁸ Gecombineerde vergunning voor verblijf en arbeid (Combined residence and work permit).

The web-site of the IND provides information on conditions and procedures for application. In addition, there are 8-9 expatriate centres in different cities in the Netherlands where TCNs can get information e.g. on how to register with local authorities.³¹⁹

EVALUATION OF THE SCHEME

Coherence, complementarity and competition between national scheme and the EU Blue Card

The EU Blue Card and the national scheme run in parallel and target primarily the same category of TCN HQWs and thus, can be considered as being in competition, even though the admission conditions are not entirely similar. According to the national stakeholders consulted, the main factor which influences the low take-up of the EU Blue Card in the Netherlands is the successful national scheme. This can be seen when comparing the number of the EU Blue Cards issued (0 EU Blue Cards issued in 2014) with the national scheme (8,540 issued in 2014).

As opposed to the EU Blue Card, there is no qualification requirement under the national scheme. The main condition is the salary threshold. In the Netherlands in 2015, the monthly salary threshold for the EU Blue Card was set at €4,908, which is higher than for the national scheme, where highly skilled TCNs, 30 years of age or older, need to earn an annual salary of at least €4,189 (excluding the holiday pay). For highly skilled TCNs younger than 30 years of age, the salary threshold is €3,701. (see table 1.1 above)

Another difference between the EU Blue Card and the national scheme is that under the national scheme there is a condition of having a recognised sponsor while this is not the case for the EU Blue Card. If the applicant wants to work in a company which is not a recognised sponsor, they can either use the EU Blue Card or the general national scheme for labour migrants.

Effectiveness, efficiency and impact of the national scheme and the EU Blue Card

Effectiveness

According to national stakeholders consulted from the IND, since its introduction the permit has seen an increase year on year and is considered as very successful. The number of permits issued has increased by 30 % from 5,800 in 2013 to 8,540 in 2014. The number of permits under the national scheme represents a significant 70 % of all residence permits issued for remunerated activities. This is explained by the selective admission policy adopted in the Netherlands whereby admission for low and medium skilled jobs to TCNs is highly restricted.

Available statistics national scheme

Year	Permit	Total number of national permits	As a share of total permits issued in the MS	As a share of first permits issued for all remunerated activities
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³¹⁹ Information provided by IND

2013 - 2014	National schemes for Highly Skilled Migrants Scheme	2013: 5.800 2014: 8.540	2014: 12 %	2014: 70%
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Source: Information from exchanges between the Commission and MS via EMN

Interviewed stakeholders from IND commented that in addition to attracting HQWs the national scheme did not have other aims (such as filling in labour shortages or any other objectives).

It was also underlined that in addition to the design of the immigration rules other factors are important such as career opportunities and living conditions. These are seen as attractive in the Netherlands by the interviewees from IND which has contributed to the take-up of national schemes for Highly Skilled Migrants Scheme.

Efficiency

Efficiency of the national schemes can be measured in terms of the financial and human resources deployed both at administrative and regulatory level. This is also related to administrative efficiency in processing application documents under the residence permits. No statistics on financial and human resources have been collected from national stakeholders in the Netherlands because budgets and staff of immigration services are collective for all permits and it is not possible to obtain concrete disaggregated statistics for particular permits, even estimates.³²⁰ According to information from IND, the authorities aim at reducing the administrative burden while striking the balance with the prevention of fraud. The fast-track decision making is seen as positive and there is no evidence of complaints from employers under the sponsorship system. In case of fraud or abuse by the employer, the status of recognised employer can be revoked.

Impact

The impact of the scheme to developing knowledge economy or contributing to knowledge spill-overs is seen as positive by the stakeholders interviewed from IND. The numbers of highly skilled admitted under the scheme have increased year-on-year and has reached about 8,500 admitted in 2014. According to the interviewed stakeholders from IND, this is seen as a sufficiently high number to contribute to the development of knowledge economy and contributing to positive economic development and competitiveness.

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³²⁰ Interview with IND.

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WRR [Scientific Council for Government Policy] (2012) In betere banen [In better jobs], p.14.

UWV (2015): Welke beroepen bieden kansen? [Which occupations offer opportunities?]

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<https://ind.nl/EN/business/employer/newsletters/Pages/Tuberculosis-test.aspx> (accessed 5th December 2015)

<https://ind.nl/EN/individuals/residence-wizard/work/highly-skilled-migrant/Pages/default.aspx#paragraph1> (accessed 5th December 2015)

COUNTRY FICHE: SPAIN

Key Points to note:

In 2013, the Spanish Government approved the Law on support for entrepreneurs and internationalisation (*Ley de Apoyo al Emprendedor y su Internacionalización*, “LAPI”). This law introduces a new scheme related to international mobility and highly qualified migration. Amendments were introduced by the Law 25/2015³²¹.

The aim of the scheme is to attract highly qualified workers (HQWs) from third countries who can make a contribution to economic growth in Spain. Several categories were included: investors; entrepreneurs; highly qualified professionals; researchers and workers engaged in intra-corporate transfers (within the same company or corporate group).

The national scheme includes a specific work and residence authorisations procedure for the above-mentioned categories. Authorisations are processed by Large Business and Strategic Groups Unit (UGE) – a specialised unit under the General Secretariat for Immigration of the Ministry of Employment and Social Security. These authorisations are not subject to the requirement of the national labour market test because they are considered to contribute to economic growth.

The company recruiting the highly qualified TCNs can apply for a residence visa, which is valid for one year. After this year, the concerned companies can apply for a residence permit for HQW for the duration of the contract without having to apply for a visa. This residence permit has a validity period of two years, renewable.

The scheme is based on business demand so the Spanish companies can seek out the highly qualified workers.

³²¹ Consolidated version available at: <http://www.boe.es/buscar/act.php?id=BOE-A-2013-10074>

OVERVIEW OF THE SCHEME

This section outlines the policy context of the scheme and its elements.

Design of the national scheme

The national scheme on international mobility was introduced in Section 2 of Title V of the Entrepreneurial Support and Internationalisation Act (Ley 14/2013)³²², which entered into force in 2013. Prior to Ley 14/2013, international mobility aspects were regulated by general immigration legislation, which contained limited provisions on highly qualified workers (HQWs).

The new law was adopted after a detailed assessment of Spanish qualified labour migration in 2012³²³. The analysis was carried out by a multidisciplinary team composed of the representatives of the following institutions: Ministry of Employment and Social Security, Ministry of the Interior, Ministry of Foreign Affairs and Co-operation as well as the Ministry of Employment and Competitiveness. This assessment revealed that the Spanish immigration policy was lacking the economic internationalisation component and was seen as inefficient in attracting HQWs. To address this, the national scheme aims to facilitate on grounds of economic interest the entry and/or stay in Spain of³²⁴:

Investors;

Entrepreneurs;

Intra-corporate transferees;

Researchers; and

Highly qualified professionals.

Under the national scheme the category of HQW includes a wide range of highly qualified professionals (e.g. executives and/or highly qualified staff of large business, strategic industries, and business projects).

The national scheme introduces flexible criteria to facilitate the entry and residence in Spain of HQWs. The flexibility is considered to be one of the key elements of the scheme. These criteria apply to all the categories of beneficiaries and include the following³²⁵:

The labour market test is not needed;

Foreign nationals holding visas do not need to obtain an Identity Card for Foreign Nationals;

³²² <http://noticias.juridicas.com/actualidad/noticias/3160-publicada-la-ley-14-2013-de-27-de-septiembre-de-apoyo-al-emprendedor/>

³²³ The Ministry of Employment and Social Security has recently published an analysis of the impact of the labour reform, which is available at http://www.empleo.gob.es/es/destacados/HOME/impacto_reforma_laboral/index.htm. See also OECD report on the main effects of the 2012 labour market reform in Spain.

³²⁴ http://extranjeros.empleo.gob.es/es/unidadgrandesempresas/ley14_2013/index.html

³²⁵ EMN, Annual Immigration and Asylum Policy Report. Spain 2013.

The simultaneous application for a permit for residence and work by family members (spouse and any children under the age of 18 or those older than 18 objectively incapable to support themselves) is possible.

Moreover, the scheme allows for the possibility to change from one status to another between different types of permits when the HQW has already legally resided in Spain. For instance, of particular interest is the change between the status of students of business schools to entrepreneurs/investors.

A set of flexible criteria are also introduced for each of HQW categories. An overview is provided in the table below.

Flexible criteria by categories

Categories	Flexible criteria
Investors	It is sufficient to travel to Spain at least once during the authorised residence period, in order to obtain the investor residence permit.
Entrepreneurs	The possibility to apply for a residence permit regardless of his/her physical presence in Spain. In addition, a business residence permit may be granted to any TCN looking to start up a business activity in Spain.
High Qualified Professionals	Export (large and small-medium size) companies may demand a residence permit for highly qualified professionals covering the duration of the job contract.
Researchers	The residence and training permit is granted for 2 years, renewable. The need to attract HQWs in Research & Development has increased.
Workers engaged in intra-corporate transfers	Facilitation and the transfer of HQWs is possible for business development purposes.

As a start the objective criteria are checked and afterwards the authorities make sure that the skills fit with the requirements for the job. The national scheme provides a set of requirements to ensure that the process takes place without affecting the formal, economic and security safeguards (see below). All foreigners opting to benefit from the provisions of Section 2 of Title V of Ley 14/2013 should meet the general requirements for stay and residence of foreign nationals in Spain. These requirements include the following³²⁶:

Formal requirements:

³²⁶ General Secretariat for Immigration and Emigration of the Ministry of Employment and Social Security – Entrepreneurial support act of 27 September 2013 (Ley 14/2013), International Mobility Section, Ministry of Employment and Social Security, 2015. <http://extranjeros.empleo.gob>.

To be over the age of 18 years;

To pay the visa or permit processing fee.

The payment of this fee is in line with the provisions of the Law on Rights and Freedoms of Foreign Nationals Act (Ley Orgánica 4/2000 (LOEX³²⁷). The fees are applied in respect to the principles of equity and equivalence of the tax system. They may change at the beginning of each financial year in conformity with the annual state budget. For instance, the fees applied in 2014 were €70.40 for the initial residence permit and €75.60 for the renewal of the residence permit³²⁸.

Economic requirements:

To have sufficient resources for themselves and for the family members;

To have a public or private health insurance.

Security requirements:

Not be listed as ‘rejectable’ in the Schengen Area;

Not be present in Spain illegally;

Not having a criminal record in Spain for offences under Spanish law and not having committed an offence in the countries with which Spain has agreements;

Compliance with Money Laundering and Anti-Trafficking law.

In addition to the above, the different categories need to meet certain specific requirements. 0 below provides a full overview of these requirements.

Specific requirements by category³²⁹

Category	Specific requirements
Investors	<p>A significant investment in Spain, directly (as an individual) or indirectly (via a legal person)</p> <p>This investment should be done within a period not exceeding 60 days prior to the application, and it should include:</p> <ul style="list-style-type: none">- €2 million in Spanish public debt securities;- €1 million in stocks or holdings in Spanish companies;- €1 million in bank deposits within the Spanish financial institutions.

³²⁷ http://noticias.juridicas.com/base_datos/Admin/lo4-2000.html

³²⁸ Report on the implementation of the International mobility section.

³²⁹ Report on the Implementation of the International Mobility Section of the Entrepreneurial Support and Internationalisation Act of 27 September 2013, Ministry of Labour and Social Security, 2015.

Category	Specific requirements
	<p>The purchase of a property in Spain of a value equal to or greater than €500,000.</p> <p>The investment (or business) should be of an economic interest for Spain, e.g. the necessity to create jobs in the sector where is most needed in order to promote the Spanish economy</p>
Entrepreneurs	<p>TCNs who carry out an innovative activity of special economic interest for Spain. This assessment is conducted by the Economic and Trade Office of the region in which the entrepreneur records the initial visa application. This refers to the two-stage application process in the case of entrepreneurs: the State Secretariat for Trade, specifically the Economic and Trade Offices (for visa applications) and the Directorate General for International Trade and Investment (for permit applications).</p>
Highly qualified professionals	<p>The companies recruiting highly qualified TCNs must lodge a request for permit in any of the following situations:</p> <p>Large enterprises or SMEs working in a strategic sector of economic interest;</p> <p>Large enterprises or SMEs involved in projects of general interest;</p> <p>When the employee is a graduate and/or a postgraduate from Spanish universities and reputable business schools.</p> <p>At the time of application and in addition to the specific criteria outlined below, a case-by-case assessment is carried out to check that the TCN is highly skilled and to ensure that they correspond with the requirements for the job.</p> <p>Specific documents for the company (alternative):</p> <p>Documents certifying that one or more of the following requirement are met:</p> <p>More than 250 employees;</p> <p>Business turnover of €50 million;</p> <p>Foreign investment of €1 million in the previous three years;</p> <p>Investment stock value or position in excess of €3 million;</p> <p>Company established in Spain and having business projects considered to be in the general interest;</p> <p>TCN having received a university degree or qualification from a business</p>

Category	Specific requirements
	<p>school in Spain;</p> <p>Copy of the job contract;</p> <p>Job description.</p> <p>Requirements for the employee:</p> <p>ID card or passport;</p> <p>Be over 18 years old;</p> <p>Public/private certificate of health insurance;</p> <p>Background check;</p> <p>Proof of sufficient financial sources to support family members during residence in Spain.</p>
Researchers	<p>TCNs who enter and/or stay in Spain with the aim to conduct training, research, development and innovation activities in public or private institutions need to satisfy the following criteria:</p> <p>Conduct scientific research, development and innovation work at business undertakings or Research and Development and investment entities established in Spain;</p> <p>Be subject to an agreement with a public or private research institution;</p> <p>Belong to teaching staff hired by universities, centres or institutions of higher education; and research, or business schools established in Spain.</p>
Workers on intra-corporate transfer	<p>This category includes TCNs who were transferred to Spain in the context of a working or professional relationship, or for professional training, with a company or corporate group established in Spain. They need to prove:</p> <p>A real business activity;</p> <p>Higher education qualification of minimum of 3 years;</p> <p>A prior and continuous professional or employment relationship more than 3 months with one or more of the group companies;</p> <p>A letter accrediting the transfer</p>

Application procedure

The application procedure is simplified with the aim of increasing the recruitment of talented TCNs and attracting foreign investment to Spain. In this regard, the residence permit is managed under a single procedure. This is done in compliance with the requirement of Directive 2011/98/EC³³⁰ on a single application procedure for a single permit for TCNs to reside and work in the territory of a Member State. Moreover, the overall application process is speeded up: visa applications are processed within 10 working days and residence permits within 20 working days (compared to the former 6 months).

The visa application can be submitted at a consulate (without the intervention of the Immigration Office). The processing of the residence application is done through a special unit - UGE. The residence permit is valid for one year, with possibility to renew. The companies on behalf of HQW can apply for a residence visa with duration of one year. After this year, the concerned companies can apply for a residence permit for HQW for the duration of the contract without having to apply for a visa. This residence permit has a validity period of two years, and is renewable.

A joint or simultaneous application for a permit or, if applicable, a visa, is foreseen for the spouse and children under the age of 18 or those dependents who are objectively incapable of providing for themselves due to health reasons. The processing period is the same as for all categories of Law 14/2013: 10 working days for visa and 20 working days for residence permit.

The residence permit may be granted:

After the start of the activity, without prior stay in Spain;

Directly to persons seeking entry to undertake entrepreneurial business activities (start-up) or to HQW who are in Spain and have another visa or permit.

In any case, the identification card for foreign nationals is not compulsory. The same application procedure for long-term residence and citizenship remains. In addition, the general requirements for stay and residence of foreign nationals in Spain apply to holders of the national permit.

Rights granted under the national scheme

Labour market rights: The HQW may change employer if the new position is also highly qualified. A change of employer must be notified to the UGE.

Residence rights: The residence permit may be renewed even when there are absences over six months per year. The residence permit is two years renewable up to maximum five years (1+2+2). Afterwards, permanent residence is granted.

³³⁰ 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, OJ L 343, 23.12.2011, p. 1–9.

Family reunification: The spouse and any children under the age of 18 or elderly dependent persons (including the parents of the permit holder/spouse) can apply jointly and simultaneously for a permit or a visa (if applicable).

Equal treatment: The national scheme also recognises the principle of equal treatment with nationals in Spain with respect to access to social services and benefits, whether basic or specific. Once TCNs are legally recognised as residents, they benefit from the same treatment.

Statistical overview

Over the period September 2013 - December 2014, the total number of visas and permits granted to all the categories (including family members) of Ley 14/2013 amounted to 5,580. The full overview is provided in the table below:

Number of visas/permits granted by category³³¹ (September 2013 – December 2014)

Investors	Entrepreneurs	Highly qualified professionals	Researchers	Intra-Corporate Transferees	Family members of all categories
531	82	1,231	369	907	2,461

Source: Ministry of Employment and Social Security³³²

From the total of 369 permits granted to researchers (not including their family members):

213 permits were issued for researchers working at universities,

71 permits for researchers working at the Spanish National Research Council;

42 permits for researchers working for foundations; and

43 permits for researchers working in other sectors.

The estimated value of the investment in Spain since the introduction of the scheme in 2013 until the end of 2014 totalled to €694 million³³³. As regards the creation of jobs, the estimation was that 12,685 new jobs were created³³⁴.

According to Eurostat data for the period 2012-2014, 4,848 permits were granted to HQW in Spain³³⁵. 0 shows the number of permits granted per year. While the number of residence permits issued through the national scheme has been progressively increasing, the number of permits via the EU Blue Card is seen to be decreasing.

Number of residence permits through the national scheme

³³¹ According to the national data gathered by the Ministry of Employment and Social Security.

³³² <http://www.empleo.gob.es/estadisticas/pte/welcome.htm>

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Please note that the table presents data from Eurostat on the admission of highly qualified workers which is not necessarily corresponding to the national scheme on international mobility introduced by Ley 14/2013. The national permit was introduced in 2013 while Eurostat data provides the admission of highly qualified TCNs from before that.

Years	Admission of highly qualified TCNs EU Blue Card	
2012	1,231	443
2013	1,480	313
2014	2,137	37

Source: Eurostat data 2012-2014 [migr_resocc]

Comparative overview national scheme and the EU Blue Card

Table 1.5. below highlights the main differences between the Blue Card and the national scheme.

Distinctive elements between the Blue Card and the national scheme

	EU Blue Card	National scheme
Definition of HQW	Rigid definition of "highly qualified professionals" in the Directive: including salary threshold and 3 years of studies or 5 years of work experience.	'HQW' includes a wide range of highly qualified professionals (e.g. executives and/or highly qualified staff of large business, strategic industries, business projects etc.). The assessment of HQW is made on a case-by-case basis taking into account the position, level of qualifications and salary.
Admission of HQW	Lack of flexibility in the national transposition of the Directive; the labour market test is applied largely	Flexible recruitment - no labour market test applied
Procedure	45 working days after lodging the application before the competent authority (90 days' maximum processing time in the Directive).	20 day period after submitting the application before the UGE. One specific procedure for all categories of the law. Under this scheme, facilitation procedures are possible for companies registered with the UGE, under specific conditions such as: business turnover of over €50 million in Spain, annual foreign investment, not less than €1 million, three years prior to the registration and etc.). This registration is for three years, renewable. Any modification must be notified to the UGE within a 30-day period.

	EU Blue Card	National scheme
Duration of the permit	One year, renewable.	One year, renewable for two-year period. Absences up to six months allowed. The residence permit may be renewed even when there are absences over six months per year in the case of residence visas and permits for investors or workers of companies that, conducting businesses abroad, have their base of operations in Spain.
Processing authority for permit	Processing authority is generally the Immigration Office. For large companies, the UGE is involved.	One specialised unit (Large Business and Strategic Groups Unit - UGE) that process all permit residence applications.
Salary threshold	1.5 times the gross annual average salary, which is determined according to the National Institute for Statistics.	Not applicable
Intra-EU mobility	The intra-EU mobility is granted to TCN only after having acquired a long-term residence permit. Such a permit is granted after five years legal and continuous residence in Spain. Even after the fulfilment of these criteria, the free movement may be limited by the second Member State.	Intra-EU mobility as such is not possible. It promotes the entry of investment and talented HQW in Spain. The scheme is designed with a view to protecting the domestic labour market rather than supporting the internationalisation of the economy.
Specific categories	No provisions for investors, entrepreneurs and students (separate EU instruments for students, researchers and ICT)	It includes specific provisions for investors, entrepreneurs, graduates and intra-corporate transferees.

EVALUATION OF THE NATIONAL SCHEME

Coherence, complementarity and competition between national scheme and the EU Blue Card

Both the EU Blue Card and the national scheme aim at attracting international talent to stimulate economic growth and employment. The same context motivated the adoption of these two instruments.

There is a level of competition between the national scheme and the EU Blue Card in so far as both instruments target HQWs from third countries. However, in term of the application procedure the national scheme is seen as more flexible and less burdensome for highly

qualified professionals (e.g. flexible and fast application procedures as described above) with a potential interest for the Spanish economy than the EU Blue Card³³⁶. According to the representatives of the Secretary of State for Foreign Trade consulted, this is mainly due to the lengthy and complex procedure foreseen for the EU Blue Card scheme in the national law. Under the EU Blue Card scheme, the term ‘highly qualified professional’ is rigid, requiring higher education qualifications of three years or at least five years of professional experience. According to the Ministry of Employment and Social Security, the strict definition created a few obstacles to the hiring of foreign professionals. Further differences between the EU Blue Card and the national scheme are outlined in Table 1.5 above.

Furthermore, according to the Ministry of Employment and Social Security, the small and medium size enterprises are more familiar with the provisions and the requirements provided by the national scheme.

As demonstrated above, since the introduction of the national scheme in 2013, the number of applicants via this scheme has increased while the number of EU Blue Cards has progressively decreased.

Efficiency, effectiveness and impact of the national scheme and the EU Blue card

The information gathered from interviews with representatives of the Ministry of Employment and Social Security and the State Secretary for Foreign Trade revealed a correlation between the increased numbers of HQW in Spain with the introduction of the national scheme. The labour shortages in certain sectors (e.g. ICT) have been reduced through the recruitment of skilled TCNs³³⁷.

Since the introduction of the national scheme, several bilateral agreements have been adopted between Spain and third countries (Mexico, Saudi Arabia, Canada, Colombia, New Zealand), with the aim to promote mobility among skilled young people. These agreements are intended to create the opportunity for the highly skilled young people of an international professional or experience that can improve their training and skills acquisition for the future. Moreover, a Memorandum of Understanding was concluded with Mexico in 2014 aiming to facilitate the international mobility.

In 2014, negotiations were conducted within the framework of the General Cooperation Agreement (signed in 2007) between the Saudi Arabia and Spain. The Bilateral Committee under the Agreement addressed the facilitation of international mobility for qualified Saudi citizens in Spain under the same terms as Spaniards in the kingdoms of Saudi Arabia³³⁸.

According to the State Secretary for Foreign Trade, Spanish companies have recognised the benefits under the national scheme. Likewise, the number of permits for highly qualified

³³⁶ EMN Study 2014, Admitting third-country nationals for business purposes, page 4 available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/26a.spain_business_study_en_version.pdf

³³⁷ Interviews with representatives of the Ministry of Employment and Social Security and the State Secretary for Foreign Trade.

³³⁸ Ibid, EMN Study 2014.

professionals has observed a year-on-year increase. As regards investors, 531 visas and/or residence permits were granted: 490 for property investments, 29 for investments in financial assets and 12 for projects in the general interest³³⁹.

The success of the Spanish national scheme has also retained the attention of international press. The New York Times published an article highlighting the improvement introduced in Spain through the adoption of Ley 14/2013³⁴⁰.

There is no information about the efficiency of the scheme available.

³³⁹ <http://www.consilium.europa.eu/en/policies/strategic-guidelines-jha/>, Implementation report, page 47.

³⁴⁰ <http://www.nytimes.com/2014/11/23/business/international/at-spains-door-a-welcome-mat-for-entrepreneurs.html>

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COUNTRY FICHE: THE UNITED KINGDOM

Key Points to note:

The UK has two entry routes for qualified TCNs (TCNs): Tier 1 for exceptional talent and Tier 2 for qualified workers. TCNs under Tier 1 exceptional talent are defined as “*exceptionally talented individuals in the fields of science, humanities, engineering, the arts and digital technology [likely] to enrich the United Kingdom’s knowledge economy and cultural life*”. TCNs under Tier 2 are defined as qualified workers and fall under four categories: general; intra-company transfers (ICTs); minister of religion and sports person.

Eligibility criteria for Tier 1 are set by relevant competent bodies for ‘exceptional talent’ and ‘exceptional promise’ applicants. With regard to Tier 2, employers must be registered as sponsors.

The UK government has set a maximum quota for Tier 1 exceptional talent and Tier 2 general visas. No cap exists for ICTs.. Tier 1 exceptional talent had a cap of 1 000 per year, with 500 places released in April and 500 places released in October. Tier 2 general visas are capped at 20 700 grants per year, which are allocated on a monthly basis through restricted certificates of sponsorship (RCoS).

There were only 112 Tier 1 exceptional talent applications in 2014, with 108 being granted. This accounts for only 11 % of the annual limit. Under the Tier 2 visa, there has been an 8 % increase in the number of sponsored visa applications for qualified workers. The final number in September 2015 was 92 859, which is mainly due to in-country extensions from previous ICT visas.

BRIEF OVERVIEW OF SCHEME

In the UK, there is a tiered visa system for TCNs. The system HQWs was introduced in 2008, yet has undergone reform since then, to meet changing labour market needs. Since 2011, there have been two entry routes for qualified TCNs: **Tier 1 for exceptional talent** and **Tier 2 for qualified workers**. For the purposes of comparison to the EU Blue Card, both Tier 1 and Tier 2 schemes are examined in this Country Fiche. However, it should be noted that the scope of the eligible categories under Tier 1 and Tier 2 is broader than the EU Blue Card and encompasses ‘qualified workers’. TCNs under Tier 1 exceptional talent are defined as “*exceptionally talented individuals in the fields of science, humanities, engineering, the arts and digital technology [likely] to enrich the United Kingdom’s knowledge economy and cultural life*”. In addition to ‘exceptional talent’, an ‘exceptional promise’ category under Tier 1 includes applicants who may still stand at the beginning of their careers, but have already shown their potential to make significant contributions as future leaders in their field. Eligible applicants have already been internationally recognised as having made significant contributions as leaders in their field, or have already demonstrated potential to contribute significantly as future leaders in their respective field. A designated competent body³⁴¹ will advise the Home Office if the applicant meets these criteria. Table 1.1 provides an overview of eligibility criteria set by the competent bodies.

Eligibility criteria of competent bodies under Tier 1

Body	Exceptional talent applicants	Exceptional promise applicants
Science bodies (British Academy, Royal Academy of Engineering and Royal Society)	<p>Applicants are eligible in a number of disciplines in the areas of science, engineering, humanities and medicine³⁴².</p> <p>Active researcher in the field</p> <p>PhD/equivalent research experience</p> <p>Recommendation letter from an eminent person resident in the UK supporting the Tier 1 visa application</p> <p>Meeting one or more of the qualifying criteria:</p> <p>Being a member of an academy³⁴³</p>	<p>Applicants are eligible in a number of disciplines in the areas of science, engineering, humanities and medicine³⁴⁴.</p> <p>Active researcher in the field</p> <p>PhD/equivalent research experience</p> <p>Recommendation letter from an eminent person resident in the UK supporting the Tier 1 visa application</p> <p>Be at an early career stage</p> <p>Have been awarded, hold, or have held in the past five years, a prestigious UK-based</p>

³⁴¹ Arts council of England; British Academy; Royal Academy of Engineering; Royal Society; and Tech City UK.

³⁴² UK Visas and Immigration. (2015), “Tier 1 (Exceptional Talent) Policy Guidance version 11/5: Tier 1 (Exceptional Talent) of the Points Based System”, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477902/T1_ET_Guidance_11_2015.pdf (accessed mid November 2015)

³⁴³ National academy or a foreign member of academies of other countries (in particular any of the UK national academies).

Body	Exceptional talent applicants	Exceptional promise applicants
	<p>Have been awarded a prestigious internationally recognised prize;</p> <p>Written recommendation of a senior member of reputable UK organisation</p>	<p>Research Fellowship, or an international Fellowship</p>
Arts Council England	<p>Eligible in a number of disciplines³⁴⁵</p> <p>Professionally engaged in producing work of outstanding quality</p> <p>Can show recent and regular activity of being engaged professionally in the respective field</p> <p>Can show a substantial track record in at least one country other than the country of residence</p>	<p>Eligible in a number of disciplines³⁴⁶</p> <p>Professionally engaged in producing work of outstanding quality</p> <p>Can show recent and regular activity of being engaged professionally in the respective field</p> <p>Can show a developing track record in at least one country other than the country of residence</p>
Tech City UK	<p>One of the mandatory and two of the qualifying criteria should be met:</p> <p><u>Mandatory criteria</u></p> <p>a proven track record of innovation working for a digital technology sector as director or founder or employee of a digital technology sector company;</p> <p>proof of recognition for work outside of the immediate occupation that has contributed to the advancement of the sector</p> <p><u>Qualifying criteria:</u></p> <p>significant technical, commercial or entrepreneurial contribution in the digital technology sector as either a director, founder or employee of a digital technology company;</p> <p>recognised as a world leading talent in the</p>	<p>Tech City UK has a single set of criteria to cover all applicants, whether the applicants are at the beginning of their careers or at a more advanced stage.</p>

³⁴⁴ UK Visas and Immigration. (2015) “Tier 1 (Exceptional Talent) Policy Guidance version 11/5: Tier 1 (Exceptional Talent) of the Points Based System”, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477902/T1_ET_Guidance_11_2015.pdf (accessed mid November 2015).

³⁴⁵ Exceptional Talent and Exceptional Promise applications: dance, music, theatre, visual arts, literature, museums, galleries and combined arts. Exceptional Talent applications only: film, television, animation, post-production and visual effects.

³⁴⁶ Ibid.

Body	Exceptional talent applicants	Exceptional promise applicants
	<p>digital technology sector</p> <p>undergone continuous learning/mastery of new digital skills</p> <p>exceptional ability in the field by making academic contributions through research</p>	

TCNs under Tier 2 are defined as qualified workers and fall under four categories: general; intra-company transfers (ICTs); minister of religion and sports person.

There are three main application routes within the Tier 2 process: the shortage occupation list (SOL); the resident labour market test (RLMT); and the intra-company transfer route.

Shortage occupation list: The SOL encompasses TCNs applying to occupations identified by government as shortage areas. There are 32 occupational groups³⁴⁷ on the current SOL. These cover a wide range of sectors, but include a particularly high number of roles in sectors such as health and social care, where there is a long lead time to train professionals, as well as occupations in high-value growth sectors such as advanced manufacturing and technology. The SOL is reviewed periodically by the independent Migration Advisory Committee

³⁴⁷ The 2014 SOL included: Production managers and directors in mining and energy, biological scientists and biochemists, physical scientists, natural and social science professionals, civil engineers, mechanical engineers, electrical engineers, electronics engineers, design and development engineers, production and process engineers, other engineering professionals, IT business analysts, architects and systems designers, programmers and software development professionals, environmental professionals, medical practitioners, medical radiographers, nurses, secondary education teaching professionals, social workers, quality control and planning engineers, engineering technicians, medical and dental technicians, artist, dancers and choreographers, musicians, arts officers, producers and directors, graphic designers, buyers and purchasing officers, welding trades, aircraft maintenance and related trades, line repairs and cable jointers, chefs.

(MAC)³⁴⁸ to reflect labour market and policy changes³⁴⁹. The list in Scotland includes an additional employment and skills shortage category³⁵⁰.

Resident labour market test: The RLMT relates to TCNs entering jobs that have been unsuccessfully advertised domestically for at least 28 days before opening it up to TCNs³⁵¹.

ICTs are not designed to fill in labour shortages and it is a separate category³⁵².

The majority of highly qualified worker TCNs enter through the Tier 2 general or ICT routes³⁵³.

Design of the scheme

Requirements for workers

Tier 2 general applicants must hold a job offer within the UK. The employer has to register as a sponsor and receive a Certificate of Sponsorship (CoS) before a TCN can apply for the visa. If a sponsor is fully approved (A-rated) and certifies that it can support and accommodate the TCN for the first month of employment, the TCN does not require a certain levels of savings (GBP 945) before applying for the visa. A RLMT is conducted for all Tier 2 general visas, but is not necessary for occupations on the SOL, or for Tier 1 exceptional talent visas. The test does not require that a vacancy is listed on the EURES mobility platform. Visa fees are lower for occupations on the SOL.

There are four main areas of requirements that TCNs have to meet before being granted a Tier 1 or Tier 2 visa:

Education. For Tier 1 exceptional talent visas a PhD (ISCED level 6) is required for natural and social scientists, medical researchers, engineers, or scholars in the fields of humanities. There are no formal qualification requirements for exceptionally talented applicants in the fields of arts and culture and technology (see table 1.1 above). Tier 1 visas are not linked to a specific job as the individual is granted a visa based on their personal attributes. They are endorsed by one of five designated bodies: Arts council of England; British Academy; Royal

³⁴⁸ UK Government. (2014), *Tier 2 Shortage Occupation List – Government-approved version – valid from 6 April 2014*, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308513/shortageoccupationlistapril14.pdf (accessed mid November 2015).

³⁴⁹ UK Home Office Science. (2015), *Determining labour shortages and the need for labour migration from third countries in the UK - European Migration Network Focused Study*, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-28a_uk_labour_shortages_english_final.pdf (accessed mid November 2015).

³⁵⁰ 2014 SOL for Scotland included: Physical scientists and medical practitioners

³⁵¹ UK Home Office Science. (2015), *Determining labour shortages and the need for labour migration from third countries in the UK - European Migration Network Focused Study*, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-28a_uk_labour_shortages_english_final.pdf (accessed mid November 2015).

³⁵² UK Home Office Science. (2015), *Determining labour shortages and the need for labour migration from third countries in the UK - European Migration Network Focused Study*, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-28a_uk_labour_shortages_english_final.pdf (accessed mid November 2015).

³⁵³ Exchanges of information with the European Commission and EMN NCPs under the EMN.

Academy of Engineering; Royal Society; and Tech City UK. For a Tier 2 visa, at least a National Qualifications Framework (NQF) Level 6 qualification is required, which is equivalent to a degree level. There are some exceptions, including creative occupations and overhead lines workers. The UK has a list of jobs that require skills equivalent to at least NQF Level 6. It is up to the employer to recruit a suitable applicant and carry out necessary qualification checks. The employer can choose a person without formal qualifications, but the Home Office can reject an applicant if they are not appropriately qualified where there are mandatory professional requirements. Applicants, resident in the UK under the Tier 4 visa for students, who want to switch to the Tier 2 visa, must have a CoS and a UK recognised degree³⁵⁴. The sponsor will then be exempt from the RLMT³⁵⁵. Graduate entrepreneurs from Tier 1 can also switch to a Tier 2 general visa without the sponsor undertaking the RLMT³⁵⁶.

Salary. For Tier 2 general visas, the job must pay GBP 20 800 or the appropriate rate for the occupation (whichever is higher). The appropriate rates are set at the 25th and 10th %iles of UK earnings for the occupation, for experienced and new employees respectively. Tier 2 ICT long term staff (up to 5 years) must be paid at least GBP 41 500, or the appropriate rate for the role (whichever is higher). Short-term staff and graduate trainees (up to 12 months) and skills transfer applicants (up to 6 months) must be paid at least GBP 24 800, or the appropriate rate for the role (whichever is higher). If applicants are earning more than GBP 155 300 they are not affected by the yearly cap on general admissions. Tier 2 ministers of religion must receive pay and conditions at least equal to those given to settled workers in the same role. This can include a traditional salary, stipend, customary offering, board and lodgings or a combination - but must comply or be exempt from the national minimum wage regulations. Tier 2 sportspersons must comply with national minimum wage regulations. All the salary thresholds are calculated independently by the MAC, using data from employers.

Years of experience. Tier 1 exceptional talent applications to the Art Council are considered beyond academic qualifications if, the applicant has an endorsement from an internationally recognised institution, recognition in the media and has been shortlisted for/have nominations for awards. Tier 2 holders can be recruited by an employer based on their years of experience rather than formal qualifications. Applicants must meet any existing salary thresholds or mandatory professional requirements. There are two minimum salary rates, one for new entrants and one for experienced staff. The requirement relating to years of experience varies by occupation/route. For example, ICTs must have worked for at least 12 months for the sending business. In the context of the SOL, chefs are required to have at least five years'

³⁵⁴ UK Visas and Immigration. (2015), "Tier 2 of the Points Based System – Policy Guidance", available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421842/Tier_2_Guidance_04_2015.pdf (accessed mid November 2015).

³⁵⁵ Ibid.

³⁵⁶ Salt, J. (2014), "International Migration and the UK" - Annual Report of the UK SOPEMI Correspondent to the OECD, Migration Research Unit, University College London, available at: http://www.geog.ucl.ac.uk/research/transnational-spaces/migration-research-unit/pdfs/copy_of_Sopemi_UK_2014_dr1.pdf (accessed mid November 2015).

experience, while welding traders must have at least three years' experience³⁵⁷. Recent changes in 2013 introduced a genuineness test for Tier 2 ministers of religion³⁵⁸.

Language. For all tier 2 applicants (except ICTs), knowledge of the English language needs to be proved when applying. This can be achieved through passing an approved English language test with at least CEFR level B1 in reading, writing, speaking and listening, or having an academic qualification that was taught in English and is recognised by UK NARIC as being equivalent to a UK bachelor's degree, master's degree or PhD. Certain nationalities are exempt from these tests (e.g. Australia, Jamaica, USA).

Requirements for employers

Employers have to meet certain requirements under the UK's national facilitated system for trusted employers. To be a trusted employer, they have to check that their foreign workers have the necessary professional accreditations, only assign the CoS to workers when the job is suitable for sponsorship and keep UK visa and immigration informed if the worker is not meeting the standards of their visa. Employers must have HR systems in place to monitor their employees' immigration status, keep copies of workers' passport and right to work information, track and record employees' attendance, and keep employee contact details up to date. Furthermore, the employer must report any significant changes in their own circumstances within 20 working days (for example, if they stop trading or become insolvent, substantially change the nature of their business and/or are involved in a merger or take-over).

The business license may be downgraded, suspended or withdrawn if the employer does not meet these specific requirements and recognition is evaluated periodically. Employers take on a cost to become a sponsor, the level of which depends on the size and nature of the business. For Tier 2 small charitable sponsors, the cost to be a trusted employer is GBP 536 (small is defined by an annual turnover of 6.5 million or less and 50 employees or less). The cost for a medium or large business is GBP 1 476. Further requirements have to be taken into account when employing TCNs under the age of 18. The employer has to make sure that workers under 18 have suitable care arrangements for travel to and arrival in the UK and living arrangements. A letter of consent needs to be given by the parents, and for workers under 16 a license from the education authority in the area where TCNs will work must be acquired.

Application procedure

In 2015, 84 % of Tier 1 and 98 % of Tier 2 visas were resolved within 15 days. Applications are required to be submitted within 3 months of the CoS being granted to the employer. If the application is accepted, then entry clearance is allowed from 14 days before the start date of

³⁵⁷UK Home Office Science. (2015), "Determining labour shortages and the need for labour migration from third countries in the UK" - European Migration Network Focused Study, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-28a_uk_labour_shortages_english_final.pdf (accessed mid November 2015).

³⁵⁸ Salt, J. (2014), "International Migration and the UK" - Annual Report of the UK SOPEMI Correspondent to the OECD, Migration Research Unit, University College London, available at: http://www.geog.ucl.ac.uk/research/transnational-spaces/migration-research-unit/pdfs/copy_of_Sopemi_UK_2014_dr1.pdf (accessed mid November 2015).

the job. If the application is rejected then an administrative review can be applied for within 28 days of the rejection. This can only happen once. Applications can be submitted through an online procedure. On top of application fees, there is a healthcare surcharge of GBP 200 per person per year (for example, GBP 1 000 for a five year visa). Procedures for renewal are only applicable for tier 2 visas. The salary conditions for renewal are verified with the employer prior to the assignment of a CoS. The conditions for the extensions of the permit vary with each visa category.

For Tier 1 exceptional talent, extensions can be applied for only if the endorsing organisation will approve the TCN's work and the TCN is still working in the stated field. For Tier 2 general and ICT visas, the TCN must have the same or similar job, must be working for the same employer and must be earning the appropriate salary. For Tier 2 ministers of religion and sportspersons, a new CoS is required from the employer before an extension can be granted. Costs of applications vary between types of Tier 2 visa, whether the job is on the SOL, and whether the applicant is inside applying for extension/switching visa or applying outside of the UK. Furthermore, for ICTs whether the visa is short term or long term affects the cost. There is the opportunity of paying a higher cost for a premium service if applicants want to extend or switch their visa within the UK. The overall breakdown of costs for applications is shown in Tables 1-4.

Rights of workers

The rights of TCN highly qualified workers under Tier 1 exceptional talent and Tier 2 visas can be split into four main categories:

Duration of residence permit. Tier 1 exceptional talent visas have a maximum duration of 5 years and 4 months. Tier 2 general visas have a maximum of 5 years and 14 days, and the visa can be extended for up to 6 years. Tier 2 ICTs vary with the type of job role. Long-term staff earning less than GBP 155 300 per year can stay for 5 years and 1 month; whereas long-term staff earning more than GBP 155 300 per year can stay for 9 years. Graduate trainee and short-term staff ICTs have a maximum duration of 12 months, while skills transfer ICTs can only reside for 6 months in the UK. Tier 2 minister of religion visas have a maximum duration of 3 years and 1 month. Sportsperson visas last for 3 years (yet can extend up to 6 years). All Tier 2 general visa holders can apply for indefinite leave.

Labour market access. The only restrictions for Tier 1 exceptional talent visa holders are that they cannot work as a doctor or dentist in training or as a professional sportsperson. Apart from those restrictions, the visa is flexible on work and study rights. All Tier 2 visa holders must work for the role defined within the CoS. They can work in a second job as long as it is in the same sector, at the same level of the main job and does not exceed 20 hours per week. Tier 2 ministers of religion and sportsperson visa holders can have a second job. However, if it is in a different sector and is not voluntary work, they must apply for a new visa application and get a new CoS from the second employer. TCNs under Tier 2 are allowed to study, but some courses require an Academic Technology Approval Schemes certificate to be presented

to the education institution³⁵⁹. If a tier 2 applicant becomes unemployed, the sponsor must report this within 10 days. Leave is curtailed to 60 days after resignation/dismissal.

Family reunification. Dependents are able to come to the UK on the Tier 1 and Tier 2 visas. This covers spouse or partner, child under 18 and child over 18 if they are already in the UK as a dependant. Each dependant must have GBP 630 available to them in addition to the GBP 945 required by the applicant for themselves before applying³⁶⁰. Dependants already in the UK can switch or extend their visa to stay with the Tier 2 applicant. If a child is born in the UK under a Tier 2 visa then permission can be granted for the child to stay (so that it is possible to travel in and out of the UK with the child).

Social rights. All workers under the Tier 2 visa must be paid the same as a resident UK worker would be paid in the same job. However, they have no access to public funding and benefits under the visa. It should be noted that TCNs might have access to private benefits provided by the employer. There is no support to improve language proficiency. Permit holders and family members are able to access integration measures at the same cost as other TNCs. Those seeking settlement are required to complete and pass a 'Life in the UK' test. This test (based on information contained in the Life in the UK handbook) is designed to ensure that those who settle in the UK have a thorough understanding of the history and culture of the UK.

WHAT HAS HAPPENED IN PRACTICE?

*Numerical targets and quotas*³⁶¹

The UK government has set a maximum quota for Tier 1 exceptional talent and Tier 2 general visas (ICTs do not have a cap). Tier 1 exceptional talent had a cap of 1 000 per year, with 500 places released in April and 500 places released in October. Tier 2 general visas are capped at 20 700 grants per year, which are allocated on a monthly basis through restricted certificates of sponsorship (RCoS). The cap only applies to out of country applications and in country tier 4 dependant applications. There are 2 550 RCoS available each April, and 1 650 certificates are made available each subsequent month. Places are allocated according to a points based selection procedure. Points are, for example, awarded to a workers in shortage occupations and according to a worker's salary level. If the cap is close to being reached, SOL applicants will be given priority over RMLT applicants. These caps should not be seen as targets. The cap for Tier 2 general visas was created by the MAC in 2011/12 and was based on the

³⁵⁹ UK Visas and Immigration (2015), "Tier 2 of the Points Based System – Policy Guidance", available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421842/Tier_2_Guidance_04_2015.pdf (accessed mid November 2015).

³⁶⁰ UK Government. (2015), "Tier 2 (General) Visa", available at: <https://www.gov.uk/tier-2-general/overview> (accessed mid November 2015)

³⁶¹ UK Home Office. (2015), "National Statistics – Work", available at: <https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/work#further-analysis-qualified-work-tier-2> (accessed mid November 2015).

maximum contribution of Tier 2 visas to overall net migration, in order for migration to be at a sustained level³⁶².

*Visa applications granted in year of Sept. 2014 – Sept 2015*³⁶³

Non-UK nationals have accounted for three quarters of the total growth in employment rates in the UK over the last year. The majority of this growth is from qualified TCNs. Last year, only 112 Tier 1 exceptional talent applications were filed and 108 permits were granted. This accounts for only 11 % of the annual limit.

Under the Tier 2 visa, there has been an 8 % increase in the number of sponsored visa applications for qualified workers. The final number in September 2015 was 92 859, which is mainly due to in-country extensions from previous ICT visas³⁶⁴. The statistics used by the government do not distinguish between in-country applications for extensions and for status changes. Long-term ICTs had the highest number of visas. Just under half of the applicants, or 23 890 individuals, worked in the information and communication sector. Five sectors accounted for 85 % of the increase. Alongside information and communication, this includes professional, scientific and technical activities (10 711), financial and insurance activities (6 832), human health and social work activities (3 332) and education (2 800). Looking at the nationalities of applicants for the qualified workers' permit, 77 % are Indian, US-American, Australian, Chinese or Japanese. India alone accounts for over half (55 %) of the qualified TCNs. There has also been an increase in the number of TCNs from South Asia and Oceania. Since 2013/2014, the number of South Asian citizens arriving for work related reasons has doubled. Of those arriving from South Asia, 91 % had a binding job offer³⁶⁵.

Rejection rates in the past year were very low. Almost all (97 %) of qualified worker applications were granted. Similarly, the vast majority (95 %) of applications for extension of stay for qualified workers were granted. Looking at the achievement of permanent settlement in the UK, a fifth of the 2008 cohort of highly qualified worker visas were granted settlement 5 years later and a further 8 % still have valid leave to remain (this data must be used tentatively as the UK visas system and the categories of qualified workers have changed since 2008).

EFFECTIVENESS OF THE UK NATIONAL SCHEME

Attracting and retaining HSWs

³⁶² Cook, G. Policy lead, Economic Migration Policy, Home Office. Interview on 04 December 2015.

³⁶³ UK Home Office. (2015), "National Statistics – Work", available at: <https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/work#further-analysis-qualified-work-tier-2> (accessed mid November 2015).

³⁶⁴ Salt, J. (2014), "International Migration and the UK" - Annual Report of the UK SOPEMI Correspondent to the OECD, Migration Research Unit, University College London, available at: http://www.geog.ucl.ac.uk/research/transnational-spaces/migration-research-unit/pdfs/copy_of_Sopemi_UK_2014_dr1.pdf (accessed mid November 2015).

³⁶⁵ Office for National Statistics. (2015), "Migration Statistics Quarterly Report, May 2015", available at: http://www.ons.gov.uk/ons/dcp171778_404613.pdf (accessed mid November 2015).

To determine whether a migration scheme is successful, various generic measures are used, such as an increase in the numbers of highly qualified workers within the country, high retention rates of qualified workers, and whether quantitative policy targets are met. However, each migration policy has to be placed within the wider context of the national policy objectives.

In the UK, the overarching policy objective is to bring down net migration. This has been reflected in the policy changes for highly qualified workers. The changes that took place in the re structure of the Tier 1 visa, resulting in the emergence of the Tier 2 visa, had the ambition of making immigration criteria more stringent for highly qualified workers³⁶⁶. A main focal point for the UK government was to reduce the misuse of the migration system, and tighten quality control on visa requirements³⁶⁷. For example in 2008, 900 colleges were closed as they were deemed to serve for immigration fraud³⁶⁸. This led to the termination of the post study work route, meaning that TCN students are no longer able to switch into the UK labour market³⁶⁹. Nevertheless, UK Prime Minister David Cameron insisted in his Speech on Immigration in May 2015 *“Let me be clear: none of these measures will stop us from rolling out the red carpet for the brightest and the best: the talented workers and brilliant students who are going to help Britain succeed”*³⁷⁰.

The UK Home Office views both the Tier 1 and Tier 2 schemes as successful in decreasing the numbers of immigration and increasing the quality of TCNs³⁷¹. For Tier 1 exceptional talent, the Home Office works with sector specialists, such as Tech City UK, to allocate visas. This endorsement model ensures that the quality of visas granted is high and that TCNs do not abuse the system as the reputation of the partners are at stake³⁷². However, as mentioned earlier, in 2015 only 11 % of the quota for Tier 1 exceptional talent visas was used. This could be understood as a sign that the visas are not optimally allocated.

In contrast to Tier 1, the Tier 2 general visa cap was exceeded for the first time in June 2015. The maximum exposure of the scheme could be seen as successful in increasing overall competitiveness between TCNs and resulting in higher quality applicants³⁷³. On the other hand employers might argue that this caps limits labour market access and can restrict the growth of business, ultimately leading to the persistence of labour market shortages³⁷⁴. High retention rates, increasing efficiency and reducing the need for further recruitment, might serve to

³⁶⁶ Salt, J. Professor, Migration Research Unit, University College London. Interview on 01 December 2015.

³⁶⁷ Cook, G. Policy lead, Economic Migration Policy, Home Office. Interview on 04 December 2015.

³⁶⁸ Cook, G. Policy lead, Economic Migration Policy, Home Office. Interview on 04 December 2015.

³⁶⁹ Salt, J. Professor, Migration Research Unit, University College London. Interview on 01 December 2015.

³⁷⁰ The Rt Hon David Cameron MP and Home Office, *PM speech on immigration*, Prime Minister's Office, 10 Downing Street, delivered on 21 May 2015, available at <https://www.gov.uk/government/speeches/pm-speech-on-immigration>

³⁷¹ Cook, G. Policy lead, Economic Migration Policy, Home Office. Interview on 04 December 2015.

³⁷² Ibid.

³⁷³ Ibid.

³⁷⁴ Salt, J. Professor, Migration Research Unit, University College London. Interview on 01 December 2015.

alleviate these shortages. Where one stands on this debate depends on whether or not one understands the labour market to be a closed, finite entity³⁷⁵.

Meeting labour market shortages

It is difficult to evaluate the effect of the UK scheme on the labour market. The European Migration Network Focused Study on the UK in 2014 states that ‘there are no formal mechanisms by which the UK monitors the effect of labour migration policies in relation to shortage occupations’³⁷⁶. The MAC was recently asked to review the Tier 2 scheme with a particular focus on whether it is meeting labour market demands or leading to an undercutting of the national labour work force. One area under review is the economic rationale for setting new salary thresholds. Higher salary thresholds would contribute to the government’s aim of reducing qualified immigration to the UK³⁷⁷. However, this could negatively impact the growth of firms that cannot fill labour shortages and could further reduce the benefits of attracting qualified workers in the first place (reducing skills variety and international connections within the economy)³⁷⁸. Increasing salary thresholds would disproportionality impact low-paid occupations and the public sector. The notion of Tier 2 TCNs undercutting resident workers has so far had little evidence to support it (as shown in the MAC’s recent analysis), yet a more in depth analysis on this point is being conducted³⁷⁹.

In November 2015 there was a call for evidence to the MAC to examine if there is a national shortage of nurses or specific nursing job titles. NHS employers argued in a review that there needs to be a more equal system of points allocation so that there is fair provision of the certificates of sponsorships (which are capped)³⁸⁰. The idea of a shortage list that is constantly changing is deemed to be a good idea, yet there is a fixed period on the list for all occupations and this does not take into account the context of each job in terms of their supply and demand and time to train³⁸¹. A proposed Immigration Skills Charge would be used to up skill UK workers through increasing apprenticeships and trainings³⁸². Yet whether this is an effective mechanism of reducing overseas recruitment is debated³⁸³. Some employers think that pay as a proxy for highly-specialised skills or skills shortages is a good reflection of skill, yet others think that pay more reflects age and experience and not necessarily skill³⁸⁴.

³⁷⁵ Ibid.

³⁷⁶ Ibid.

³⁷⁷ Migration Advisory Committee. (2015), “Review of Tier 2 - Analysis of Salary Thresholds”, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452805/Review_of_Tier_2_-_Analysis_of_salary_thresholds.pdf (accessed mid November 2015).

³⁷⁸ Ibid.

³⁷⁹ Ibid.

³⁸⁰ NHS Employers. (2015), “Submission tier 2 review and joint health and care letter to MAC”, available at: <http://www.nhsemployers.org/~media/Employers/Documents/Workforce%20supply/NHS%20Employers%20SUBMISSION%20tier%20%20review%20and%20joint%20letter%20-%20Sept%202015%20FINAL.pdf> (accessed mid November 2015)

³⁸¹ Ibid.

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Migration Advisory Committee. (2015), “Review of Tier 2 - Analysis of Salary Thresholds”, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452805/Review_of_Tier_2_-_Analysis_of_salary_thresholds.pdf (accessed mid November 2015).

Increasing knowledge-based economy

Another way to measure success is through the evidence of skills transferred from highly qualified workers to the national workforce and the overall development of knowledge based economies. This can vary hugely by employer, creating difficulty in drawing overall conclusions for the whole of the UK economy. In the UK, training programmes for new employees within companies can be inadequate, limiting the productivity of highly qualified workers³⁸⁵. This could restrict the level of skills transfer to national workers. There is more evidence of skills transfer from ICTs at management level within international businesses³⁸⁶. It could be thought that the longer highly qualified workers are retained within a company then the greater contribution to the knowledge based economy³⁸⁷. So, higher retention levels of highly qualified TCNs in the UK might have a successful longer-term effect on the development of knowledge based economies. This area needs further study and research to back up assumptions.

Efficiency and unexpected impacts

Other impacts that are important to consider when evaluating effectiveness of the UK scheme are the efficiency of the scheme and the unexpected impacts that have resulted. In comparison to international standards, the UK is regarded highly in terms of efficiency within their immigration systems³⁸⁸. Compared to Germany, the UK opens application routes every month, instead of once a year. Yet the UK's monthly cap could have a negative effect on less demanded qualified workers, such as graduates, through creating an uncertainty of whether they will be able to qualify or not in regards to high competition within the points based allocation of places³⁸⁹. There are also premium services that are available for businesses requiring fast transactions. The visa system is rarely the main attraction for highly qualified workers in deciding upon destinations (diasporas, career opportunities, education and lifestyle are more highly regarded), yet feedback to UK Home Office has implied that applicants are attracted to the clarity of the UK rules and guidance³⁹⁰. The application routes are now online so that they can be processed faster. The burden of administration procedures has had a more negative effect on small and medium enterprises (SMEs) compared to larger companies³⁹¹. SMEs arguably have less capacity to apply for and monitor TCNs under the Tier 2 visa. Large companies predominantly outsource the administrative burden to agencies in hiring and looking after TCNs under the Tier 2 visa³⁹². However, the costs involved in attracting and retaining TCNs for companies must be justified given the fact that employers are exceeding the quotas for Tier 2 general visas and the number of ICTs are increasing³⁹³. Overall the UK

³⁸⁵ Salt, J. Professor, Migration Research Unit, University College London. Interview on 01 December 2015.

³⁸⁶ Cook, G. Policy lead, Economic Migration Policy, Home Office. Interview on 04 December 2015.

³⁸⁷ Salt, J. Professor, Migration Research Unit, University College London. Interview on 01 December 2015.

³⁸⁸ Cook, G. Policy lead, Economic Migration Policy, Home Office. Interview on 04 December 2015.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

³⁹¹ Salt, J. Professor, Migration Research Unit, University College London. Interview on 01 December 2015.

³⁹² Salt, J. Professor, Migration Research Unit, University College London. Interview on 01 December 2015.

³⁹³ Ibid.

does not feel that they need to advertise their visas schemes as they are in high demand and serve a practical purpose to fill in labour shortages³⁹⁴.

One unexpected impact is that roughly 80 to 90 % of ICTs are within the IT sector³⁹⁵. This dominating influx of highly qualified workers to IT projects raises the question of whether more efforts need to be placed in improving the resident workforce's knowledge and expertise in IT to limit effects of displacement³⁹⁶. Another unexpected impact is that TCNs could negatively affect the UK housing market through creating increased competition with UK nationals such as renting properties in London stopping nationals from getting on the housing ladder³⁹⁷. Highly qualified workers also need low qualified workers to sustain their lifestyles, such as creating greater demands on public transport, housing, cleaning and other public services³⁹⁸. The immigration of highly qualified workers can have a knock on effect on immigration of all types of workers, going against the government's intention of reducing overall net migration³⁹⁹.

In terms of administrative costs of immigration services to the UK, in 2013/14 the UK Home Office estimated to spend roughly GBP 1.7 billion (this includes all types of immigration, not just highly qualified)⁴⁰⁰. Half of that cost was estimated to be covered through visa fees and the other half through taxation⁴⁰¹. The administrative costs include costs of deciding applications and costs of operating immigration controls. From the period of 2011 to 2015 the UK government planned to reduce overall spending on immigration and costs of boarder control by GBP 450 million⁴⁰². This was aimed to be achieved by reducing support costs, boosting productivity and improving value for money from commercial suppliers.

ADVANTAGES AND DISADVANTAGES OF THE UK SCHEME COMPARED TO THE EU BLUE CARD

The UK opted out the EU Blue Card in 2009 as reportedly 'the government does not want to participate in the perceived EU race for talent' between Member States⁴⁰³. This does not seem to have made the UK less attractive for TCNs and the UK scheme is a competitor to other national schemes within Europe. An advantage of the UK schemes is that, as it is a national scheme, there are set regulations in place, so the TCNs are clear on the requirements and conditions of the visa, compared to the EU Blue Card where regulations vary between Member States⁴⁰⁴. It is hard to compare the EU Blue Card and the UK scheme, due to this

³⁹⁴ Cook, G. Policy lead, Economic Migration Policy, Home Office. Interview on 04 December 2015.

³⁹⁵ Ibid.

³⁹⁶ Ibid.

³⁹⁷ Salt, J. Professor, Migration Research Unit, University College London. Interview on 01 December 2015.

³⁹⁸ Ibid.

³⁹⁹ Ibid.

⁴⁰⁰ UK Home Office. (2013), "Fees and charging immigration and visas consultation document", available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256443/Fees_and_charging_immigration_and_visas.pdf (accessed mid November 2015)

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ Cook, G. Policy lead, Economic Migration Policy, Home Office. Interview on 04 December 2015.

⁴⁰⁴ Ibid.

differentiation between Member States. For example salary thresholds under the EU Blue Card vary with each member state’s average gross salary.

One advantage of the UK scheme over the EU Blue Card could be greater flexibility in education and qualification requirements of TCN applicants. Under the EU Blue Card the applicant must have certain years of experience and qualifications which cover all job occupations across all sectors. The UK has more flexible requirements that are dependant more on the employer and vary hugely between occupations and sectors. Another advantage could be time taken to process an application. The time taken to process an EU Blue Card application can take no longer than 90 days, where as in the UK nearly all visas are processed within 15 days. The UK also has more flexible family reunification rights as allows the reunification of a partner or spouse to the applicant. The EU Blue Card allows for reunification of a spouse but the reunification of a partner is decided upon differently between each member state.

A disadvantage of the UK scheme compared to the EU Blue Card could be that the EU Blue Card offers greater security of holders if they are unemployed. EU Blue Card holders can reside within the host country for up to three months if unemployed giving them a greater opportunity to look for work. Under the UK scheme TCNs can only reside in the UK for maximum 60 days. The EU Blue Card also offers holders the right to equal treatment with member state nationals within the workplace and with access to public goods. While the UK scheme offers these rights in the workplace, TCNs are not allowed to access state welfare benefits.

A main attraction of the EU Blue Card, to the UK scheme, is that the EU Blue Card offers intra-EU mobility after 18 months of residence. TCNs in the UK do not have access to the EU labour market until they gain permanent residence, which is at least five years. However analysis on intra-EU mobility has shown that it has not been that successful in practice due to the fact that the EU Blue Card holder has to apply for a new EU Blue Card in the Member State that they want to move to⁴⁰⁵. Once a TCN becomes a permanent UK resident, they will have greater freedom of movement than a TCN on an EU Blue Card⁴⁰⁶.

Tier 1 (Exceptional Talent) visa costs:

Applicant type	Stage 1 endorsement application	Stage 2 visa application
TCN	£281	£281
TCN (Turkey or Macedonia)	£281	£226
All dependants		£562

Source: UK Home Office. (2015), *National Statistics – Work*, available at: <https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/work#further-analysis-qualified-work-tier-2> (accessed mid November 2015)

⁴⁰⁵ Kalantaryan, S & Martin, I. (2015), “Reforming the EU Blue Card as a Labour Migration Policy Tool?”, Migration Policy Centre, EUI, available at: http://cadmus.eui.eu/bitstream/handle/1814/35744/MPC_PB_2015_08.pdf?sequence=1&isAllowed=y (accessed mid November 2015).

⁴⁰⁶ Ibid.

Tier 2 (General) visa costs

Tier 2 (General) Type	Applicant type	Apply (outside the UK)	Extend or switch by post in the UK	Extend or switch in person in the UK (premium service)
Tier 2 General (up to 3 years)	TCN worker	£564	£651	£1,051
Tier 2 General (up to 3 years)	TCN worker (Turkey or Macedonia)	£509	£596	£996
Tier 2 General (up to 3 years)	All dependants	£564 each person	£651 each person	£1 051 each person
Tier 2 General (up to 3 years) – shortage occupation	TCN worker	£428	£428	£828
Tier 2 General (up to 3 years) – shortage occupation	TCN worker (Turkey or Macedonia)	£373	£373	£773
Tier 2 General (up to 3 years) – shortage occupation	All dependants	£428 each person	£428 each person	£828 each person
Tier 2 General (more than 3 years)	TCN worker	£1 128	£1 302	£1 702
Tier 2 General (more than 3 years)	TCN worker (Turkey or Macedonia)	£1 073	£1 247	£1 647
Tier 2 General (more than 3 years)	All dependants	£1 128 each person	£1 302 each person	£1 702 each person
Tier 2 General (more than 3 years) – shortage occupation	TCN worker	£856	£856	£1 256
Tier 2 General (more than 3 years) – shortage occupation	TCN worker (Turkey or Macedonia)	£801	£801	£1 201
Tier 2 General (more than 3 years) – shortage occupation	All dependants	£856 each person	£856 each person	£1 256 each person

Source: UK Home Office. (2015), *National Statistics – Work*, available at:

<https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/work#further-analysis-qualified-work-tier-2> (accessed mid November 2015)

Tier 2 (Intra Company Transfer) visa costs:

Tier 2 (Intra Company Transfer) Type	Applicant type	Apply (outside the UK)	Extend or switch by post in the UK	Extend or switch in person in the UK (premium service)
Short-term Staff, Graduate Trainee or Skills Transfer	TCN worker	£ 445	£ 445	£ 845
Short-term Staff, Graduate Trainee or Skills Transfer	TCN worker (Turkey or Macedonia)	£ 390	£ 390	£ 790
Short-term Staff, Graduate Trainee or Skills Transfer	All dependants	£ 445 per person	£ 445 per person	£ 845 per person
Long-term Staff (up to 3 years)	TCN worker	£ 564	£ 651	£ 1 051
Long-term Staff (up to 3 years)	TCN worker (Turkey or Macedonia)	£ 509	£ 596	£ 996

Long-term Staff (up to 3 years)	All dependants	£ 564 per person	£ 651 per person	£ 1 051 per person
Long-term Staff (more than 3 years)	TCN worker	£ 1 128	£ 1 302	£ 1 702
Long-term Staff (more than 3 years)	TCN worker (Turkey or Macedonia)	£ 1 073	£ 1 247	£ 1 647
Long-term Staff (more than 3 years)	All dependants	£ 1 128 per person	£ 1 302 per person	£ 1 702 per person

Source: UK Home Office. (2015), National Statistics – Work, available at:

<https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/work#further-analysis-qualified-work-tier-2> (accessed mid November 2015)

Tier 2 (Minister of Religion) and Tier 2 (Sportsperson) visa costs:

Applicant type	Apply	Extend or switch online	Extend or switch in person (premium service)
TCN worker	£ 564	£ 651	£ 1,051
TCN worker (Turkey or Macedonia)	£ 509	£ 596	£ 996
All dependants	£ 564 per person	£ 651 per person	£ 1 051 per person

Source: UK Home Office. (2015), National Statistics – Work, available at:

<https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/work#further-analysis-qualified-work-tier-2> (accessed mid November 2015)

A table to show the number of tier 2 visas granted in 2014 and 2015:

Visa type	Year ending September 2014	Year ending September 2015	Change	%age Change
Qualified (Tier 2) visas granted	86 771	92 859	+6 088	+7 %
of which:				
Main applicants total	50 069	54 174	+4 105	+8 %
Tier 2: General	14 051	16 883	+2 832	+20 %
Tier 2: Intra Company Transfers	2 142	2 177	+35	+2 %
Tier 2: Intra Company Transfers: Short Term	21 039	21 346	+307	+1 %
Tier 2: Intra Company Transfers: Long Term	12 247	13 198	+951	+8 %
Tier 2: Ministers of Religion	388	424	+36	+9 %
Tier 2: Sportsperson	146	116	-30	-21 %
Work Permit Holders	56	30	-26	-46 %
Dependants total	36 702	38 685	+1 983	+5 %
Tier 2: Dependant	13 607	15 264	+1 657	+12 %
Tier 2: Intra Company Transfers Short Term	8 442	8 776	+334	+4 %
Tier 2: Intra Company Transfers	14 601	14 628	+27	+0 %

Long Term				
Work Permit Holders	52	17	-35	-67 %

Source: UK Home Office. (2015), *National Statistics – Work*, available at:

<https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/work#further-analysis-qualified-work-tier-2> (accessed mid November 2015)

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Office for National Statistics. (2015), Migration Statistics Quarterly Report, May 2015, available at: http://www.ons.gov.uk/ons/dcp171778_404613.pdf (accessed mid November 2015)

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UK Government. (2015), Tier 2 (General) Visa, available at: <https://www.gov.uk/tier-2-general/overview> (accessed mid November 2015)

UK Government. (2014), Tier 2 Shortage Occupation List – Government-approved version – valid from 6 April 2014, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308513/shortage_occupation_list_april_14.pdf (accessed mid November 2015)

UK Home Office. (2013), Fees and charging immigration and visas consultation document, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256443/Fees_and_charging_immigration_and_visas.pdf (accessed mid November 2015)

UK Home Office. (2015), National Statistics – Work, available at:

<https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/work#further-analysis-qualified-work-tier-2> (accessed mid November 2015)

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http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-studies-28a_uk_labour_shortages_english_final.pdf (accessed mid November 2015)

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477902/T1__E_T_Guidance_11_2015.pdf (accessed mid November 2015)

UK Visas and Immigration. (2015), Tier 2 of the Points Based System – Policy Guidance, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/421842/Tier_2_Guidance_04_2015.pdf (accessed mid November 2015)

ANNEX 7

ANALYSIS RELATED TO VARIATIONS OF THE ADMISSION CONDITIONS OF THE EU BLUE CARD

1. Introduction

Currently, the cumulative material conditions for acquiring an EU Blue Card⁴⁰⁷ are:

- 1) presenting a valid work contract or binding job offer for highly qualified employment of at least one year;
- 2) meeting the required qualifications
 - a. *for regulated professions*: a document attesting fulfilment of the conditions as provided for in national law for the exercise that regulated profession;
 - b. *for unregulated professions*: presenting documents attesting higher professional qualifications relevant in the occupation or sector specified in the work contract or in the binding job offer as provided for in national law, meaning:
 - i. higher educational qualifications⁴⁰⁸; *or*,
 - ii. *optional for Member States*, relevant and equivalent professional experience of at least 5 years, in the sector or occupation specified in the work contract or job offer;
- 3) meeting the salary threshold of
 - a. 1,5 times the average gross annual salary in the Member State concerned; *or*,
 - b. *optional for Member States*, a lower threshold of 1,2 times the average gross annual salary for specified shortage occupations, meaning professions which:
 - i. are in particular need of third-country national workers and for which the Member State has communicated an annual list with professions to the Commission; *and*
 - ii. belong to the major groups 1 and 2 of ISCO.

These cumulative conditions define what a highly-skilled migrant is for the purpose of the Blue Card and thus also determine the scope of the Directive by their exclusion effect. This annex analyses the effect of these conditions in terms of selection/exclusion effect. In particular, it attempts to present to what extent the conditions in the *current* Blue Card Directive are rather inclusive or, on contrary, exclusive for potential highly skilled migrant workers from third-countries – and what could be the impact of modifying those conditions.

It is to be noted that the potential impacts of modifying the admission conditions are analysed in detail, as far as data availability allows, in Annex XIV.

⁴⁰⁷ Besides, of course, the "standard conditions", i.e. the need of having a valid travel document, not being a threat to public policy and public security etc.

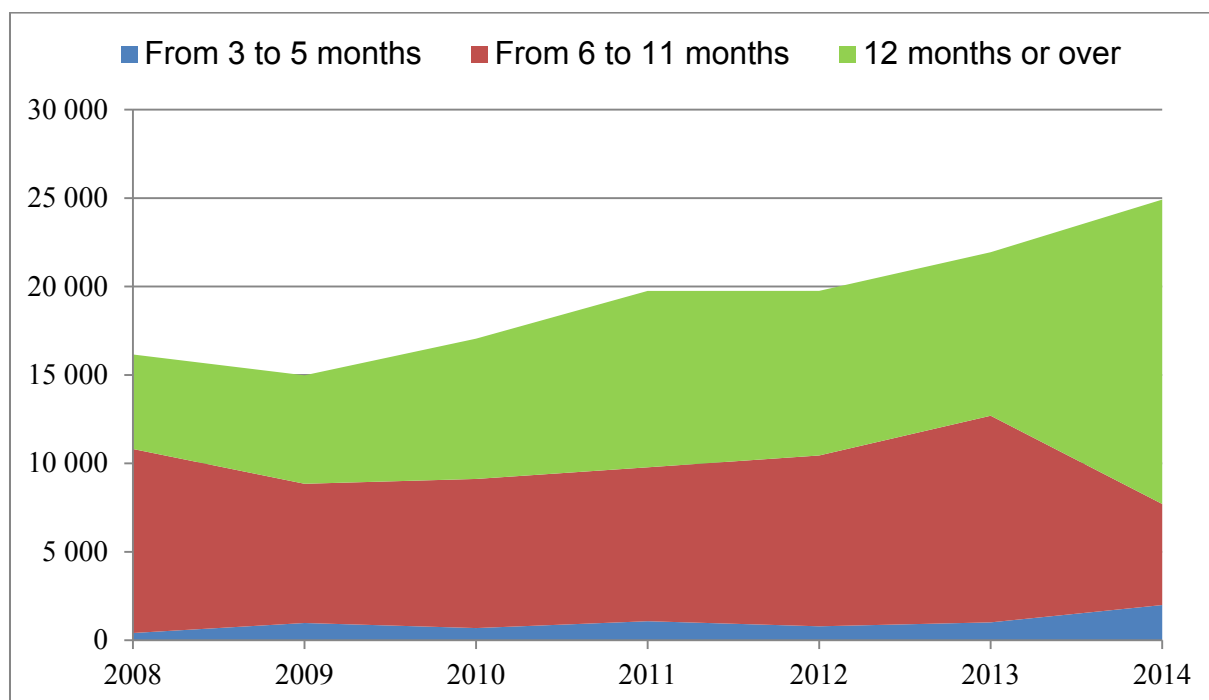
⁴⁰⁸ Corresponding to ISCED level 6 (ex 5A), i.e. a tertiary education programme, of at least 3 years (e.g. bachelor, *licence*).

2. The Minimum Length of the Work Contract or Job Offer

Eurostat statistics on the length of granted permits under national parallel schemes for admitting highly skilled workers in the 25 Member States that also have the Blue Card Directive show that a significant amount of these permits are granted for periods that are less than the minimum length of the work contract or job offer required for a Blue Card.

2.1. Overall data for EU25

Residence permits for highly skilled workers (national schemes), distribution length of validity (in the 25 Member States applying the Blue Card) - Graph



Source: Eurostat, Remunerated activities reasons: Highly skilled workers. OCC_HSW. Extracted on 09.12.15

Residence permits for highly skilled workers (national schemes), distribution length of validity (in the 25 Member States applying the Blue Card) - Graph

EU 25	Total	From 3 to 5 months	From 6 to 11 months	12 months or over
2008	16.157	413	10.402	5.342
		2,56%	64,38%	33,06%
2009	14.980	978	7.871	6.131
		6,53%	52,54%	40,93%
2010	17.053	691	8.431	7.931
		4,05%	49,44%	46,51%
2011	19.751	1.080	8.700	9.971
		5,47%	44,05%	50,48%
2012	19.755	791	9.659	9.305
		4,00%	48,89%	47,10%
2013	21.940	1.015	11.680	9.245
		4,63%	53,24%	42,14%
2014	24.916	1.994	5.712	17.210
		8,00%	22,93%	69,07%

Source: Eurostat, Remunerated activities reasons: Highly skilled workers. OCC_HSW. Extracted on 09.12.15

2.2. Detailed data per Member State

Residence permits for highly skilled workers (national schemes), distribution length of validity (in the 25 Member States applying the Blue Card) - 2012

2012	DURATION						
GEO/TIME	Total	3-5 months		6-11 months		12 months or over	
EU28	33.321	1.282	3,85%	10.869	32,62%	21.170	63,53%
EU 25	19.755	791	4,00%	9.659	48,89%	9.305	47,10%
BE	95	4	4,21%	19	20,00%	72	75,79%
BG	0	0		0		0	
CZ	69	4	5,80%	5	7,25%	60	86,96%
DK ⁴⁰⁹	4.088	371	9,08%	759	18,57%	2958	72,36%
DE	210	0	0,00%	0	0,00%	210	100,00%
EE	0	0		0		0	
IE ³	1.408	120	8,52%	451	32,03%	837	59,45%
EL	0	0		0		0	
ES	1.231	55	4,47%	156	12,67%	1.020	82,86%
FR	3.037	7	0,23%	108	3,56%	2.922	96,21%
HR							
IT	1.695	80	4,72%	981	57,88%	634	37,40%
CY	600	19	3,17%	293	48,83%	288	48,00%
LV	106	1	0,94%	78	73,58%	27	25,47%
LT	0	0		0		0	
LU	21	0	0,00%	0	0,00%	21	100,00%
HU	0	0		0		0	
MT	0	0		0		0	
NL	5.514	0	0,00%	5.514	100,00%	0	0,00%
AT	1.158	2	0,17%	1.067	92,14%	89	7,69%
PL	206	55	26,70%	151	73,30%	0	0,00%
PT	313	6	1,92%	25	7,99%	282	90,10%
RO	0	0		0		0	
SI	0	0		0		0	
SK	0	0		0		0	
FI	749	82	10,95%	158	21,09%	509	67,96%
SE	4.751	476	10,02%	1.104	23,24%	3.171	66,74%
UK ³	8.070	0	0,00%	0	0,00%	8070	100,00%

Source: Eurostat, Remunerated activities reasons: Highly skilled workers. OCC_HSW. Extracted on 09.12.15

⁴⁰⁹ This Member State is not bound by and does not apply the Blue Card Directive. Figures refer to permits issued under national schemes.

Residence permits for highly skilled workers (national schemes), distribution length of validity (in the 25 Member States applying the Blue Card) - 2013

2013	DURATION						
GEO/TIME	Total	3-5 months		6-11 months		12 months or over	
EU28	32.458	1.658	5,11%	12.845	39,57%	17.743	54,66%
EU 25	21.940	1.015	4,63%	11.680	53,24%	9.245	42,14%
BE	73	7	9,59%	12	16,44%	54	73,97%
BG	0	0		0		0	
CZ	69	1	1,45%	8	11,59%	60	86,96%
DK ⁴¹⁰	5.730	519	9,06%	815	14,22%	4.396	76,72%
DE	11	0	0,00%	0	0,00%	11	100,00%
EE	0	0		0		0	
IE ⁴	1.707	124	7,26%	350	20,50%	1.233	72,23%
EL	0	0		0		0	
ES	1.480	109	7,36%	174	11,76%	1.197	80,88%
FR	2.667	9	0,34%	97	3,64%	2.561	96,03%
HR	565	54	9,56%	299	52,92%	212	37,52%
IT	1.543	62	4,02%	893	57,87%	588	38,11%
CY	385	9	2,34%	158	41,04%	218	56,62%
LV	82	0	0,00%	68	82,93%	14	17,07%
LT	0	0		0		0	
LU	0	0		0		0	
HU	0	0		0		0	
MT	0	0		0		0	
NL	7.046	0	0,00%	7.046	100,00%	0	0,00%
AT	1.228	1	0,08%	1.227	99,92%	0	0,00%
PL	387	98	25,32%	262	67,70%	27	6,98%
PT	767	26	3,39%	34	4,43%	707	92,18%
RO	0	0		0		0	
SI	0	0		0		0	
SK	0	0		0		0	
FI	971	62	6,39%	165	16,99%	744	76,62%
SE	4.666	577	12,37%	1.237	26,51%	2.852	61,12%
UK ⁴	3.081	0	0,00%	0	0,00%	3.081	100,00%

Source: Eurostat, Remunerated activities reasons: Highly skilled workers. OCC_HSW. Extracted on 09.12.15

⁴¹⁰ See footnote 3.

Residence permits for highly skilled workers (national schemes), distribution length of validity (in the 25 Member States applying the Blue Card) - 2014

2014	DURATION						
	Total	3-5 months		6-11 months		12 months or over	
EU28	35.527	2.684	7,55%	7.420	20,89%	25.423	71,56%
EU 25	24.916	1.994	8,00%	5.712	22,93%	17.210	69,07%
BE	2.484	160	6,44%	288	11,59%	2.036	81,96%
BG	0	0		0		0	
CZ	46	4	8,70%	3	6,52%	39	84,78%
DK ⁴¹¹	5.698	469	8,23%	924	16,22%	4.305	75,55%
DE	13	0	0,00%	0	0,00%	13	100,00%
EE	0	0		0		0	
IE ⁵	2.438	221	9,06%	784	32,16%	1.433	58,78%
EL	0	0		0		0	
ES	2.137	201	9,41%	144	6,74%	1.792	83,86%
FR	2.561	13	0,51%	136	5,31%	2.412	94,18%
HR	0	0		0		0	
IT	1.066	17	1,59%	557	52,25%	492	46,15%
CY	469	9	1,92%	130	27,72%	330	70,36%
LV	122	0	0,00%	121	99,18%	1	0,82%
LT	0	0		0		0	
LU	0	0		0		0	
HU	0	0		0		0	
MT	0	0		0		0	
NL	7.123	548	7,69%	1.254	17,60%	5.321	74,70%
AT	1.083	6	0,55%	1.074	99,17%	3	0,28%
PL	691	254	36,76%	308	44,57%	129	18,67%
PT	989	5	0,51%	47	4,75%	937	94,74%
RO	0	0		0		0	
SI	0	0		0		0	
SK	0	0		0		0	
FI	1.120	103	9,20%	330	29,46%	687	61,34%
SE	5.012	674	13,45%	1.320	26,34%	3.018	60,22%
UK ⁵	2.478	0	0,00%	0	0,00%	2.478	100,00%

Source: Eurostat, Remunerated activities reasons: Highly skilled workers. OCC_HSW. Extracted on 09.12.15

⁴¹¹ See footnote 3.

3. Higher Educational qualifications

The UNESCO's International Standard Classification of Education is an internationally used standard framework to categorize and report cross-nationally comparable education statistics. It is occasionally updated in order to better capture new developments in education systems worldwide. In the ISCED 2011 classification, the educational level is usually defined as follows: High (ISCED 5 and above: tertiary); Medium (ISCED 3-4: upper secondary and post-secondary non-tertiary); Low (ISCED 0-2: none, (pre-)primary and lower secondary).

Table: ISCED 2011 levels of education and comparison with ISCED 1997⁴¹². The level currently covered by Blue Card Directive indicated in shaded frame.

⁴¹² Source: UNESCO Institute for Statistics, Report on International Standard Classification of Education ISCED 2011, published in 2012. Available at: www.uis.unesco.org/Education/Documents/isced-2011-en.pdf

Level	ISCED 2011	Description	Corresponding ISCED 1997 level	Orientation	Cumulative duration in tertiary education
0	Early childhood Education (01 Early childhood educational development)	Education designed to support early development in preparation for participation in school and society. Programmes designed for children below the age of 3.	None		/
0	Early childhood Education (02 Pre-primary education)	Education designed to support early development in preparation for participation in school and society. Programmes designed for children from age 3 to the start of primary education.	Level 0: Pre-primary education.		/
1	Primary education	Programmes typically designed to provide students with fundamental skills in reading, writing and mathematics and to establish a solid foundation for learning.	Level 1: Primary education or first stage of basic education.		/
2	Lower secondary education	First stage of secondary education building on primary education, typically with a more subject-oriented curriculum.	Level 2: Lower secondary education or second stage of basic education	General / pre-vocational and Vocational	/
3	Upper secondary education	Second/ final stage of secondary education preparing for tertiary education and/or providing skills relevant to employment. Usually with an increased range of subject options and streams.	Level 3: Upper secondary education	General / pre-vocational and Vocational	/
4	Post-secondary non-tertiary education	Programmes providing learning experiences that build on secondary education and prepare for labour market entry and/or tertiary education. The content is broader than secondary but not as complex as tertiary education.	Level 4: Post-secondary non-tertiary education	General / pre-vocational and Vocational	/
5	Short-cycle tertiary education	Short first tertiary programmes that are typically practically-based, occupationally-specific and prepare for labour market entry. These programmes may also provide a pathway to other tertiary programmes.	Level 5B: First stage of tertiary education: typically shorter, more practical/technical/occupationally specific programmes leading to professional qualifications.	General and Vocational	depending on programme: <2year, ≥2years
6	Bachelor or equivalent	Programmes designed to provide intermediate academic and/or professional knowledge, skills and competencies leading to a first tertiary degree or equivalent qualification.	Level 5A: First stage of tertiary education: largely theoretically based programmes intended to provide qualifications for gaining entry into more advanced research programmes and professions with higher skills requirements.	Academic and Professional	depending on programme: <3 years, ≥3-4 years, ≥4 years, ≥5 years, ≥ 6 years
7	Master or equivalent	Programmes designed to provide advanced academic and/or professional knowledge, skills and competencies leading to a second tertiary degree or equivalent qualification.	Level 5A: First stage of tertiary education: largely theoretically based programmes intended to provide qualifications for gaining entry into more advanced research programmes and professions with higher skills requirements.	Academic and Professional	
8	Doctoral or equivalent	Programmes designed primarily to lead to an advanced research qualification, usually concluding with the submission and defence of a substantive dissertation of publishable quality based on original research.	Level 6: Second stage of tertiary education (leading to an advanced research qualification).	Academic and Professional	n.a.

4. The Minimum Salary Threshold

In order to be eligible to apply for a Blue Card, candidates must have a job offer meeting the salary threshold of:

- a. 1.5 times the average gross annual salary in the Member State concerned, *or*
- b. Optional for Member States, a lower threshold of 1.2 times the average gross annual salary for shortage occupations.

The section below analyses the impact of these conditions in terms of inclusion/exclusion effect (i.e. to what extent this condition can be met easily by highly-skilled worker) and what would be the impact of modifying the conditions. It is partly based on the analysis conducted by the OECD Migration Division in the frame of the joint project "Review of EU labour migration policy"⁴¹³ as well as on the input provided by OECD experts within the Expert Group on Economic Migration. It is to be noted that the potential impacts of modifying the admission conditions in particular the minimum salary threshold, are analysed in detail, as far as data availability allows, in Annex XIV.

4.1. Implementation of the salary threshold in the current Blue Card Directive

The figure below shows the current salary thresholds applied across EU Member States, in thousands euros, as well as in % of average gross income for full-time employment. The wide variation in absolute levels means that there are widely divergent salary requirements for highly qualified work permits in Europe, reflecting the differences in average salaries across EU Member States.

The variation in % terms (*i.e. the fact that the diamonds in the chart are not aligned on a 150% line*) could be somewhat more surprising as the rule in the Blue Card Directive mentions clearly "at least 1.5 times the average gross annual salary". However, this variation is driven by two elements:

- the 1.5 factor is set as a minimum, meaning that some Member States decided to apply a higher level (Romania, Lithuania)⁴¹⁴;
- Member States used different benchmarks⁴¹⁵ (data sources⁴¹⁶ and definitions⁴¹⁷) to set the thresholds at national level⁴¹⁸.

⁴¹³ In particular the forthcoming OECD paper: J. Chaloff, The Framework for Labour Migration in European Union Countries and the Policy Impact of the EU Blue Card Directive (first draft presented at 12 June 2015 "2ND OECD-EU Dialogue on International Migration and Mobility: Forward-Looking Labour Migration Governance in Europe").

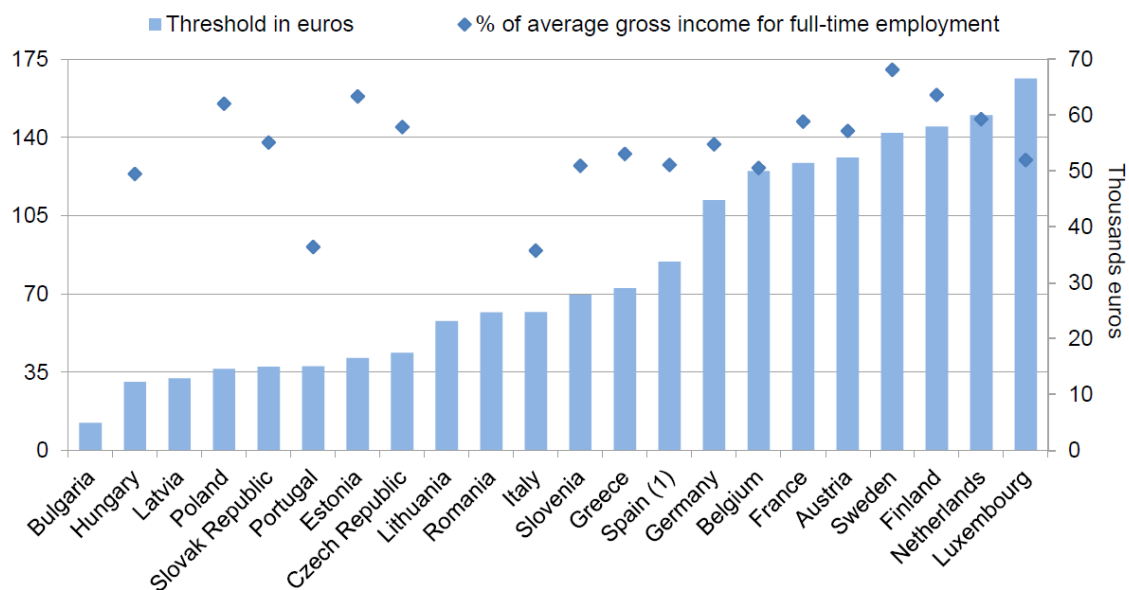
⁴¹⁴ In those two Member States the thresholds are so high that, in % terms, they are not visible in the scale used in the chart.

⁴¹⁵ Directive 2009/50/EC does not fix the benchmark, leaving Member States free to choose the data sources. See Article 20(3) "For the purpose of the implementation of Article 5(3) and, where appropriate, 5(5), reference shall be made to Commission (Eurostat) data and, where appropriate, national data".

⁴¹⁶ The data source for salary used in Chart 1 is the average annual gross income of full-time employed according to OECD statistics available at: http://stats.oecd.org/Index.aspx?DataSetCode=AV_AN_WAGE.

⁴¹⁷ "Gross annual salary" is not defined in the Directive beyond Article 5(3) "the gross annual salary resulting from the monthly or annual salary specified in the work contract or binding job offer shall not be inferior to a relevant salary threshold defined and published for that purpose by the Member States, which shall be at least 1,5 times the average gross annual salary in the Member State concerned". This leaves it unclear whether other compensation that is not strictly salary may be taken into account for meeting the salary threshold. For instance, in kinds-benefits (e.g. company housing, company car, gym membership, school sponsoring for children, private

Chart 1: EU Blue Card thresholds: required salary in thousands euros and as a percentage of the average annual gross income of full-time employed, 2014



Source: OECD average gross income, March 2014 exchange rates. (1) Spain uses an occupational benchmark; the mean is shown.

4.2. Impact of the salary threshold in the current Blue Card Directive

In order to analyse what the impact of the salary threshold in the current Blue Card Directive, analysis below looks at:

- how hard it is for a "highly-educated"⁴¹⁹ worker to meet the salary threshold in different EU countries;
- what the situation is for those who recently graduated (who may be less likely to qualify due to lower salary at entry in the labour market);
- whether the lower salary threshold option (1.2 for some shortage occupations) makes a difference;
- and how to the Blue Card salary threshold compare to salary threshold set by existing national schemes.

health or dental insurance), employer contributions to social security and pension schemes, 13 or 14th month holiday payments, etc. Such elements can be a substantial part of the compensation package, especially for expat contracts, and thus drive up costs for employers. If these cannot be taken into account for meeting the salary threshold, this may drive up the recruitment costs for employers and have an additional exclusion effect.

⁴¹⁸ This practice is clearly at odds with the purpose of the salary threshold as stated in Recitals (10) "*The definition of a common minimum denominator for the salary threshold is necessary to ensure a minimum level of harmonisation in the admission conditions throughout the Community*" and (11) "*The sole purpose of this salary threshold is to help to determine, taking into account a statistical observation published by the Commission (Eurostat) or by the Member States concerned, the scope of the EU Blue Card established by each Member State on the basis of common rules*".

⁴¹⁹ Highly-educated workers are those with ISCED level 6 and over (ISCED 2011 nomenclature (see point 2 above)).

Box: Data sources, definitions and limitations

Ideally, when measuring the inclusiveness of the Blue Card scheme in terms of salary threshold, one should use data on potential salaries of third-country (highly-skilled) third-country migrants. However as no information is available on this, one has to use data on current salaries of full-time employed (with high education) whatever their nationality as a proxy. The logic is as follows: if in a given country, the salary threshold is above what most workers (with high education) earn, it means that the Blue Card is quite *exclusive* and that only a small number of potential third-country migrants could get a job offer that met the salary threshold conditions. On the contrary, if most workers (with high education) in a given country earn more than the salary threshold, it can be interpreted as being *inclusive*.

The main data source used in this section is the distribution of gross annual income of the full-time employed according to EU-SILC (and GSOEP for Germany) which is compared to the official salary thresholds set by the Member States in relation with the Blue Card (or with national schemes for Member States not covered by the Blue Card such as DK, IE and UK). **EU-SILC** was chosen as the data source because other data source on earnings have strong limitations: **(Eurostat) National accounts** data allow to calculate average salary but do not provide the distribution of income and do not contain the breakdown by education level of the employees. The **Structure of Earnings Survey** contains data on the distribution of income by education level but is only available every 4 years (latest is 2010) and does not cover all sectors (broadly speaking the *public sector* is excluded) and all company sizes (establishments with less than 10 employees are not included in many Member States). Finally, the **EU-Labour force survey** does not contain actual earnings levels but only on earnings categories (deciles). Nevertheless, it should be clear that even **EU-SILC** may have limitations: a rather low number of observations per country (no possibility to breakdown the data in many categories except if pooling together several waves) as well as the self-reported nature of the salary data which may impact on reliability.

Another methodological point relates to the target group "**highly-educated** workers". In the dataset used, highly-educated workers are those with level 5 and over in the ISCED 1997 nomenclature, meaning that it includes workers with the level ISCED 5b (short first tertiary programme) who are excluded from the scope of the Blue Card Directive. Given that workers with ISCED 5b level have on average lower salaries than other tertiary educated (ISCED 5a and 6 levels), according to data such as the Structure of Earnings Survey 2010, the EU-SILC data on salaries used in this section may underestimate the salary level of tertiary educated persons. In that case, the level of "exclusiveness" of the Blue Card scheme may be exaggerated, i.e. there may be more workers eligible than estimated. Unfortunately, available data does not allow estimating the size of this bias.

In the last part of this section (*4.3 Potential impact of modifying the salary threshold in a revised Blue Card Directive*) the income distribution has not been compared to the official threshold set by the Member States but to several thresholds calculated by multiplying the factor set at different levels (1.0, 1.2, 1.5, 1.7,...) by the average wage of full-time workers as estimated from the EU-SILC (and GSOEP for Germany). This explains differences in the share of full-time workers earning above the threshold (of 1.5 times the average gross salary), for instance EU average of 35% in Chart 3 (using the official thresholds) vs 29% in Chart 9 (using the estimated thresholds).

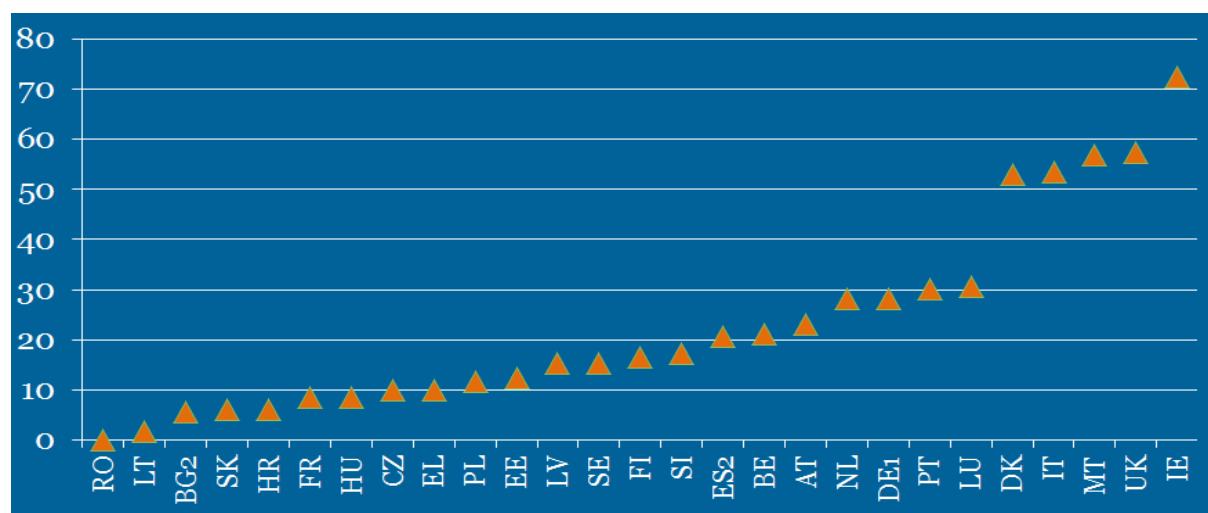
Finally, another limitation is the absence of reliable data on the potential number of workers without higher educational qualifications who could apply to a Blue Card on the basis of their

professional experience. In the current Blue Card directive there is the option for Member States to admit, instead of persons with higher educational qualifications, those with "relevant and equivalent professional experience of at least 5 years, in the sector or occupation specified in the work contract or job offer". In the case this admission condition would be modified, for instance by forcing Member States to recognize making this alternative admission condition, the target group of the Blue Card potential applicants would increase. However, there is no data available to estimate this increase.

4.2.1. Level of in/exclusiveness of the salary threshold for tertiary educated workers

Chart 2 depicts the share of full-time employed workers earning more than the salary thresholds⁴²⁰. It shows clearly that in most Member States, only a limited share of workers (0 to 30%) in the economy earns more than the salary threshold, meaning that the Blue Card looks currently as a rather 'exclusive' scheme. It also provides evidence that, in terms of salary threshold, the national schemes applied by Member States not bound by the Blue Card Directive (DK, UK, IE) are less exclusive than the Blue Card.

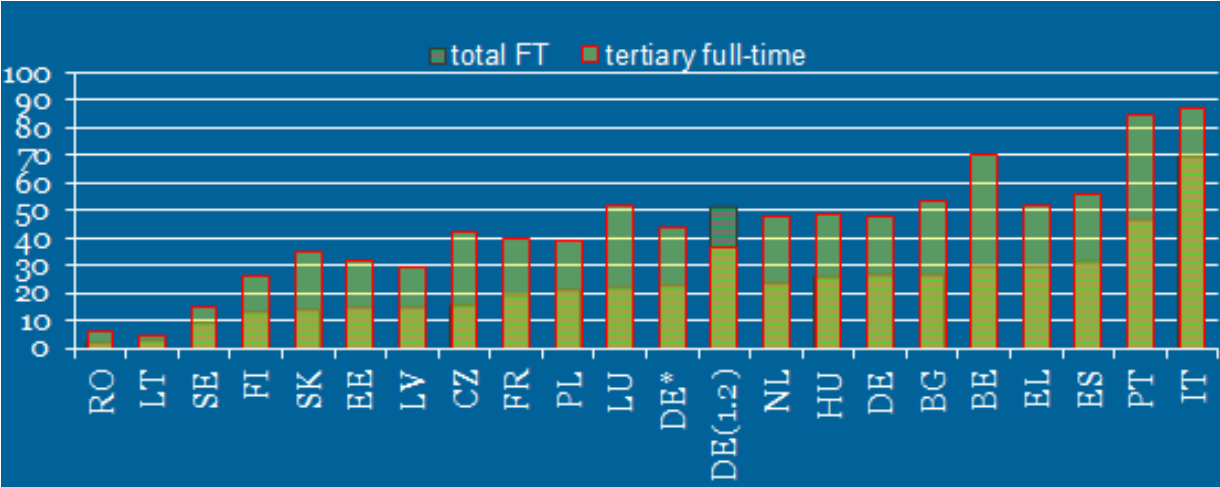
Chart 2: Share of full-time employees whose salary is above the salary threshold (Blue Card and other national schemes)



Source: EU-SILC and GSOEP for DE. Income data 2011-2013; thresholds in 2014. Low values for Romania and Lithuania are due to wage threshold set at high levels in those countries (i.e. higher than the 1.5 factor applied by most Member States).

⁴²⁰ The Blue Card threshold or, for Member States not bound by the Directive, the threshold applied in the respective national schemes.

Chart 3: Share of full-time employees with tertiary education whose salary is above the Blue Card salary threshold (in comparison with all full-time employed)



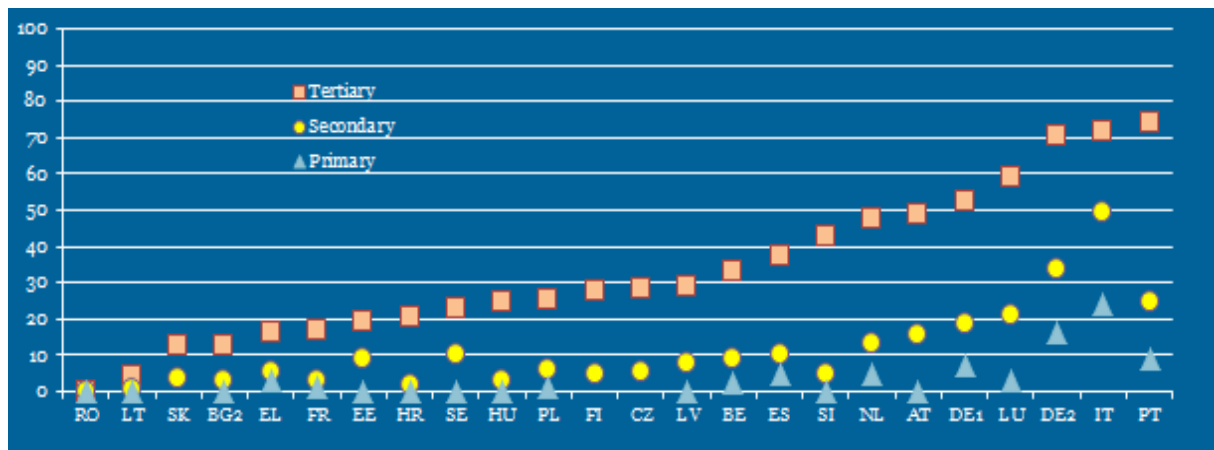
Source: EU-SILC and GSOEP for DE. DE (1.2) refers to the lower threshold (1.2 times the average salary). Low values for Romania and Lithuania are due to wage threshold set at high levels in those countries (i.e. higher than the 1.5 factor applied by most Member States).

Nevertheless, the comparison makes more sense when applied only to those having **tertiary education** as it is basically the target group of the EU Blue Card Directive. Indeed, Chart 3 demonstrates that in most Member States, 30-50% of full-time workers with tertiary education level earn at least the level of salary threshold (the un-weighted average across EU countries covered is around 35%). In other terms, unsurprisingly, when focusing on tertiary educated employees, the Blue Card looks less restrictive than for the full population of employees (while continuing to be more restrictive than most of the comparable national schemes – see below point 3.2.4).

Moreover, chart 4 confirms that most workers with less than tertiary education do not meet the Blue Card salary requirements. The current threshold largely excludes persons with primary education level as well as secondary-level education, though for the latter, this is not true in all Member States⁴²¹.

⁴²¹ This is due to the large differences in wage spread between Member States, i.e. in some Member States (e.g. SE) the spread between the lowest and highest salaries is less wide than in other Member States (e.g. NL, AT). In IT and PT the exclusion of secondary educated appears lower (i.e. the wage spread appears less wide). However, this is due to the salary threshold being set significantly lower than allowed by the Directive. See Chart 1 in which the values for IT and PT are aligned around the 100% line instead of the 150% line.

Chart 4: Share of full-time employees whose salary is above the salary threshold, by level of education



Source: EU-SILC and GSOEP for DE. DE² refers to the lower threshold (1.2 times the average salary).

However, the share of tertiary educated workers earning more than the salary threshold (or in other terms the level of *inclusiveness* of the Blue Card) varies largely across Member States (visible in both charts 3 and 4). This variation is driven by two main factors: (a) the wage distribution in the respective Member States (b) the level at which Member States set their salary thresholds⁴²².

Chart 5 below shows in more detail how the wage distribution (for full-time workers with tertiary education) compares to the actual salary threshold (as well as to the mean and median wage). Several situations emerge across Member States:

- In a few Member States (**group 1**), most tertiary educated workers would qualify, i.e. they currently earn more than the Blue Card threshold. Two of these Member States are precisely those currently granting the highest number of Blue Cards (DE in absolute levels and LU in proportion of its size) while it is not the case for IT and PT. It shows that, in any case, there is not a simple correlation between the level of the threshold and the number of Blue Cards granted.
- In another set of countries (**group 2**), the threshold falls close to the middle of wage distribution of tertiary-educated full-time employed, so the threshold has a more exclusive effect than for group 1;
- In most other Member States (**groups 3, 4 and 5**), the Blue Card threshold is rather high compared to the wage distribution of tertiary-educated full-time employed meaning that it is a rather *exclusive* scheme.
- In group 4, this reflects notably the compressed wage distribution (found for instance in Nordic countries) which makes the threshold more restrictive (relatively few workers earning more than 1.5 times the average wage, even when tertiary educated).
- By contrast, the extreme situation in group 5 is rather driven by the fact that those Member States (Romania and Lithuania) set the threshold at very high levels (i.e. higher than the 1.5 factor applied by most Member States).

⁴²² Member States can set a higher level than 1.5 of the average salary, as Romania and Lithuania did. This can also be influenced by the data source/definition.

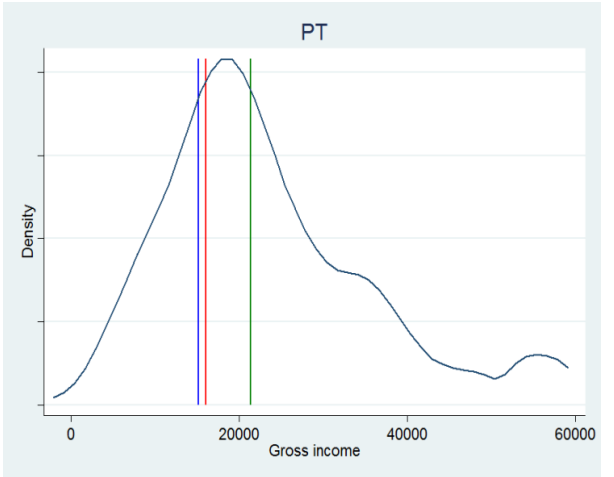
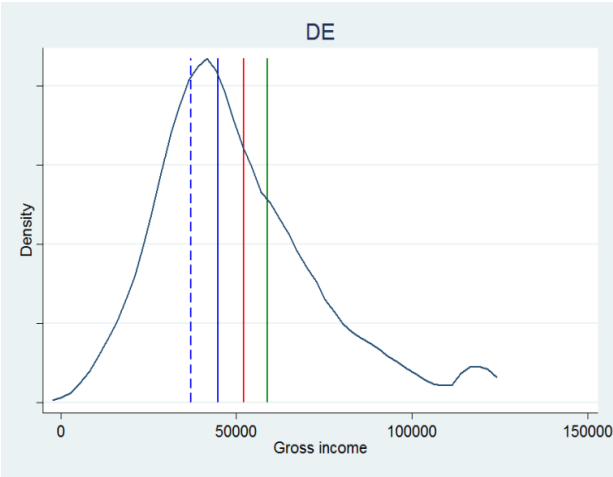
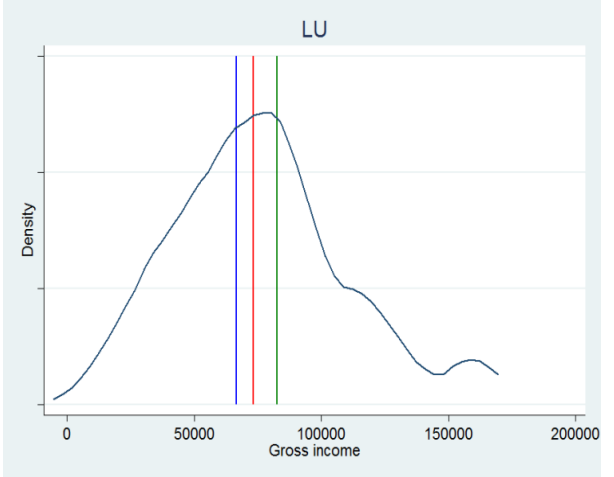
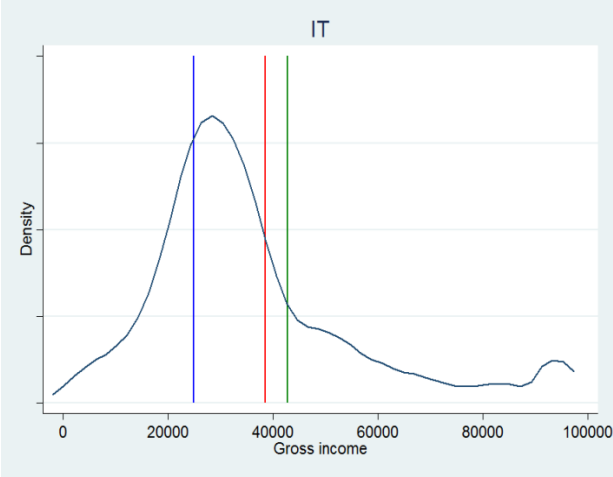
In conclusion, the fact that the distribution of salaries looks very different from one EU country to another impacts strongly on the inclusiveness of the Blue Card scheme across Member States. This has several implications:

- While the definition of a common minimum denominator for the salary threshold was seen as necessary to ensure a minimum level of harmonisation in the admission conditions throughout the EU, in practice it does not have a strong harmonising effect as wage distributions vary largely across countries;
- In countries where incomes are concentrated (close mean and median), small shifts in the threshold would translate into big changes in eligibility while in countries with *long flat tails*, shifting the threshold would make less difference.

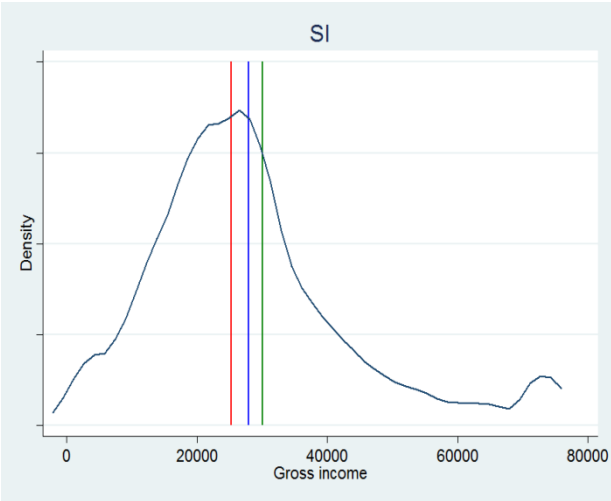
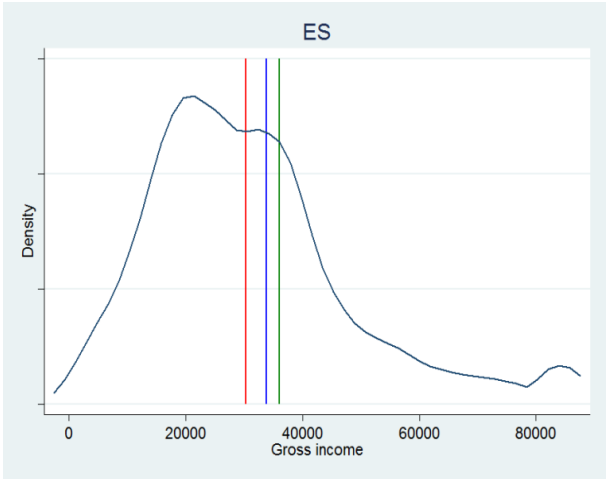
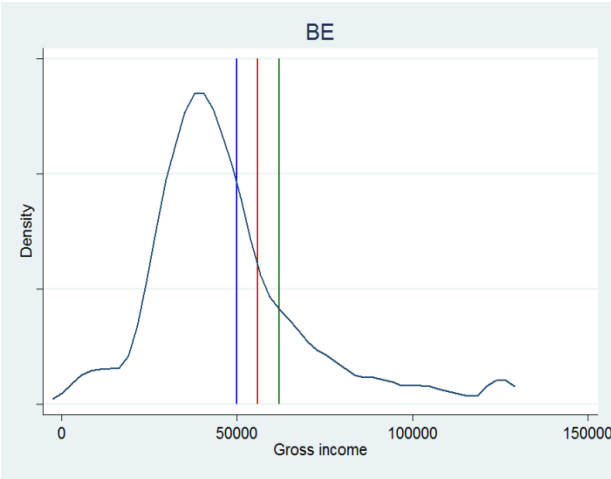
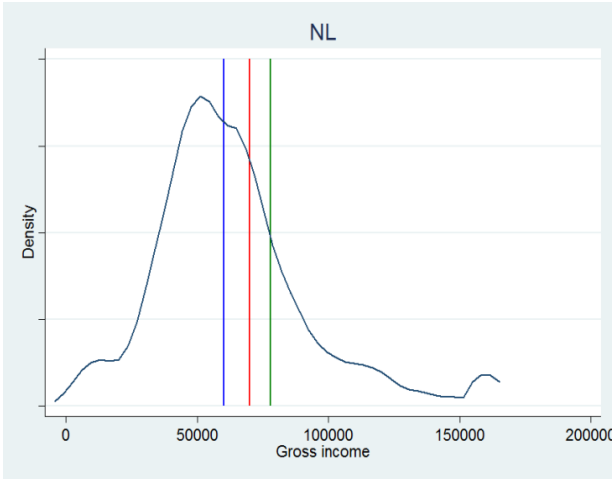
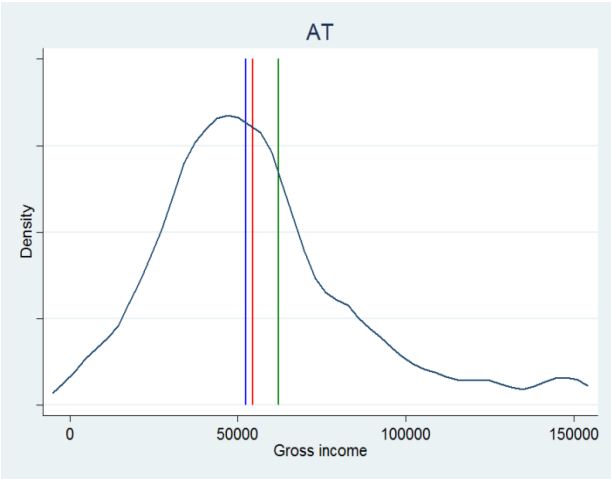
Chart 5: Wage distribution (for full-time workers with tertiary education) compared to the salary threshold and to mean and median wage, for selected Member States

*Key: Green=1.5*mean, Red=1.5*median, Blue=BC Salary threshold*

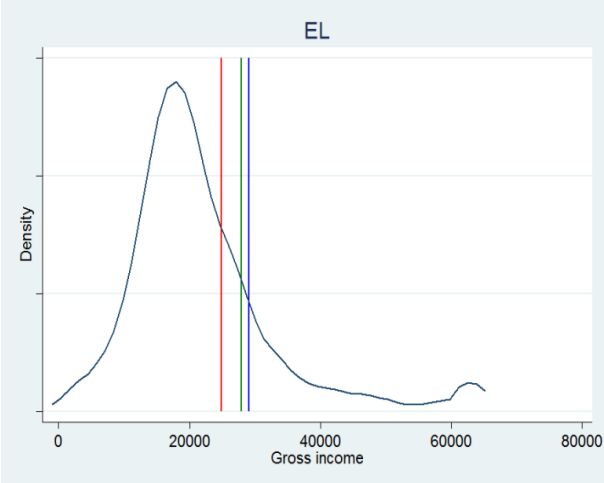
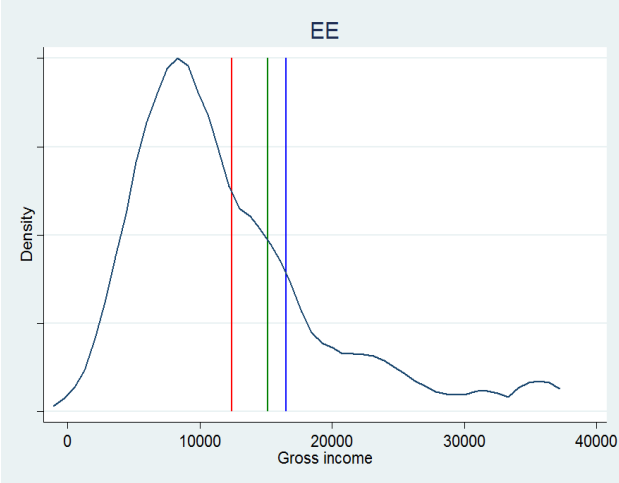
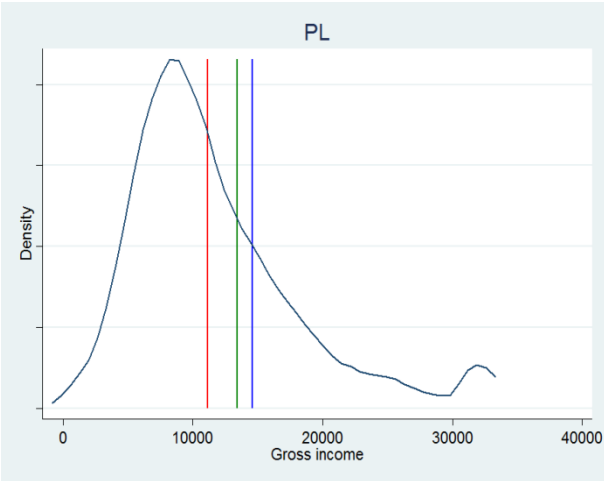
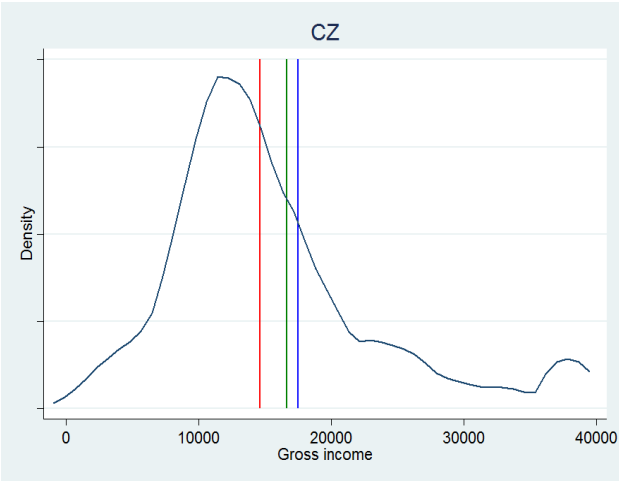
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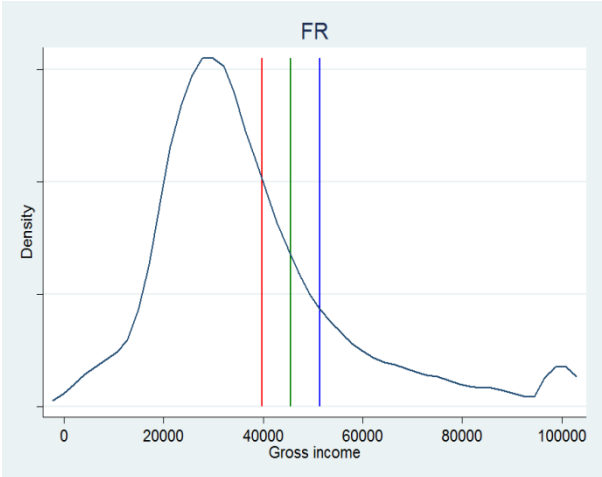
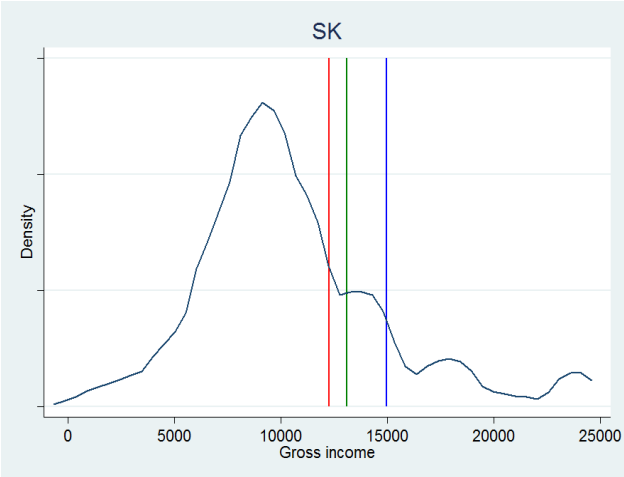
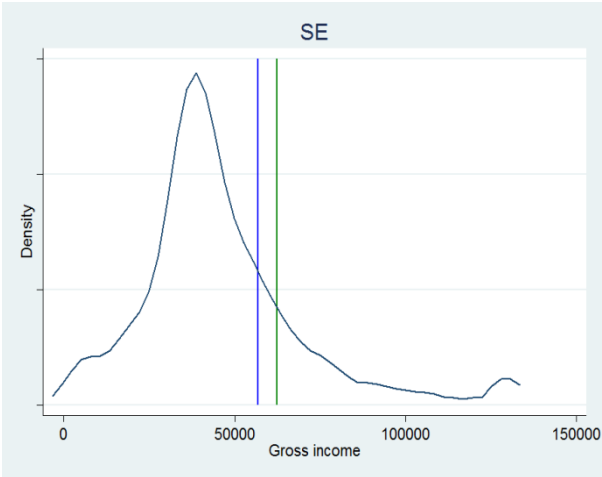
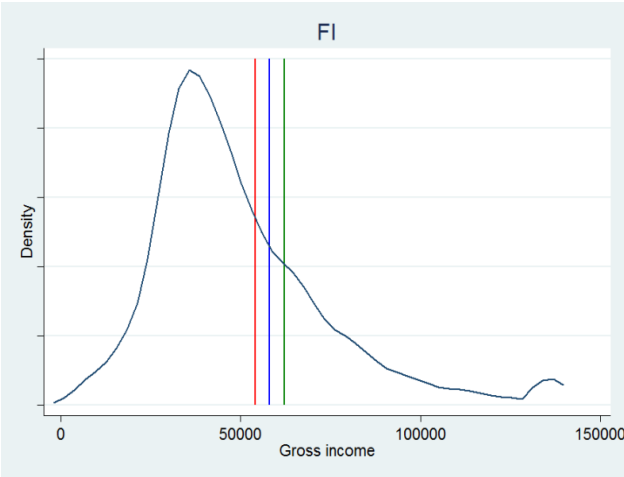
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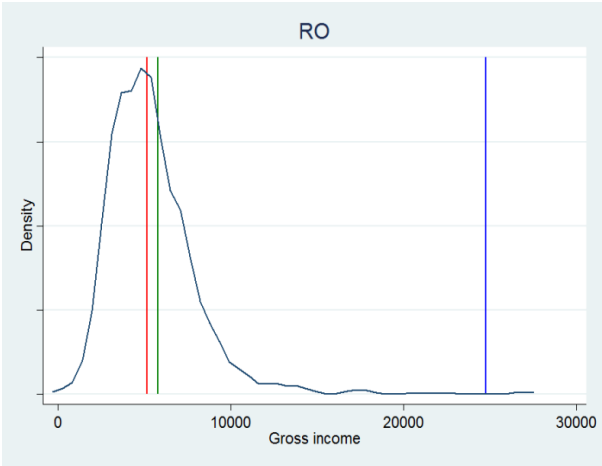
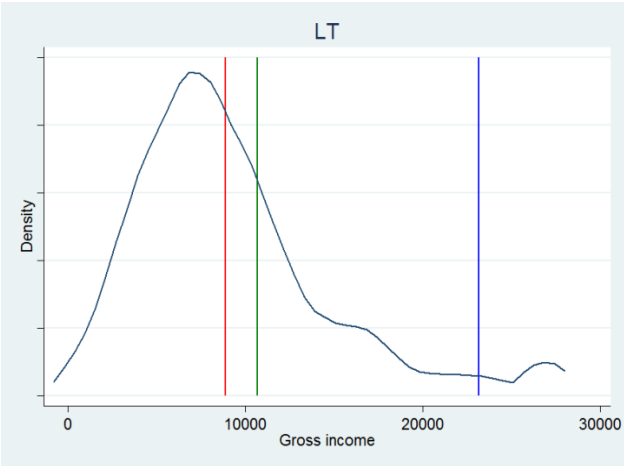
Group 3



Group 4



Group 5

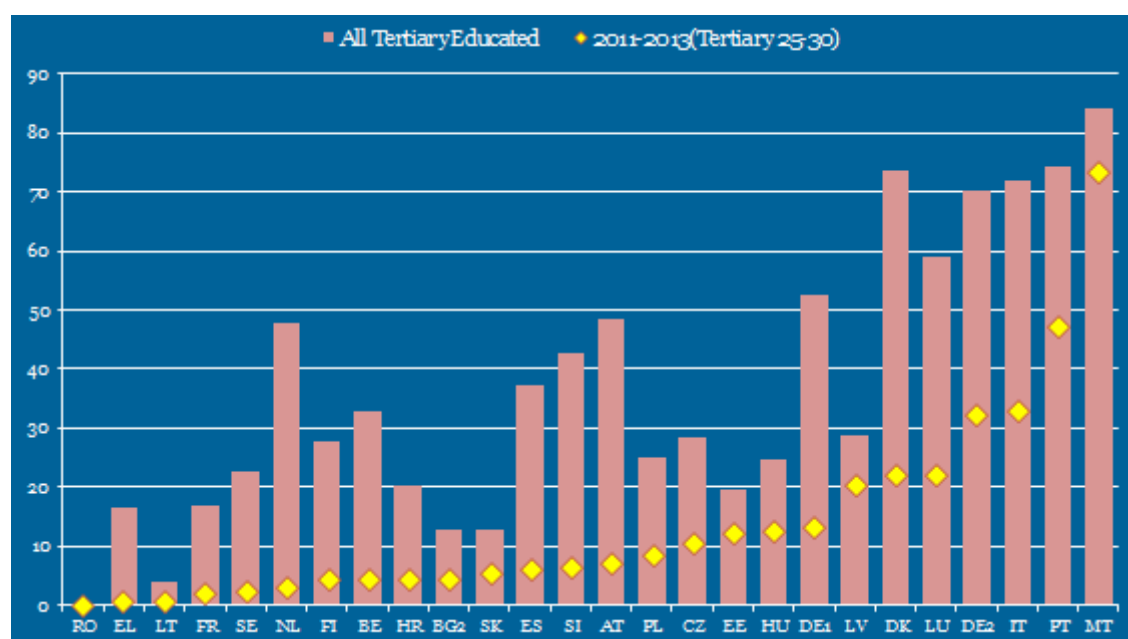


Source: EU-SILC and GSOEP for DE

4.2.2. Impact of salary threshold for attracting young talents

Another question regarding the salary thresholds relates to their impact on inclusiveness for the group of recent graduates. Recent (tertiary) graduates have a lower level of earnings at entry in the labour market than the average tertiary-educated worker. Chart 6 below shows that in most Member States, only 20% or less of tertiary educated (full-time workers) aged 25-30⁴²³ earn more than the salary threshold – and less than 10% in half of the Member States. This is indeed much below the share among all full-time tertiary educated workers. It points to the fact that the provisions of the current Blue Card Directive may not allow EU Member States to attract many young talents from third-countries.

Chart 6: Share of tertiary educated full-time workers whose salary is above the salary threshold (distinction between all versus only those aged 25-30)



Source: EU-SILC and GSOEP for DE. OECD presentation at the Expert Group on Economic Migration.

⁴²³ Age range being used as a proxy for recent graduates.

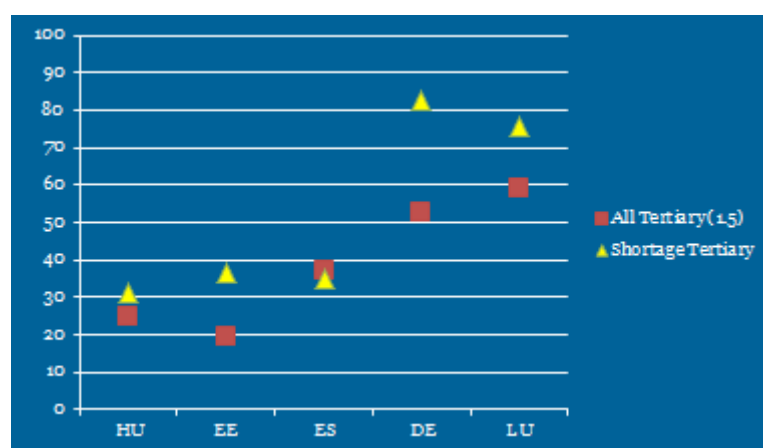
4.2.3. Impact of lower salary threshold for shortage occupations

While the analysis above refers to how the earnings of tertiary educated workers in the Member States relate to the official thresholds set by the Member States (i.e. in most of the cases around 1.5 times the average gross annual salary in the Member State concerned) it does not take into account, that some Member States chose to derogate from the main scheme in terms of the salary threshold and to apply a lower threshold of 1.2 times the average gross annual salary for shortage occupations⁴²⁴.

Chart 7 illustrates - for selected Member States that did choose to apply the lower threshold level for shortage occupation – that the lower threshold does make a difference as, unsurprisingly, a larger proportion of tertiary educated would qualify, i.e. earn a higher level than the 1.2 threshold compared to what they would earn with the standard factor (1.5).

The lower threshold makes a big difference in eligibility for DE (which indeed issues around half of Blue Card permits under this lower threshold scheme), EE and LU. On the contrary, this is not the case for Spain, because Spain has set salary threshold at sector-level (only Member State to have implemented the Blue Card in this way)⁴²⁵.

Chart 7: Share of tertiary educated full-time workers whose salary is above the salary threshold (distinction between standard 1.5 factor and the 1.2 optional factor for shortage occupations)



Source: EU-SILC and GSOEP for DE. OECD presentation at the Expert Group on Economic Migration

⁴²⁴ The Blue Card Directive indeed allows this where "it is considered by the Member State concerned that there is a particular lack of available workforce and where such professions are part of the major group 1 and 2 of the ISCO (International Standard Classification of Occupation) classification".

⁴²⁵ As salaries are likely to be higher in shortage occupations, pegging the Blue Card threshold to the mean salary in the occupation (such as Spain did) made it finally more difficult to obtain a Blue Card.

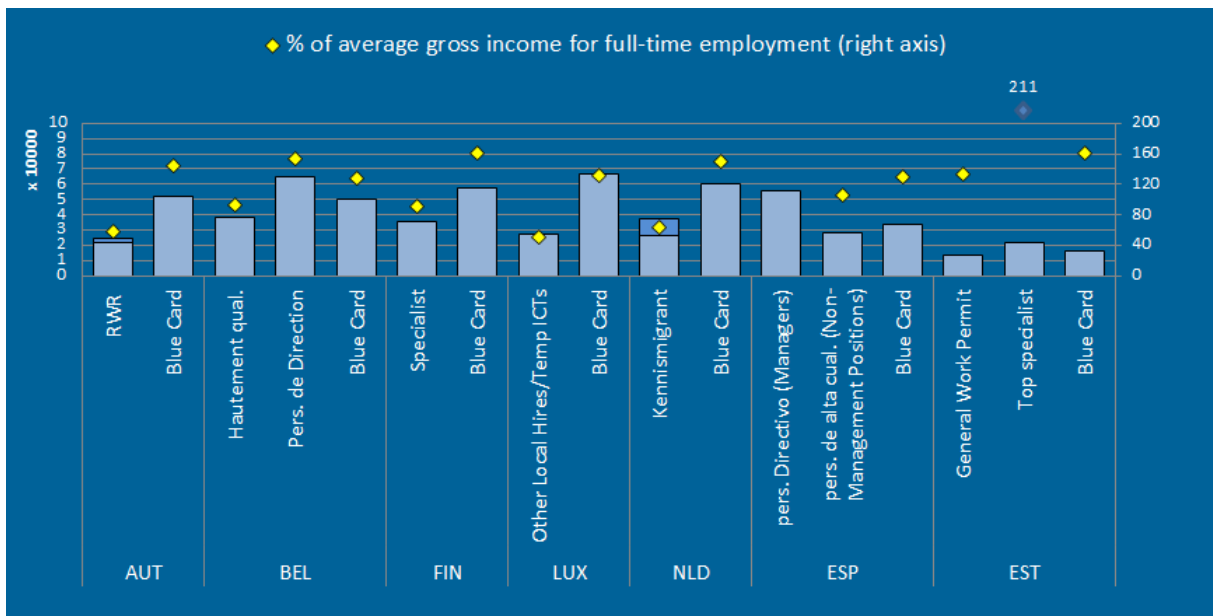
4.2.4. Level of Blue Card salary threshold in relation to other national schemes

As the limited number of Blue Cards issued over the last few years is partly related to the co-existence of national schemes, it is also important to analyse the level of the salary thresholds applied in the national schemes in comparison with the Blue Card.

Chart 8 below clearly shows (at least for selected Member States that do have national schemes with salary thresholds), that the salary thresholds in the national schemes are lower than for the Blue Card.

While the national schemes may differ from the Blue Card in terms of scope (more or less focussed on highly skilled) and in terms of criteria (some countries take into account the age of the applicant), it can be concluded from this broad comparison that the national schemes are less 'exclusive' than the Blue Card.

Chart 8: Required salary as a percentage of the average annual gross income of full-time employed, 2014, Blue Card vs. other salary-based permits (in selected Member States)



Source: OECD analysis based on OECD average gross income, March 2014 exchange rates. Note: NLD and AUT apply thresholds according to age. OECD presentation at the Expert Group on Economic Migration

4.3. Potential impact of modifying the salary threshold in a revised Blue Card Directive

Beyond the analysis of the in/exclusiveness of the current Blue Card Directive presented above, this section presents information on the impact of modifying the salary thresholds. It is to be noted that the potential impacts of modifying the admission conditions in particular the minimum salary threshold, are analysed in detail, as far as data availability allows, in Annex XIV.

On the basis of EU-SILC⁴²⁶ data, one can assess what would be impact of setting the factor of the salary threshold at different levels between 1 and 2 times⁴²⁷ the average gross salary. Chart 9 shows that, at EU level on average:

- only around 14% of tertiary educated earn more than **twice** the average wage,
- this proportion goes up to 29%⁴²⁸ when the factor is brought down to 1.5 (current threshold in the Blue Card Directive)
- and to 47% if the factor would be set at 1.2 level (current optional level for shortage occupations but used only in a few Member States).

In other terms, one could make the Blue Card Directive even more exclusive than currently by setting the factor of the salary threshold at two times the gross annual salary. In that case, only slightly more than 10% of highly educated workers across most EU countries (EU average of 14% and a range from 7% in Sweden to 27% in Portugal) would be eligible to a Blue Card (from the point of view of the salary threshold at least).

On the contrary, setting the factor of the salary threshold at 1.2 times the gross annual salary would make the Blue Card much more inclusive as around 40% in many Member States (EU-average of 47%, ranging from 32% in Sweden to 66% in Portugal) would met the salary requirements.

Chart 10 and 11 detail the differences it could make (in terms of change in the share of tertiary educated meeting the salary requirements expressed in percentage points) to modify the factor of the salary threshold either from 1.5 to 1.2 / 1.0 (*less exclusive*) or from 1.5 to 1.7 / 2.0 (*more exclusive*).

For instance, the potential gain at EU level in terms of share of tertiary educated meeting the salary requirements when modifying the factor for the salary threshold **from 1.5 to 1.2** is around 18 pps (percentage points), from 29% to 47% (as visible in chart 9) and can be found in chart 10 (*blue bar for EU-23*). This value ranges from 12 pps in EE to 25 pps in HR. Bringing the factor of the salary threshold down to 1.0 would enlarge potential population of highly educated workers by 34 pps at EU level (from 29% to 63%, see table below). This 'gain' would range from 24 pps in EE to 37 pps in HR.

On the contrary, if one would want to make the EU Blue Card more exclusive (targeted at most talented migrant workers having very high levels of salaries), chart 11 shows that modifying the factor for the salary threshold **from 1.5 to 1.7** would lead to have a decline in share of the tertiary educated meeting the salary requirements by 8.5 pps from 29% to 20.5%

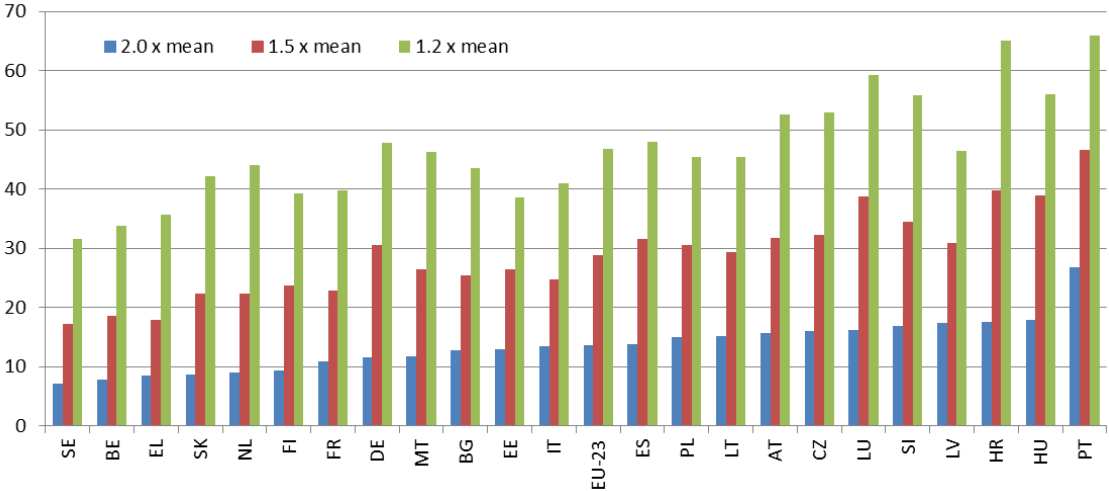
⁴²⁶ Specific data extractions based on EU-SILC micro-data (and GSOEP for Germany).

⁴²⁷ The various levels tested were the following: 1.0, 1.1, 1.2, 1.4, 1.5, 1.7 and 2.0, see full results in Table below.

⁴²⁸ The difference with the 35% figure refers to in the previous section (commenting Chart 3) comes from the different benchmarks used, as explained in the methodological box above.

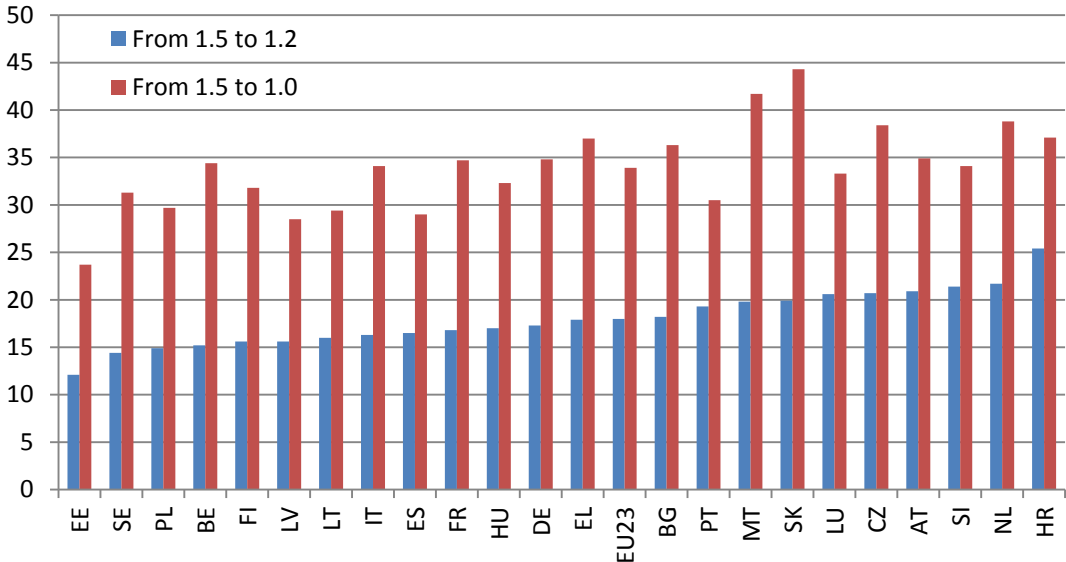
(ranging from 5 pps in EL to 15 pps in HR). Making it even more exclusive by bringing the factor for the salary threshold **from 1.5 to 2.0** would lead to excluding around from 10-20 pps of the share of 'eligible' population of tertiary educated workers - that would reach rather low levels in most Member States, as already visible in chart 9.

Chart 9: Simulation exercise: share of tertiary educated full-time workers earning more than the salary threshold as set at different levels (factor 1.2, 1.5 and 2.0)



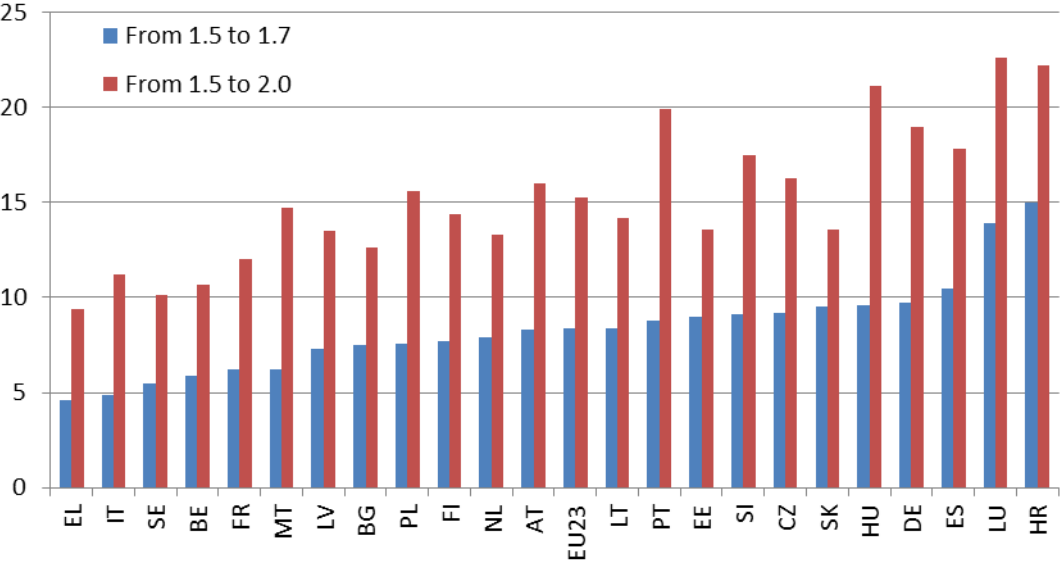
Source: EU-SILC and GSOEP for DE. EU-23 is the unweight average of the 23 EU Member States for which data was available and reliable.

Chart 10: Simulation exercise: "Making the Blue Card less exclusive": increase (in percentage points) in the share of tertiary educated potentially eligible to a Blue Card if the salary threshold was changed from 1.5 to 1.2/1.0



Source: EU-SILC and GSOEP for DE. EU-23 is the unweight average of the 23 EU Member States for which data was available and reliable.

Chart 11: Simulation exercise: "Making the Blue Card more exclusive": decrease (in percentage points) in the share of tertiary educated potentially eligible to a Blue Card if the salary threshold was changed from 1.5 to 1.7/2.0



Source: EU-SILC and GSOEP for DE. EU-23 is the unweight average of the 23 EU Member States for which data was available and reliable.

Table 1: Full simulation results: Share of the population of full-time employees with tertiary education earning above the threshold, according to different factors levels

	1 x mean	1.1 x mean	1.2 x mean	1.4 x mean	1.5 x mean	1.7 x mean	2.0 x mean
AT	67	59	53	39	32	23	16
BE	53	43	34	22	19	13	8
BG	62	50	44	30	25	18	13
CZ	71	62	53	37	32	23	16
DE	65	57	48	35	31	21	12
EE	50	43	39	29	27	18	13
EL	55	44	36	24	18	13	8
ES	61	55	48	37	32	21	14
FI	56	46	39	28	24	16	9
FR	58	48	40	27	23	17	11
HR	77	72	65	49	40	25	18
HU	71	63	56	43	39	29	18
IT	59	50	41	28	25	20	14
LT	59	52	45	34	29	21	15
LU	72	66	59	46	39	25	16
LV	59	53	47	35	31	24	17
MT	68	58	46	31	27	20	12
NL	61	53	44	28	22	14	9
PL	60	52	46	35	31	23	15
PT	77	72	66	52	47	38	27
SE	49	39	32	21	17	12	7
SI	69	62	56	42	34	25	17
SK	67	49	42	25	22	13	9
EU-23 average	63	54	47	34	29	20	14

Source: EU-SILC and GSOEP for DE. EU-23 is the unweight average of the 23 EU Member States for which data was available and reliable.

4.4. ISCO-08 categories for applying the lower salary threshold in the current Blue Card Directive and in a revised Blue Card Directive

The International Standard Classification of Occupations (ISCO)⁴²⁹ is one of the main international classifications for which the International Labour Organization (ILO) is responsible. ISCO is a tool for organizing jobs into a clearly defined set of groups according to the tasks and duties undertaken in the job. The basic criteria used to define the system are the skill level and specialization required to competently perform the tasks and duties of the occupations.

The ISCO-08 divides jobs into 10 major groups. Each of the ten major groups is made up of two or more sub-major groups, which in turn are made up of one or more minor groups. Each of the 130 minor groups is made up of one or more unit groups. Each major group is denoted by a 1-digit code. Each sub-major group is denoted by a 2-digit code, comprising the major group code plus one digit. In the same way, minor groups are denoted by 3- digit codes and unit groups by 4-digit codes. The list below gives an overview at 2-digit or sub-major group level.

Three main skill levels of jobs can be distinguished. While there is no fixed rule, Major Groups 1, 2 and 3 are often regarded as high skilled professions, Major Groups 4, 6 and 7 as medium skilled, and Major Groups 5, 8 and 9 as low skilled. Sometimes Major Group 5 is considered as medium skilled. In other classifications, sometimes Major Groups 1, 2 and 3 are considered as high-skilled non-manual, Major Groups 4 and 5 as low-skilled non-manual, Major Groups 6, 7 and 8 as skilled manual and Major Group 9 as elementary occupations.

The current Blue Card Directive allows for a derogation from the general salary threshold (at least 1,5 times the average gross annual salary), by applying a lower threshold at 80% of the general threshold (at least 1,2 times the average gross annual salary) for employment in specific professions where it is considered by the Member State concerned that there is a particular lack of available workforce and which belong to the Major Groups 1 and 2 of ISCO (recital 10 and Article 5(5)). There is no such restriction to Major Groups of ISCO for the general threshold.

MAJOR GROUP 1 – MANAGERS

- 11 Chief executives, senior officials and legislators
- 12 Administrative and commercial managers
- 13 Production and specialized services managers
- 14 Hospitality, retail and other services managers

MAJOR GROUP 2 – PROFESSIONALS

- 21 Science and engineering professionals
- 22 Health professionals
- 23 Teaching professionals
- 24 Business and administration professionals
- 25 Information and communications technology professionals
- 26 Legal, social and cultural professionals

MAJOR GROUP 3 - TECHNICIANS AND ASSOCIATE PROFESSIONALS

- 31 Science and engineering associate professionals

⁴²⁹ See ISCO website: <http://www.ilo.org/public/english/bureau/stat/isco/index.htm>

- 32 Health associate professionals
- 33 Business and administration associate professionals
- 34 Legal, social, cultural and related associate professionals
- 35 Information and communications technicians

MAJOR GROUP 4 - CLERICAL SUPPORT WORKERS

- 41 General and keyboard clerks
- 42 Customer services clerks
- 43 Numerical and material recording clerks
- 44 Other clerical support workers

MAJOR GROUP 5 - SERVICE AND SALES WORKERS

- 51 Personal service workers
- 52 Sales workers
- 53 Personal care workers
- 54 Protective services workers

MAJOR GROUP 6 - SKILLED AGRICULTURAL, FORESTRY AND FISHERY WORKERS

- 61 Market-oriented skilled agricultural workers
- 62 Market-oriented skilled forestry, fishery and hunting workers
- 63 Subsistence farmers, fishers, hunters and gatherers

MAJOR GROUP 7 - CRAFT AND RELATED TRADES WORKERS

- 71 Building and related trades workers, excluding electricians
- 72 Metal, machinery and related trades workers
- 73 Handicraft and printing workers
- 74 Electrical and electronic trades workers
- 75 Food processing, wood working, garment and other craft and related trades workers

MAJOR GROUP 8 - PLANT AND MACHINE OPERATORS AND ASSEMBLERS

- 81 Stationary plant and machine operators
- 82 Assemblers
- 83 Drivers and mobile plant operators

MAJOR GROUP 9 - ELEMENTARY OCCUPATIONS

- 91 Cleaners and helpers
- 92 Agricultural, forestry and fishery labourers
- 93 Labourers in mining, construction, manufacturing and transport
- 94 Food preparation assistants
- 95 Street and related sales and service workers
- 96 Refuse workers and other elementary workers

MAJOR GROUP 0 - ARMED FORCES OCCUPATIONS

- 01 Commissioned armed forces officers
- 02 Non-commissioned armed forces officers
- 03 Armed forces occupations, other ranks

5. The "Labour market test" or "Economic Needs Test"

The current EU Blue Card Directive allows for the imposition of a so-called labour market test (LMT). The Directive does not specify what form such a test should take, if it is implemented. Table 2 shows Member States do not apply LMTs to all labour migration channels. Refusal rates on LMTs appear to be low for the admission of highly-qualified workers.

Table 1. Labour Market Tests applying to national schemes and EU Blue Cards

Country	EU Blue Card	National Scheme for highly qualified	General National Scheme
Austria	LMT (most cases)	LMT (some cases)	LMT
Belgium	Allowed, but not applied	No LMT	n.a.
Bulgaria	LMT (except for shortage occupations from 2016)	n.a.	LMT
Czech Republic	LMT	n.a.	LMT
Germany	No LMT	No LMT	LMT
Greece	LMT	n.a.	LMT
Hungary	LMT	n.a.	LMT
Finland	No LMT	No LMT	LMT
France	No LMT	LMT	n.a.
Estonia	LMT	LMT (some exceptions)	LMT
Italy	LMT, except for pre-approved employers	LMT, except for pre-approved employers	LMT
Latvia	LMT	n.a.	LMT
Lithuania	No LMT, unless salary is <3x average	LMT	n.a.
Luxembourg	No LMT	n.a.	LMT
Netherlands	No LMT	No LMT	LMT
Poland	LMT	n.a.	LMT
Romania	No LMT	n.a.	LMT
Sweden	LMT	n.a.	LMT
Slovenia	LMT	n.a.	LMT
Slovak Republic	LMT	n.a.	LMT
Spain	LMT	No LMT	n.a.

Source: Jonathan Chaloff / OECD, *The Impact of EU Directives on the Labour Migration Framework in EU Countries*, forthcoming.



Strasbourg, 7.6.2016
SWD(2016) 193 final

PART 6/6

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Annexes to the Impact Assessment

Accompanying the document

Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment

{COM(2016) 378 final}
{SWD(2016) 194 final}

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ANNEX 8

INTERNATIONAL PERSPECTIVES AND BENCHMARKING

1. THE "GLOBAL RACE FOR TALENT"

Along with globalisation, the intensity of movement of people has increased and economic activity has become more and more interconnected. As our societies are increasingly knowledge-based, they are also more and more reliant on highly skilled workers (HSW). This annex will firstly analyse the global competition for skills, in which the EU needs to be attractive for HSW. Secondly, it will describe different schemes for HSW in the US, Canada, China, Australia, Switzerland, Russia and New Zealand. Thirdly, it will discuss potential impacts on countries of origin when HSW emigrate, highlighting the issue of “brain-drain” and the recruitment of health workers in particular. Four detailed country fiches (US, Canada, Australia and China), are attached at the end of the annex, prepared by an external contractor assigned to carry out a study to support the drafting of the Impact Assessment.

Different factors influence the global competition for skills

There are a number of circumstances that come into play when assessing the attractiveness of the EU in the global competition for skills. At macro level, economic factors such as the growth rate and economic characteristics determine a destination’s attractiveness. As economic growth has shifted from the advanced economies to middle-income and low-income countries, many traditional destination countries have become less attractive for migrant workers and their families.

Furthermore, at micro level, actual migration decisions are made by individuals taking into account multiple factors. Some are related to migration policies, while others are economic and non-economic factors that do not depend and cannot be altered by migration policy. Economic incentives that can influence the flows of human resources are e.g. opportunities for better salary and career advancement. Factors that are less tangible to migration policies are e.g. language, living standards, GDP, entrepreneurial environment and taxes. There is also evidence that institutional quality and governance effectiveness increases a destination's attractiveness for highly-qualified migrants.¹

Indicators of EU attractiveness

In light of the various factors listed in the previous section, any objective measurement of EU attractiveness is difficult to establish. The Gallup World Poll on the opinions and aspirations of people around the globe shows that the EU is more attractive than other developed regions among highly-qualified respondents with a clear intention to migrate. According to the Gallup worldwide survey, 33 % of all highly-educated workers intending to migrate prefer the EU/EEA, compared to 19 % that prefer the United States. However, of all non-EU migrants coming to OECD countries, 48% of low-educated migrants choose a EU27 and 68% of the high-educated ones a non-European OECD destination.²

¹ See for example, Reinhard Weisser, *The impact of international students and post-graduation internal mobility: an analysis of student mobility and retention rate*, OECD 2016, forthcoming.

² Flore Gubert, Jean-Noël Senne, *Europe as a Single Labour Market Destination*, OECD, 2016, forthcoming.

Global supply and demand for HSW

International highly skilled labour migration has been moved up on the policy agenda of medium and high-income countries since the late 1990s. Countries like the United States, Canada, Australia, France, the UK and Germany are net importers of highly-educated workers.³ A highly-skilled workforce is acknowledged as a fundamental building block of knowledge-based societies and essential in supporting economic and technological development. As a result, the promotion and attraction of so-called STEM⁴ skills has become a high priority across both developed and developing countries.

Since the 1990s, international migration among the highly-skilled is characterised by two main trends: increasing flows from Asia towards major OECD countries and an increasing exchange of skilled workers among developed countries.⁵ The main sending countries are Asian, led by India, the Philippines and China.⁶ Among the top ten sending countries of high-skilled professionals in 2010/11, there are also a number of EU/OECD countries, including the United Kingdom, Germany and Poland.

In 2000, there were 90 million 25-34 year-olds with higher education (tertiary) degrees, of which 51 million were in OECD countries and 39 million in non-OECD G20 countries. By 2010, the total had increased to 130 million, of which 66 million in OECD countries, compared to 64 million in non-OECD G20 countries.

Over the next twenty years the demand for higher education is expected to grow sharply. By 2020, more than 200 million 25-34 year-olds are projected to have higher education degrees across all OECD and G20 countries. Significantly, 40 % of them will be from China and India alone, while the United States and the EU will account for just over 25 %.⁷ By 2030, the number of students worldwide is projected to reach 414 million, with China showing by far the highest increase, followed by Brazil and India.⁸

It is important to make the EU attractive also for international students, and consider them as potential future workforce. The EU is the world's most popular destination for international students. There are currently around 1 million non-EU students studying in the EU (in addition to 0,5 million EU students studying in another Member State). Retention rates vary, and are estimated to be between 16 and 29 %.⁹

While future trends of skilled labour migration are difficult to forecast¹⁰, the global labour market is likely to continue to absorb the increasing supply of highly-educated workers as the demand for employees in “knowledge economy” fields is expected to continue to grow. As a result, highly skilled foreign professionals are ever more sought after and the growing

³ See Database on Immigrants in OECD countries (DIOC).

⁴ Scientific, technological, engineering and mathematical skills.

⁵ OECD, *The Global Competition for Talent. Mobility of the Highly Skilled*, OECD Publishing, Paris, 2008, p. 19.

⁶ Between 2001-2011, the three major sending countries of skilled labour remained the same. In 2010/11, India was still the main sender, while China had moved into second position, with the Philippines in third place.

⁷ OECD, *Education Indicators in Focus-No 36*, 2012/05, OECD Publishing, Paris, 2012.

⁸ Commission Communication of 11 July 2013, *European higher education in the world*, COM(2013) 499 final.

⁹ Reinhard Weisser, *The impact of international students and post-graduation internal mobility: an analysis of student mobility and retention rate*, OECD 2016, forthcoming.

¹⁰ Given the projected changes in the rapidly growing size of the global talent pool and its changing composition and the expected increased economic weight and domestic demand for highly skilled labour of China and India.

internationalisation of the highly-skilled labour market has led to an increasing global competition for talent.¹¹

Europe is therefore in an increasingly fierce competition with an increasing number of other economies to attract workers with the skills it needs. Around 25 % of migrants currently in the EU are highly-educated compared to more than 35 % in non-EU OECD countries.¹² In Europe, 22 % of the migrants that arrived between 2006 and 2011 were between 25 and 29 years old, and 53 % were between 25 and 39 years old.¹³ Furthermore, a bulk of migrants is found among the (prime-age) working population, aged 25-64, that accounts for almost three fourths of the total stock. However, the EU27 tend to attract low-educated migrants while non-Europe OECD countries tend to be more selective for the high-educated migrants. More than 60 % of non-European low-educated migrants choose a European destination and more than 60 % of the high-educated ones a non-European OECD destination.¹⁴

Recent surveys on immigration intentions point to a relatively strong attractiveness of the EU for highly-educated potential migrants, compared notably to the United States.¹⁵ Also in the public consultation carried out for the purposes of the Blue Card review, potential and actual migrants indicated a strong attractiveness of several Member States, notably Germany (32 %), France (11 %), the Netherlands (8 %) and the United Kingdom (7 %), on par with the United States (30 %), Canada (27 %), Norway (14 %) and Australia (11 %).¹⁶ The EU as a whole rates high on factors of attractiveness such as its welfare and healthcare system, level of wages and job opportunities. However, the EU appears much less successful both in retaining talents and in converting its attractiveness into higher numbers of highly-skilled migrants being admitted.

2. OVERVIEW OF INTERNATIONAL COMPETITOR SCHEMES

Most OECD countries are net beneficiaries of international mobility, with inflows exceeding outflows. The United States, Canada, Australia and France in particular, have experienced strongly positive net inflows of tertiary-educated migrants.¹⁷

From a mere quantitative perspective, international competitive schemes for HSW such as those in Canada and the United States, attract more HSW than the EU Blue Card and parallel national schemes for HSW. However, relative to population, labour migration to the United States is much lower than the EU OECD average. The US' labour force is around two-thirds of that of the EU and it has relatively low labour migration rates (around one fourth of the EU rate, per 1000 inhabitants), yet it admits around 200 000 skilled labour migrants every year (permanent green cards for extraordinary talents — EB-1 — and H-1B visas for temporary specialised work). Labour migration to Canada, New Zealand and Australia (all of which apply selective labour migration programmes, with limited access to permanent migration for

¹¹ Rinne, U., *The Evaluation of Immigration Policies*, IZA Discussion Paper Series, IZA DP No.6369, Bonn, 2012.

¹² Jean-Noël Senne and Anda David, 'General Context and Contribution of Labour Migration in Europe', OECD 2016, *forthcoming*.

¹³ OECD/European Union, *Matching Economic Migration with Labour Market Needs*, OECD Publishing, Paris, 2014.

¹⁴ Jean-Noël Senne and Anda David, 'General Context and Contribution of Labour Migration in Europe', OECD 2016, *forthcoming*.

¹⁵ Based on Gallup Surveys 2011-2014 analysed by Jean-Noël Senne and Anda David in 'Europe as a Single Labour Market Destination', OECD 2016, *forthcoming*.

¹⁶ See Annex 2.

¹⁷ OECD, *The Global Competition for Talent*, Policy Brief - February 2009, OECD Publishing, Paris, 2009.

low-educated migrants or those in low-skill occupations) is around twice the EU average relative to the size of their labour markets. This reflects these countries' commitments to ensuring that a substantial part of new entries to the skilled labour force stems from migration. Within the EEA, Switzerland has relatively low inflows of non-EEA permanent-type migration, and the levels of free movement for employment are much higher (at least ten times the level of third-country labour migration). A substantial share of free movement is for skilled employment.¹⁸ The following section will describe and analyse the migration schemes, including those for HSW, in the United States, Canada, China, Australia, Russia, Switzerland and New Zealand. Each subsection will describe the legal framework, present key statistics and analyse the effectiveness of the respective schemes. At the end of the annex, country fiches produced by an external contractor are included, focussing on the United States, Canada, China and Australia.

2.1. United States

According to the Gallup worldwide survey, 33 % of all highly-educated workers intending to migrate prefer the EU/EEA, compared to 19 % that prefer the United States. As regards labour migration, the United States applies a demand-driven policy. Highly skilled migrant workers can enter the US labour market on temporary grounds or as lawful permanent residents (with the so-called Green Card). Workers are more often admitted on temporary visas, from which they may subsequently acquire permanent resident status. In practice, this means that most labour migrants enter the United States through sponsorship by an employer, and their right to remain in the country depends on continued employment by their sponsor (or on securing a new one). This selection mechanism aims to ensure that migrants cannot enter in the absence of a concrete demand for their skills and abilities.

The Permanent immigration system

Holders of the Green Card are known as lawful permanent residents (LPR). LPR status is mainly granted on the basis of so-called 'family-sponsored preference' and 'employment-based preference'. Employment-based preferences consist of five categories of workers (and their spouses and children). Only EB1 and EB2 workers can be considered as highly skilled or qualified workers, as per the EU Blue Card definition¹⁹. Employment First Preference (EB1) include: (1) Persons with extraordinary ability in sciences, arts, education, business, or athletics²⁰; (2) Outstanding internationally recognized professors and researchers with at least three years' experience in teaching or research; (3) Multinational managers or executives who have been employed for at least one of the three preceding years by the overseas affiliate, parent, subsidiary, or branch of the US company employing the HSW. Employment Second Preference (EB2) covers professionals with advanced degrees²¹ or aliens of exceptional

¹⁸ Jonathan Chaloff, *Labour Migration Policy Development in the EU: Policy Features and Influence of Directives*, p 3, OECD 2016, forthcoming.

¹⁹ The definition includes: (1) evidence of higher education qualifications: any diploma or other evidence of formal qualifications issued by a higher education institution attesting the successful completion of a post-secondary education programme of at least three years; (2) when provided by national law: by at least five years of professional experience of a level comparable to higher education qualifications relevant for the profession/sector.

²⁰ Applicants in this category must have extensive documentation showing sustained national or international acclaim and recognition in their fields of expertise. Such applicants do not have to have specific job offers, as long as they are entering the U.S. to continue work in the fields in which they have extraordinary ability.

²¹ Professionals with advanced degrees concern those who hold degrees beyond a baccalaureate degree, or a baccalaureate degree and at least five years progressive experience in the profession.

ability²². The permanent immigration system allocates 140 000 visas annually for high-skilled immigrant and their families.

In 2013, 158 466 persons accessed LPR status through the employment-based preference.²³ This represented 16 % of the total LPR flow of that year.²⁴ Out of the total of employment-based preference LPRs, 28,6 % are allocated to each of the first three employment preferences; EB1 and EB2 included.²⁵ The visas are allocated according to a cascading system, i.e. when the number of visas available under the highest preference category are not used, they can be used for the next preference category. Generally, there are more EB1 visas available than used. The first preference (EB1 priority workers) accounted for 24 % of new employment-based LPRs. Most of the unused EB1 visas (extraordinary ability visas) in 2013 were used in the second preference (EB2 professionals with advanced degrees) which represented 39 % of new employment-based preference LPRs.

H-1B visa

The H-1B visa is the most comparable to the EU Blue Card. H-1B visas are temporary (three-year, one-time-renewable) visas issued to high-skilled foreign workers. It requires the migrant worker to hold a higher education degree (or its equivalent) and to be sponsored by a US employer. The employer must submit a Labor Condition Application (LCA) to the Department of Labor²⁶ There is no labour market test under this category, whereas this is the case under other entry routes. In terms of salary requirements, the Labor Condition Application (LCA) requires employers to attest that they will pay H-1B workers the higher of (1) actual wage level they pay other employees with similar experience and qualifications or (2) the prevailing wage. The prevailing wage is determined based on the position in which the applicant will be employed and the relevant geographic location (among other factors). The US Department of Labor (DOL) maintains a database with applicable current prevailing wage levels based on occupation and work location. In principle, H-1B dependent firms are required to hire equally qualified US workers, and to refrain from laying off similar US workers. However there can be exceptions to this principle. Firms are not prohibited from displacing US workers as long as they pay the H-1B workers a minimum of USD 60 000 per year or the workers have a relevant master's degree. Furthermore, the employer has to give public notice at the place of employment about their wish to hire an H-1B worker. In terms of rights, the H-1B does not offer as extensive rights as the EU Blue Card. While H-1B workers may be accompanied or joined by a spouse and unmarried children under the age of 21, these family members may not engage in employment under this visa and must change status to a category for which employment is authorized. An H-1B holder may not be granted permanent residency independently, but the employer may sponsor the applicant for permanent residency immediately under another scheme. H-1B holders are the main applicants for EB-3 employment visa, which is grants permanent residency to professionals or other type of workers including HSW. In case of unemployment, the HSW may not stay in the country to search for a job.

²² Persons with exceptional ability in sciences, arts, or business. Exceptional ability means having a degree of expertise significantly above that ordinarily encountered in these fields.

²³ Monger, R. and Yankay, J., *Annual Flow report, U.S. Lawful Permanent Residents: 2013*, Office of Immigration Statistics policy directorate, May 2014.

²⁴ Ibid.

²⁵ Ibid.

²⁶ U.S Citizenship and Immigration Services, *H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models*.

In 2014, the H-1B visas were capped at 65 000. In general, the annual quota for H-1B visas is filled in the first months of the year, and no new H-1B visas are issued thereafter. A problematic effect of applying such numerical limits is that when these are reached rapidly, admissions become less selective and highly qualified candidates may be turned away because there are no visas left. There are however exemptions for HSW in STEM fields and non-profit organisations (such as universities, research labs and think tanks) that are not subject to H-1B caps. In reality, the total number of H-1B visas issued is thus much higher than the official cap.

As mentioned above, the H-1B visa allows foreigners to enter the US for a specific limited stay but it also allows employers to apply immediately for permanent resident status for their sponsored foreign-born employee. According to another 2012 study, 90 % of employment-based Green Cards (permanent visas) were granted to individuals who originally entered the US as foreign students and temporary workers, many of whom held H-1B and L visas.²⁷ The temporary-to-permanent resident transition amongst highly qualified migrants is a key characteristic of the US immigration system.

Recent policy debates in the United States have focused on the need to make permanent status more easily accessible to successful students and skilled workers. Employers have pushed for this especially in STEM fields (science, technology, engineering and maths).²⁸ Legislators have proposed a piecemeal approach to immigration reform, and Congress is currently considering the following legislation concerning highly skilled migrants²⁹:

- *Immigration Innovation Act*: A bipartisan bill introduced in the Senate in January 2015 that would almost double the number of visas for temporary high-skilled workers (H-1B visas), from 65 000 to 115 000, and eliminate annual per-country limits for employment-based Green Cards.
- *Start-Up Act*: A bipartisan bill introduced in the Senate in January 2015 (three prior versions had been introduced) that proposes to create an entrepreneur visa for self-employed immigrants and a STEM visa for US-educated workers with advanced degrees in science, technology, engineering or mathematics, and to eliminate per-country caps on employment-based immigration visas.

Key statistics

A significant portion of immigrants to the US, especially recent arrivals, tend to be highly educated, with 37 % of those of working age having at least a college degree, compared to 26 % in the EU. In 2013, 2.1 million persons were issued temporary (non-immigrant) visas (excl. tourists), an increase of five percentage points compared to 2012. A significant share of those consisted of speciality occupations (H-1B), which accounted for 153 223 issuances in 2013 (see USA Country fiche in annex). H-1B visas went mostly to nationals of India (64 %) and China (10 %). About half (54 %) of all approved H-1B visa applications for initial employment were filed abroad. Demand for H-1B visas was strong in both 2013 and 2014, with the annual cap of 65 000 being reached in the first week of filing. Most permanent

²⁷ CRS Report 7-5700, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees*, Congressional Research Service, 11 May 2012 cited in Koslowski, R., *Selective migration policy models and changing realities of implementation*, International Migration Vol. 52 (3) 2014.

²⁸ Martin, P., *Attracting Highly Skilled Migrants: US Experience and Lessons for the EU*, Robert Schuman Centre for Advanced Studies, European University Institute, Florence, 2012.

²⁹ Renswick, P., *The U.S. Immigration Debate*, The Council on Foreign Relations (CFR), New York, 2015.

migration to the US is for family reasons, which accounted for 735 000 people or 74 % of the total immigration in 2014.³⁰ Permanent residence, through employment-based Green Cards, was mostly given to migrants who had already been admitted as temporary workers (140 000). The number of new arrivals who were granted permanent resident status was 21 000 in the same year (2013).³¹

2.2. Canada

Legal and policy framework

Canada has put in place multiple schemes supporting the entry of different categories of skilled workers. This section will first look at the permanent programs, including the Express Entry system introduced in 2015. Secondly, it will describe the temporary schemes. Thereafter, some key statistics will be presented.

Permanent Residence Programs

To date, Canada grants permanent residence under two streams: the Family Class and the Economic Class. Under the Economic Class, the skilled migration programs for permanent residence are the Federal Skilled Trades Program (FSTP), the Federal Skilled Worker Program (FSWP) and the Canadian Experience Class (CEC). These programs assess applicants based on a range of 'human capital factors', such as age, education, language proficiency and work experience. Applicants who possess the sought-after characteristics earn points under a points based system at a later stage. Skilled work experience and minimum language proficiency in English and/or French are the minimum requirements across all programs. However, applicants are not always required to have a formal job offer or Canadian work experience, although such features might increase their prospects of success, depending on the program through which they apply.

These programs place greater emphasis on the skilled work experience of candidates than on their formal educational attainment, and therefore all include minimum requirements on skilled work experience. While the educational requirements are low or non-existent for the FSTP, FSWP and CEC, candidates can gain additional points for their education during the Express Entry stage if they have either a Canadian post-secondary diploma or equivalent foreign credentials that are supported by an Educational Credential Assessment (ECA).³²

The Federal Skilled Worker Programme (FSWP) covers more than 80 % of all admissions for economic purposes and is specifically designed to attract HSW.³³ The selection of labour migrants under the FSWP is based on a points based system. While the FSWP is capped, the number of permits issued has increased in recent years. With 5 000 permits issued in 2013, it was increased to 25 000 in 2014, i.e. more than five times as many. Moreover, the number of

³⁰ OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 258.

³¹ US Department of Homeland Security.

³² The ECA certifies that their educational level is equivalent to Canadian post-secondary level. Note that education can be important for meeting the minimum number of points in Express Entry but is more important for moving into the pool of candidates, which is filled by the top candidates only.

³³ CanadaVisa, *Canada Federal Skilled Worker (Professional) Immigration*.

occupations that are open to foreign workforce more than doubled, from 24 in 2013 to 50 in May 2014.³⁴

Express Entry

Canada uses a centralised online application system for all permanent residence applications (Express Entry) and online application processes for the temporary residence applications (TFWP and IMP, see below). Express Entry was introduced in the beginning of 2015. All applicants to the economic stream must make an initial application through the Express Entry system. This is used as a 'first filter' for establishing whether applicants are eligible for one or more of the three federal programs (FSWP, FSTP, CEC), or the Provincial Nominee Program (PNP).³⁵ Those who fulfil the eligibility criteria are then moved into a 'pool of candidates', where they are ranked using the (points-based) Comprehensive Ranking System.³⁶ Only those candidates who are ranked above a certain threshold are issued with an Invitation to Apply (ITA) for permanent residence, at which point they can begin the application process for the individual programs. There is no defined quota for Express Entry applications and candidates are free to make applications whenever they wish. However, this does not mean that all applicants for Express Entry receive an invitation to apply (see statistics below).

As previously mentioned, the features that are attributed most weight within the ranking systems are, firstly, the candidates' human capital, assessed based on their age, level of education, official language proficiency and Canadian work experience and, secondly, a pre-existing job offer (supported by a Labour Market Impact Assessment) or the provincial nomination (if held). However, applicants may also gain some additional points for other features, such as the language proficiency of their spouses or common-law partners and the transferability of their skills. Citizenship and Immigration Canada (CIC) aims to process 80 % of the applications through Express Entry within 6 months. After receiving the ITA, candidates have 60 days to apply for permanent residence and fulfil the entry criteria specified under the individual program requirements. For more details, see *Summary table of entry requirements* in the attached Country Fiche on Canada.

The Express Entry application management system was adopted partly in response to the excess supply of eligible candidates. Due to the many eligible applicants, the CIC faced backlogs and was forced to take either a 'first come, first served' approach (entailing long processing times) or to consider other policy tools, which all had their own draw-backs. By introducing Express Entry as a 'first filter' selecting the most appropriate candidates from a 'pool', the government could control and select intake more effectively. Another reason for introducing Express Entry was to reduce processing times. Indeed, while it is still too early to draw final conclusions, the CIC seems to be on track to meet the official target of processing 80 % of applications within six months.³⁷ Furthermore, the ranking system is considered transparent and is widely known and understood. Significant efforts have also been made by the CIC to engage employers in the system (via e.g. employer liaison network, Employer

³⁴ For more details, see attached Country Fiche on Canada.

³⁵ The PNP is a system of provincial/territorial nomination of immigrants. Only the federal programs will be presented in this analysis.

³⁶ This takes into account factors such as skills and experience; whether they have a job offer; whether they have a nomination from a province or territory. Extra points are available for a job offer backed by a Labour Market Impact Assessment (LMIA) and/or provincial nominations.

³⁷ See Country Fiche: Canada, in annex.

Portal, Job Bank). While the system seems to work well, it remains early to assess the full impact of Express Entry.

Temporary Residence Programs

There are two temporary residence schemes for skilled workers: the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP). Applications through the TFWP must always be supported by a job offer and a positive Labour Market Impact Assessment (LMIA). The IMP, being largely regulated by international agreements, does not require LMIA. Workers under the TFWP normally receive employer-specific work permits, whereas IMP workers generally have greater labour market mobility.

Under the TFWP, there are two forms of entry: the 'high-wage' and 'low-wage' stream. Most migrant workers under the TFWP are low-skilled. Under the high-wage stream, employers must obtain a positive LMIA, also sometimes referred to as a 'confirmation letter' from Employment and Social Development Canada (ESDC), proving that the worker is needed for a specific position.³⁸ Employers can use either the Temporary Foreign Worker Web Service or a paper application form to apply for the LMIA. The cost of each LMIA (for each position requested) is CAD 1 000. The temporary worker must then apply for a work permit, using their LMIA-supported confirmation letter (provided by the employer). LMIA's remain valid for six months. Unless the position is of a limited duration, employers must submit a Transition Plan showing how they will recruit and train Canadians and how they will support the TFWs to become permanent residents. These activities must be undertaken over the course of the employment period.³⁹ If employers are inspected, or apply for an additional LMIA later on under similar circumstances, they will have to report on their progress concerning the commitments they made in the Transition Plan. For more details on the numbers of temporary work permit holders in 2013, see Country Fiche: Canada in annex.

Rights

All foreign nationals working in Canada (both temporary and permanent) must be granted equal labour rights and benefit from the same working conditions as native Canadians. Once they become permanent residents, skilled foreign workers face no longer any restrictions to their labour market access or mobility. For permanent residence programs, provincial and territorial governments have the responsibility to uphold a certain level of labour standards (applicable on equal terms as to native Canadians and immigrants with a right to permanent residence). For temporary foreign workers, Employment and Social Development Canada (ESDC) is responsible for following up with employers who may be subject to inspection.

Key statistics

The expansion of economic migration programmes in Canada has led to a change in the categories of migrants entering the country. In the mid-1980s, 50 % of migrants were admitted based on family preferences, 30 % were economic migrants and 18 % were refugees. By 2009, these proportions changed to 38 %, 47 % and 9 % respectively. In 2013, this pattern was yet more pronounced: out of the 258 953 permanent residents admitted, 148 181 (57 %) were under the economic class of migration programs, whereas 81 831 (32 %) came under the

³⁸ Employment and Social Development Canada, Temporary Foreign Workers, *Streams for High-wage or Low-wage Positions*.

³⁹ Employment and Social Development Canada, Temporary Foreign Workers, *Stream for High-wage positions*.

family class and 28 941 (11 %) came as refugees.⁴⁰ However, it should be noted that the group of migrants under the economic class also includes dependents.

In 2013, migrants in Canada continued to be well qualified: 46 % (75 000) of permanent residents between 25 and 64 years of age had completed post-secondary studies with a bachelor's, master's or doctorate degree as their highest level of education, a 10 % increase from 2012 (68 000).⁴¹

The number of applicants for the permanent economic programs currently exceeds the number of available places. Between 1 January and 6 July 2015, 41 218 of those who applied through Express Entry were deemed to fulfil the conditions for one or more permanent economic programs. However, only 12 017 (11 % of all applicants and 29 % of those in the pool) have been issued with an invitation to apply for permanent residence.

Data on work permits issued by nationality is not available, but the same kind of data does exist on candidates invited through the Express Entry scheme. As of 6 July 2015 the top ten countries of citizenship were: India (2 687 invited candidates), the Philippines (2 514), United Kingdom (951), Ireland (682), China (531), United States (521), South Korea (327), France (258), Australia (257) and Mexico (249). It should, however, be noted that invited candidates do not necessarily gain permanent residence.

2.3. China

Legal and policy framework

In the past decades, China has undergone significant political, economic, and demographic changes that have influenced migration both to and from the country. In 2011, the country was ranked as the fourth largest country of emigration in the world by the World Bank. In addition to large flows of emigrants leaving in search of better opportunities elsewhere, and the recurrent, more traditional flows of internal migration, a new trend of immigration into China is emerging. This phenomenon is partly driven by the country's rapid economic growth as well as its demographic transition. At a time of increasing labour demand, the growth of the Chinese labour force is slowing down, which in turn increases pressure on wages and the China's aging population.⁴²

In June 2012, the new Exit and Entry Administration Law (*Chujing Rujing Guanli Fa*) was passed. It entered into force in July 2013 and replaced both the Law on the Control of the Exit and Entry of Citizens and the Law on the Control of the Entry and Exit of Aliens. Under this law, four categories of visas exist: diplomatic visas, courtesy visas, issued to foreigners who are given courteous treatment due to their status, service visas, issued to foreigners entering China for official service reasons, and ordinary visas. As part of China's efforts to attract highly skilled and talented workers, the new Exit and Entry Law added 'attracting talent' as one of the purposes of the ordinary visa.⁴³ This talented person visa, the so called R-visa, is a residence permit valid up to 5 years, 4 years longer than regular working visas, valid for 1 year only. Eligible TCNs are highly qualified workers or much-needed talent. Exactly how these two categories are defined is left to the discretion of the government departments

⁴⁰ Government of Canada, *2014 Annual Report to Parliament on Immigration*, 2014.

⁴¹ OECD, *International Migration Outlook 2015*, p 194.

⁴² Skeldon, R., *China: An emerging destination for economic migration*, Migration Information Source, Migration Policy Institute, 2011.

⁴³ Exit and Entry Administration Law, Article 16.

responsible for administering the system. In terms of salary, equal pay conditions are not specified; foreign applicants tend to receive higher salaries than their Chinese counterparts. Recipients can bring their spouse, parents, spouse's parents and any children under the age of 18 with them on the same visa. The R-visa offers equal rights to social security (healthcare, pension, workplace insurance, and education for children) as Chinese nationals, and the right to buy one residential property.

The R-visa is complemented by a national scheme called the Thousand Talents Plan (TTP), an incentive scheme launched in 2008 with the aim of attracting 2 000 highly talented individuals to China within its first 5 to 10 years. The rights granted by the R-visa are comparable to the EU Blue Card. In addition, the scheme provides generous financial incentives such as a resettlement subsidies and subsidies and research grants from local governments. For more details on these financial incentives, see attached Country Fiche: China, in annex.

As for the R-visa there are no published guidelines spelling out in which specific fields or for which roles applications are encouraged, but participants move to China as either 'researchers' or an 'entrepreneurs' and applicants are supposed to work in the fields of innovation, science and research. The national TTP is further complemented by various similar schemes at regional level and applicants admitted under these schemes are likewise granted an R-visa.⁴⁴

R-visa holders appear to fall under the same employment law as regular working visa holders. They may change employers as long as their former employer provides them a letter of release and they have a formal job offer from their new organisation. If they do not receive a letter of release, they have to leave the country within 30 days and are then required to apply for a new visa if they wish to return to China. The same applies to those whose employment is terminated, but who are unable to find new employment. The law does not appear to place restrictions on the kind of position that a HSW may fill, but if they cease to work in an area deemed to be in need of high-skilled talent they will no longer be eligible for the R-visa. Upon renewal they would then only be able to apply for a one-year residence permit.

Key Statistics

In 2011, China's high-skilled workforce amounted to an impressive 31.2 million individuals.⁴⁵ Nevertheless, the country is likely to face a shortage of 8 million graduates by 2020, due mostly to growing demand for HSW.⁴⁶ Relative to the size of China's native workforce, the number of foreigners working in China (either on an R- or a regular working visa) is very low, making up less than 1 % of the labour supply. This is especially obvious for HSW. Even according to the most generous estimates, TCNs only make up 0, 01 % of the country's high-skilled workforce.

At the time of the 2010 census, of a work force of 802 million, only 134 889 were foreigners on working visas. Publicly available data does not give any detailed information on recipients or uptake of the R-visa. However, given the unclear application procedures and requirements, it is likely that a significant proportion of recipients have entered China via the TTP scheme (which brings participants to China on an R-visa). The number of TTP participants can

⁴⁴ See Country Fiche: China, in annex.

⁴⁵ China Daily, *China's workforce goes more skilful*, 2012.

⁴⁶ McKinsey China, *The \$250 billion question: Can China close the skills gap?*, Insights – Talent and Leadership, 2013.

therefore be used as a proxy for R-visa recipients, in order to get a general idea of how many TCN HSWs are moving to China under the R-visa.

The TTP scheme has exceeded its target of attracting 2 000 individuals during the first 5 to 10 years of its implementation. During the first 6 years it has brought 4 180 HSW to China. Furthermore, figures show that during the first 5 years of the program, 1 306 of TTP participants, i.e. roughly one-third, became permanent residents. For more details on the uptake of permits under the TTP scheme, see the attached Country Fiche in annex.

Success of the scheme

In comparison to the EU Blue Card, the effects of the R-visa and its associated schemes have been limited. Overall numbers of foreign HSW moving to and settling in China as a result of the introduction of the scheme are significantly lower than the number of TCN HSW taking up work in the EU as a result of the Blue Card scheme, both in absolute terms and as a proportion of the HSW workforce. Up until now, the Chinese schemes have not had a significant impact upon labour shortages in the country.

It seems that, initially, the advantages offered by the TTP program have persuaded some foreign HSW to move to China on a long-term basis. Whether or not this has contributed to technological breakthroughs or the enhancement of China's high-tech sector and other emerging industries (the stated purpose of the TTP), however, is yet to be ascertained, as the impact of the program has not yet been assessed.

2.4. Australia

In 1996, Australia shifted from a human capital model targeting highly skilled migrants, to an approach more sensitive to skills shortages and labour market needs. In 2008/09, the government carried out a review on permanent skilled migration and approved a more demand-driven approach based on employment being arranged prior to arrival. The aim of this reform was to enable migration to better respond to national skills shortages and to ensure a better labour market integration of migrants.

Legal and policy framework

The Australian permanent immigration program is divided into two distinct streams: the Migration Programme for Skilled and Family Migrants and the Humanitarian Programme for Refugees. Within the Migration Programme for Skilled and Family Migrants, the skill stream is linked to the needs of the national labour market, while the family stream aims at facilitating the entry of family members wishing to join their relatives in Australia. Together, the programmes contribute to the national goal of sustained population growth, in a context of great diversity: in 2011 26 % of Australia's population were first generation immigrants. This rate is substantially exceeding those of other major immigrant-receiving countries. In 2011 and 2012, the Skilled Stream accounted for 68 % of the total permanent migration intake.⁴⁷ In 2014, the OECD reported that the Skilled Stream accounted for about two-thirds of the migration visas issued in 2012.⁴⁸

The late 1990s saw a shift in policy focus that culminated in a series of policy reforms. Further criteria were introduced in order to ensure better employment outcomes for migrants,

⁴⁷ Australian Government, Department of Immigration and Citizenship, *2011-12 Migration Program Report*.

⁴⁸ OECD, *International Migration Outlook 2014*, OECD Publishing, Paris, 2014.

such as a nominated skills list, tighter English language requirements, and more stringent rules concerning the recognition of overseas qualifications. Following a first wave of reforms, effective as from 1 January 2009, skilled migrants sponsored by an employer were given higher processing priority over independent migrants. Priority processing was also granted to migrant with skills considered to be in critical shortage within the Australian labour market (including medical and IT professionals, engineers, and construction workers). Furthermore, the age distribution among skilled migrants is influenced by the requirement to be below 50 years of age.

In 2010, the government announced a phasing-out of the Critical Skills List, which had only been introduced in 2009. A new ‘more targeted’ Skilled Occupations List (SOL) entered into force in July 2010, including 181 identified shortage occupations. It is important to note that the Skilled Occupations List includes a variety of professions, both highly skilled (such as nuclear engineers and surgeons) and medium-skilled (such as plumbers and joiners). Likewise, the Consolidated Sponsored Occupations List (CSOL) includes both highly skilled professions and medium and low-skilled professions (like flower growers and pig farmers). It is updated annually by the Department of Immigration and Citizenship in consultation with employers and unions.⁴⁹ Independent skilled migration applicants must hold relevant qualifications in occupations listed on the SOL. In 2011-12, the top five professions for the Skill Stream were accountants, cooks, software and applications programmers, software engineers and program developers.

To date, the selection of labour migrants is a shared undertaking of government and business. The Skill Stream migration programme is divided into several categories. Some categories require a points-based assessment whereas other categories do not. The categories that do not require a points-based assessment are the following:

- The **Temporary Skilled Visa** (*subclass 457*) allows skilled people to work for an approved sponsor for up to 4 years. It is the most comparable to the EU Blue Card. The migrant is required to work in one of the occupations included on the SOL, have a sponsored employer, show evidence of recent relevant skills and experience, and have a level of English proficiency in accordance with the occupational requirements (for example to secure vocational registration).⁵⁰ After two years of employment in the same position, an employer can sponsor a subclass 457 visa holder through the Temporary Residence Transition stream, thereby allowing the migrant worker to switch category to permanent resident status. A high proportion of applicants that switch category this way are international graduates of Australian universities, who first secured employment through the 457 visa.⁵¹ It should be noted that, since 2012, degree-qualified international students have been guaranteed the right to stay and search for employment in Australia for 2-4 years upon course completion (with 4 years allocated to those holding a postgraduate degree).

The categories that do require a points-based assessment are the following:

⁴⁹ Australian Government, Department of Immigration and Border Protection, *The Skilled Occupation List*.

⁵⁰ Most Australian professional and trade regulatory bodies require specific English language levels as a condition to ensure registration to practice, most ranging from International English Language Testing System Band 6 to Band 8 (for example IELTS Band 6 for professional engineers, Band 7 for all medical and allied health practitioners, and higher levels for lawyers). See Country Fiche: Australia in annex.

⁵¹ See Country Fiche: Australia, in annex.

- The **Skilled-Independent Visa** (*subclass 189*) is a permanent visa that requires an expression of interest by the applicant, before he or she can apply through SkillSelect. A sponsor is not necessary; however the applicant must select an occupation in the relevant SOL and his or her skills are thereafter assessed by a relevant authority. Moreover, the applicant must be under 50 years of age and be proficient in English. Those who cannot demonstrate the specified English level for their field, and/or those whose qualifications are unlikely to be recognised are not eligible to proceed with their application. Points are granted for the number of years worked in skilled employment, the level of qualifications, qualifications obtained in Australia, working experience in Australia and partner's skills.
- The **Skilled-Nominated Visa** (*subclass 190*) is a permanent visa that requires the applicant to express his/her interest before the start of the application procedure. Furthermore, the applicant has to have a sponsor and be nominated by a state/territory government. The applicant's skills are assessed by the relevant authority against the relevant CSOL occupation, i.e. the one indicated by the applicant.⁵² Moreover, the applicant must be under 50 years of age and be proficient in English (same as under subclass 189). Points are granted for years worked in skilled employment, qualifications, qualifications obtained in Australia, working experience in Australia and partner's skills.
- The **Skilled-Regional (Provisional) Visa** (*subclass 489*) is a temporary entry channel that grants residence for up to 4 years and for which the applicant must express interest before being invited to apply. The applicant can be sponsored by either an eligible relative or by a state/territory government and the occupation must be listed either in the SOL or in the CSOL. Moreover, the applicant must be under 50 years of age and proficient in English.
- The **Employer Nomination Scheme** (*subclass 186*) is a permanent scheme for applicants sponsored by an employer. It requires a skill assessment by the relevant authority and 3 years of work experience within a profession listed in the CSOL.
- The **Regional Sponsored Migration Scheme** (*subclass 187*) is a permanent scheme that requires the applicant to be sponsored by a regional employer and to hold a qualification at level 1, 2 or 3 within the Australia New Zealand Standard Classification of Occupations (ANZCO).
- The **Skilled-Independent Visa** (*subclass 189*) requires the applicant to express his or her interest and to be invited to apply in order to be granted permanent residence. A sponsor is not necessary; however the applicant must select an occupation in the relevant SOL.
- The **Skilled-Nominated Visa** (*subclass 190*) requires the applicant to express his or her interest and to be invited to apply in order to be granted permanent residence. It requires the applicant to be nominated by a state/territory government and to select an occupation in the CSOL.
- The **Skilled-Regional (Provisional) Visa** (*subclass 489*) is a temporary entry channel that grants residence for up to 4 years and for which the applicant must express interest before being invited to apply. The applicant can be sponsored by either an eligible relative or by a state/territory government and the occupation must be listed either in the SOL or in the CSOL.

⁵² Australian Government, Department of Immigration and Border Protection, *The Consolidated Sponsored Occupation List*

Temporary Skilled Visa (457)

Other than the permanent skilled migration programme, it is however essential to recognise that the vast majority of skilled applicants now enter Australia as temporary long-stay workers. This is a category with no annual quota and only minimal requirement for labour market testing that reflects the priorities of sponsoring employers.⁵³ The Temporary Skilled Visa (subclass 457) is the most comparable to the EU Blue Card as it is temporary and sponsor-based. It is of interest to Australian employers in multiple fields as it allows them to select migrants based on their personal attributes and grants relatively speedy access to work in under-supplied sectors and sites for up to 4 years (with scope for extension). Subclass 457 visa plays a vital role in assuring workforce supply in selected fields, including medicine and nursing. From the migrant's perspective, subclass 457 offers attractive benefits such as facilitated priority processing, immediate access to work, the possibility to change employer, and the possibility to switch to a permanent skilled migration permit.

The selection of most applicants was tightened in July 2013, as the skills assessment was reinforced, the English requirements were increased and the sponsor was required to demonstrate that there was actually a vacancy and had to commit to train local workers. In 2013-2014, demand for these visas decreased significantly, and visa grants fell by 22 % to 98 600. For the second year in a row, India was the top source country with 24 500 grants, followed by the United Kingdom and China with 16 700 and 6 200 grants respectively.⁵⁴ By June 2014 the number of temporary 457 visa professionals far exceeded the scale of points-tested permanent skilled migrant arrivals in key sectors such as IT, engineering and medicine. By this time, around 50 % of permanent skilled migrants were also selected onshore i.e. among international graduates of Australian universities (for example in accounting and nursing), or among previously temporary foreign workers.⁵⁵

SkillSelect

The dividing line between 'permanent' and 'temporary' migrants has become increasingly blurred over time, but temporary migration continues to dominate. In a typical year up to 130 000 '457' visa primary applicants become permanent residents – exceeding the number of primary applicants in the 128 550 permanent skilled migration quota (where stated numbers include all accompanying family members). Reflecting this trend, a new model to select skilled migrants called the Skilled Migrant Selection Model (SkillSelect) was introduced in Australia in July 2012, following an internal review of the points-based system.⁵⁶ The model is an electronic system whereby prospective applicants must first submit an expression of interest (EoI) for an initial review of their skills through the Department of Immigration and Citizenship before being invited to make a visa application⁵⁷. SkillSelect can be used for both temporary and permanent primary applicants. Lodged applications can be screened online, by both prospective employer and state/ territory government sponsors. Applicants can be offered a permanent highly skilled job immediately, or (alternatively) a

⁵³ Khoo, S-E., McDonald, P., Hugo, G., *Temporary Skilled Migrants in Australia: Employment Circumstances and Migration Outcomes*, Department of Immigration Multicultural and Indigenous Affairs, Canberra, 2005.

⁵⁴ OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2014, p 184.

⁵⁵ Hawthorne, L., *The Impact of Skilled Migration on Foreign Qualification Recognition Reform in Australia*, Canadian Public Policy Journal, Volume 41 Issue Supplement 1, 2015.

⁵⁶ Department of Immigration and Citizenship, *Introduction of a New Points Test*, DIAC, 2010.

⁵⁷ Australian Government, Department of Immigration and Border Protection, *Fact Sheet – Managing the Migration Programme*.

temporary sponsored position at first, while sponsored applicants are fast-tracked thereafter. The applications remain in the ‘pool’ for a defined period of time. If they are not selected within that period, they must submit a new application to ensure that all information is accurate and to prevent processing backlogs.

Key statistics

In 1996-1997, skilled migration represented 47 % of the Migration Programme. By 2011/2012, this share had risen to 68 %⁵⁸. Since 2009, the share of the employer-sponsored category of the Skill stream has been rising steadily, reaching 37 % of the Skill stream in 2011/2012.⁵⁹ From a quantitative perspective, the Skill stream attracts a significant number of applicants, with around 125 000 skilled migrants arriving per year. In 2013/2014, the Skill stream accounted for about two-thirds of the visas issued.⁶⁰ For figures of migrants according to different categories of Australia’s immigration skilled stream (2011/2012), see Country Fiche: Australia in annex.

Recent statistics show that temporary migration, for work or study purposes, is increasingly becoming the first step toward permanent settlement in Australia. In 2011-2012, around 40 % of applicants for permanent visas were already residing in Australia, and half of these applicants had a temporary skilled permit.⁶¹ By 2015, this had risen to around 50 %. Immigration policy in Australia distinguishes between on- and off-shore applications, and provides bridging visas between the two. For more details, see Country Fiche: Australia in annex.

During the 2014/15 program year, in the three months (quarterly publication) up to 31 December 2014, 27 660 subclass 457 primary visa applications were lodged. The acceptance rate was very high (92 %) and 25 530 visas were granted. In 2014-15, there were 130 000 primary applicants. On 30 September 2015, 103 860 subclass 457 primary visa holders resided in Australia. Of those individuals approximately half had launched their application onshore and half had done so before their arrival. In 2012-13, 40 450 subclass 457 visa holders were granted permanent residence.

A comparison between the number of Blue Cards and the number of 457 visas reveals that Australia grants almost twice as many high skilled permits in three months as the EU grants in one year. In terms of coverage, the majority of Blue Cards have been issued in Germany, but Australia also suffers from an uneven geographical distribution of migrants, whereby migrants tend to gravitate towards the top four metropolitan cities. To tackle this uneven distribution, Australia has devised specific permits for rural Australia.

2.5. Switzerland

Legal framework

The Aliens Act was approved by the Swiss voters on the 24 September 2006 and entered into force on the 1 January 2008. The law regulates the access to the Swiss labour market for third-country national HSW. It mainly covers the entry and residence of persons who are

⁵⁸ The most updated statistics available from national official sources date from 2011/2012 (including the national statistical institute and the Department of Immigration and Citizenship sources).

⁵⁹ DIAC, *2011–12 Migration Program report*, Canberra, 2012.

⁶⁰ OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 184.

⁶¹ Parliamentary Library, *Temporary skilled migration*, 2014.

neither citizens of either the EU or the European Free Trade Association (EFTA), nor asylum seekers.⁶²

Switzerland has a dual system of work permits for TCNs. The first concerns citizens from EU and/or EFTA countries, who are generally allowed to come to Switzerland for up to three months to look for work, a period that can be extended to six months if proof of an active job search can be provided. The second concerns third-country nationals. Citizens from these countries must have a binding work contract as well as the appropriate work visa before entering the country. A job offer alone is not enough to ensure that a permit is granted.

Application forms and specific requirements differ from canton to canton, but, in general, non-EU/EFTA citizens need a specific residence permit with authorisation to work in Switzerland. This applies whether the employment contract is with a Swiss or a foreign company and whether the work is paid or unpaid. Whether or not the authorisation to work is granted or not generally depends on existing quotas, educational level and work experience and the outcome of a labour market test.

The B-permit is a residence permit that is granted to persons who have a permanent employment relationship or one lasting for a minimum of 12 months. The permit is valid for five years and is automatically extended for another five years as long as the employment relationship lasts. However, the extension may be limited to one year if the person is unemployed for longer than 12 consecutive months. The B-permits are issued on a quota basis and tie the permit holder to the initial employer. The permits often specify that the holder lives in the canton where the permit is issued, and that he or she cannot leave the canton. Persons wishing to be self-employed can get a B-permit valid for five years if they can prove they have sufficient financial resources while being self-employed. Persons who settle in the country without gainful employment can also be granted a B-permit provided they have sufficient resources.⁶³

After an uninterrupted stay of at least 10 years, the TCN may obtain a C-permit, i.e. a permanent residence permit. Nationals from the US and Canada only have to stay for 5 consecutive years to obtain the C-permit. With this permit, the visa holder can change employer freely and live in any canton in Switzerland. Cantons are responsible for issuing permits, subject to federal approval.

Quotas

Switzerland is among the OECD countries with the largest immigrant populations – 27 % of the working-age population are foreign-born. More than 60 % of the migrants come from high-income OECD countries, more than half of whom are from the neighbouring German/French and Italian-speaking countries with which Switzerland shares the same national languages. Among the other immigrants, the majority are from the successor countries of former Yugoslavia and from Turkey.⁶⁴

The issue of immigration is both high on the policy agenda and vividly discussed in the public debate. Against this backdrop, the Swiss government decided on 28 November 2014 to reduce

⁶² 142.201 Ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative (OASA) du 24 octobre 2007 (Etat le 1^{er} janvier 2016).

⁶³ Swissinfo.ch, *Work Permits*, Article published 20th August 2013.

⁶⁴ OECD, *Jobs for Immigrants Vol 3: Labour Market integration in Austria, Norway and Switzerland*, OECD Publishing, Paris, 2012, p 41.

the number of work permit for inter alia non-EU/EFTA nationals, a decision that took effect on 1 January 2015. The quota for B-permits for TCN workers was set at 2 500 permits in 2015, and will be kept at the same number for 2016. This can be compared with the quotas in 2013 and 2014 that was set at 3 500 in both years. A large number of cantons and business representatives had expressed hopes that the quotas would be increased, yet the Swiss government considered that such an increase would undermine the country's goal of favouring local workers whenever possible.⁶⁵

Key statistics

In 2014, 152 000 foreigners came to Switzerland for long-term stays, i.e. 2 % less than in 2013. This was the first decline since 2009. Citizens from EU/EFTA countries represented almost three-quarters of the inflow. While 64 % of the EU/EFTA nationals came for employment purposes, the main reason for immigration of non-EU/EFTA citizens was family reunification (47 % of the inflow).⁶⁶

2.6. Russia

One of the main challenges in Russia in terms of migration is the significant brain drain. Almost 1 million people have left Russia in the past decade, out of which 80 % were highly qualified.⁶⁷ In 2011, consular statistics estimated that 1.7 million Russian citizens were residing permanently abroad. At the same time, Russia is a main country of destination for citizens of the former Soviet republics. Between 1993 and 2011, more than 13 million individuals arrived in Russia to settle permanently.

Legal framework

Migration legislation in the Russian Federation emerged in the early 1990s, when the Federal Migration Service (FMS) was established. The dissolution of the USSR and subsequent large-scale migration across what was formerly a unified country led to a need to legislate and regulate many aspects of migration. Against this backdrop, Russia started to develop a migration policy in 2010, with a view to, inter alia, attracting highly qualified labour migration to Russia. A bill to that effect was signed in July 2010, and in 2010/2011, 12 500 highly qualified professionals received work permits on preferential terms.⁶⁸

The law includes a fast-track for the target category, which is the main advantage granted to them. HSWs may apply for a three-year work visa, which can subsequently be extended if the applicant receives an annual salary exceeding the statutory level of RUB 1-2 million (or an equivalent of 25 000-50 000 EUR per year or 6000 EUR per month) from a Russian company. The visa also allows for family reunification. Moreover, the deadline for migrant registration is extended and HSW are granted a grace period of 90 days to choose their place of registration, which can be either a company office or a residential building.⁶⁹

⁶⁵ Bal Corporate Immigration, *2016 quotas on highly skilled foreign workers announced*, News Detail: Switzerland, published 11th November 2015.

⁶⁶ OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 252.

⁶⁷ Focus Migration, *Russian Federation*, Country Profile: Russian Federation, No 20, July 2010.

⁶⁸ Migration Policy Centre, *Migration Profile Russia*, June 2013.

⁶⁹ World Economic Forum, *Russia Eases Immigration Controls for Highly Skilled Workers*, Repository of Talent Mobility Good Practices.

Key statistics

Temporary labour migration to Russia continued to grow in 2014. After 2.9 million work permits issued in 2013, more than 3.7 million permits were issued in 2014. About 1.3 million foreigners obtained regular work permits, mostly based on quotas. An additional 159 000 work permits were issued outside of the quota system in 2014, which again represented an increase compared to 2013. The number of special permits for HSWs rose strongly from 26 000 to 34 000. Most HSWs came from countries such as China, Vietnam, Turkey and the Philippines.⁷⁰

Permits issued to Highly Qualified Specialists⁷¹

2010	1 000
2011	10 000
2012	12 000
2013	26 000
2014	34 000

2.7. New Zealand

Temporary labour migration

Throughout the history of New Zealand (NZ), immigration has been a main driver of its national and economic development, and the country continues to receive larger immigration flows than most other OECD countries. Temporary labour migration, the main entry route for labour migrants, has expanded significantly since the late 1990s and has reached a level that is, compared to the size of the population, not matched by any other country within the OECD. New Zealand offers a range of work visas that are all temporary at first, although some can lead to permanent residence. Currently, the single largest component of temporary flows is comprised of Working Holiday Schemes.

Traditionally, the main category of admission for temporary labour migration has been the Essential Skills visa (ES). The firmly established, essential proposition of this visa, often referred to as the 'New Zealanders first' policy of this visa, is to attract only those migrants that fill jobs for which no New Zealander or permanent resident is available. To ensure that priority is given to the local workforce, a labour market test is applied, with the exception of those occupations on the shortage list.⁷² The application for a work visa can be lodged either on- or offline. In practice, the process tends to be largely employer-driven. Not only do applicants need to have a job offer before applying, but, where a labour market test must be passed, it is also up to the employer to make the case with Immigration New Zealand. In principle the duration of the visa is equal to the length of the work contract, but it also depends on the skill level of the job. The ES visa can be granted for a maximum period of 1 year for low-skilled jobs (corresponding to ANZCO levels 4 and 5) to 5 years for high-skilled jobs (ANZCO level 1), in which case the annual salary has to be at least NZD 55 000. The visas can be renewed indefinitely, for as long as the employer can demonstrate that no domestic workforce is available. In reality, however, migrants tend to stay on the ES visa only

⁷⁰ OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 242.
⁷¹ OECD, *International Migration Outlook 2011;2012;2013;2014;215*, OECD Publishing, Paris.
⁷² OECD, *Recruiting Immigrant Workers: New Zealand*, OECD Publishing, Paris, 2014, p 53.

for short periods. Half of those that receive an ES visa for the first time keep it for less than a year. The ES visas also grants labour market access to accompanying family members of primary applicants.⁷³ If the TCN has an ES visa based on a skilled job, he or she may qualify for residence visa under the Skilled Migrant Category (SMC) (see below).

Permanent labour migration policy

As regards permanent migration to NZ, the Immigration Amendment Act from 1991 shifted the policy focus from addressing short-term skill shortages to a medium-term human capital model of skilled migration. The previous Occupational stream was replaced by the so-called General Category which selected migrants using a points system instead of the previously used Occupations Priority List. The objective of the government was to make the selection of skilled migrants more transparent and consistent.

The 1991 law also introduced an immigration target in line with similar targets introduced in Canada and Australia, where the target is a goal rather than a limit, meaning that it is possible for overall acceptances to exceed the limit. This limit has since then been raised and the margin of tolerance has been increased. The policy changes implemented in 1991 and favourable economic conditions in the early 90s resulted in a sharp increase in applicants through the General Category, from less than 10 000 in 1992/93 to nearly 35 000 in 1994/95. The number of applications accepted from all immigration streams exceeded NZ's annual immigration target of 25 000 migrants in each of the 4 years following the introduction of the points system in 1991. In 1994 and 1995 actual numbers overshot the target by more than 100 percentage points.⁷⁴ Simultaneously; there was some evidence that the lack of a consistent English language assessment and a general difficulty in getting migrant qualifications recognized by local industry bodies were causing settlement difficulties for skilled migrants and leading to a discount of their qualifications on the NZ labour market. These concerns and the overflow of the General Category lead to a review of the residence schemes in 1994. Following the 1994 review, the General Category was replaced with the General Skills Category (GSC) in 1995. The reform reinforced the English language requirement and extended it to secondary as well as principal applicants.

In 2001, an annual numeric target for permanent residence approvals was set at 45 000, with a goal of accepting about 60 % through the Skilled/Business Stream, 30 % through the Family stream, and 10 % through the international/humanitarian stream.⁷⁵ The next major shift in immigration policy took place in 2003. Due to shortages in many industries, it was considered that the current human capital model of the General Skills Category had to be modified. As a result, the government replaced the General Skills Category with the Skilled Migrant Category (SMC) which, with some modifications, is still used today.

Skilled Migrant Category (SMC)

The Skilled Migrant Category is a permanent residence permit for those that hold a job offer, are coming to NZ for a specific purpose or event, want to gain experience or work after

⁷³ New Zealand Immigration, *Work Visa Guide*, (INZ) 1016, December 2015, p 6.

⁷⁴ The increases in the number of applications, coupled with an overall improvement in the quality of applicants, resulted in such a large number of applicants exceeding the automatic pass-mark that there were not any spots left over for pool applicants (those with enough points to be considered, but not enough to be automatically accepted). Since Immigration New Zealand was obliged by law to accept these migrants, it lost, in effect, the ability to limit the number of accepted General Category migrants.

⁷⁵ OECD, *Recruiting Immigrant Workers: New Zealand*, OECD Publishing, Paris, 2014, p 38.

studying in NZ or want to join a partner and work.⁷⁶ Since 2004, the SMC operates via a two-step application process. The TCN worker first has to submit an Expression of Interest (EoI) for a permanent residence permit to the SMC pool. This can be done either on paper or online, although the vast majority chooses the latter option which is also cheaper. No supporting documents are required at this stage. Thereafter, the applicants are ranked using a points-based system.⁷⁷ They are awarded points based on their skills, work experience, qualifications, age, and whether they have a job offer. Applicants with over 100 points are thereafter placed in a selection pool. Applicants with 140 points or more are automatically selected. Applicants fewer than 140 points are pre-selected or not according to current quotas and policies, and a certain number of applicants from the pool are then invited to apply for residence through the SMC. Applicants who are selected and have been assessed as having sufficient points are then assessed according to their ability to integrate into society and the labour market. In these situations, holding an offer for a skilled job serves a proxy for settlement and contribution. Migrants without skilled jobs are interviewed to determine their suitability. As a result of the interview, applicants that are selected and apply but who do not have a skilled job offer can be offered job search visas to help them find skilled work in NZ and this way be granted a residence permit.⁷⁸

Following the shift in focus, which partly implied a return to demand-driven policies, the points granted to applicants who already hold a job offer or work contracts increased from 17 % of the pass mark to 54 % of the pass mark. Bonus points are given to migrants who have work experience, needed qualifications or a job offer in a 'future growth area' or an 'area of shortage'. Applicants eligible to claim the maximum number of these bonus points can earn up to 65 points, or 46 % of the auto-pass mark. The points granted for other characteristics were reduced. The importance of age, for instance, was reduced, with the maximum points available falling from 38 % to 21 % of the pass mark. Points for settlement funds and family sponsorship were initially removed entirely, but family sponsorship was reinstated in 2005/06.⁷⁹ Further changes to the point system were implemented in 2007. The bonus points awarded for educational qualifications obtained in Australia were increased and the points for qualifications and/or job offers held by the partner of the principle applicants were doubled.

New Zealand's immigration policy has remained relatively unchanged in the recession following the 2007 global financial crisis, which was still less severe than in many other OECD countries. A new immigration act was passed in 2009, which newly differentiated the number of points granted based on the level of the qualification obtained, reducing the bonus points for vocational training received in New Zealand.⁸⁰

Key statistics

In 2013/2014, 20 300 persons (or 46 % of all residence approvals) were admitted through the SMC, a 12 % increase compared to 2012/2013. This first increase since 2009/2010 could be interpreted as a trickle-down effect of the increase in Essential Skills (temporary) workers. In fact, most principal applicants in 2013/2014 had a job in New Zealand, and 92 % were awarded points for a job or a job offer. India was, with 20 % of the total, the most important country of origin among those admitted to the SMC, followed by the United Kingdom (13 %). Reflecting a long-term trend, the increase from India (up from 17 % in the previous year) is

⁷⁶Immigration New Zealand, *Working Temporarily in New Zealand*.

⁷⁷ OECD, *Recruiting Immigrant Workers: New Zealand*, OECD Publishing, Paris, 2014, p 103.

⁷⁸ OECD, *Recruiting Immigrant Workers: New Zealand*, OECD Publishing, Paris, 2014, p 103.

⁷⁹ Ibid, p 39.

⁸⁰ Ibid, p 40.

mainly due to the transition of former Indian international students to temporary work and then to permanent residence. In 2013/2014, 26 500 persons were granted work permits in New Zealand under the Essential Skills visa, an increase of 18 % compared to 2012/2013 and the second year increase since the start of the global economic slowdown.⁸¹

3. ANALYSIS AND CONCLUSION

The more Member States have positioned themselves to compete for talent worldwide, the more their labour migration policy frameworks have been adapted to attract skilled migrants and ensure that they stay. This is evident as regards international students, permanent residence, family reunification and naturalisation. Foreign students may initially sustain university enrolment figures, but they are also prospective future workers with the potential to rejuvenate the work force. Thus, most EU countries have looked at various ways to attract them. Moreover, maximizing the retention rate of skilled migrants in the host country requires attractive policy frameworks, allowing a smooth transition towards permanent residency, coupled with good conditions for family reunification.⁸²

Comparing the schemes examined in the previous sections, one can identify a number of similarities and differences compared to the EU Blue Card. The following section will compare some key features of the schemes that differ across the countries.

Salary requirements

Salary thresholds are applied differently across the countries analysed. They can exempt certain applicants from labour market tests (US) or other prerequisites (AUS), or extensions (CAN).⁸³ The salary thresholds vary widely across the EU Member States, which is why it is difficult to compare the salary threshold of the EU Blue Card directly with international competitors. While the EU Blue Card sets a relatively high threshold, other HSW schemes, for example in Canada⁸⁴, do not apply an explicit salary threshold, but rely on alternative minimum salary requirements instead. In Russia, the HSW has to earn an annual salary of at least RUB 1-2 million per year (or around EUR 6000 per month). The salary threshold in Russia can be compared to the annual salary threshold in LU (71 946 € in 2015). This is however significantly higher than the EU Blue Card salary threshold in RO, which was € 2152,36 in 2015.

Expression of interest system

CAN, NZ and AUS all use Expression of Interest systems, a tool that is credited with a potential to reduce backlogs and involve employers in the recruitment process. These online tools are usually coupled with Points Based Systems that assess and rank the candidates according to a number of parameters, linked to the needs of the labour market and the migrant worker's potential to integrate. Creating such a system with a pool of talent at EU level could help facilitating access to labour market information; however it would require extensive cooperation and coordination with Member States and employers. The implementation of

⁸¹ OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 232.

⁸² Chaloff, J., *The framework for labour migration in European Union countries and the policy impact of the EU Blue Card Directive*, DELSA/ELSA/MI(2015)3, OECD Publishing, Paris, 2016, p 15.

⁸³ Chaloff, J, *Understanding salary thresholds as they are applied in the EU Blue Card scheme(s)*, Presentation 7/12/2015, Expert Group Economic Migration Second Meeting, Brussels, 2015.

⁸⁴ No explicit salary thresholds apply under the Federal Skilled Worker Program and the Provincial Nominee Program.

such a system at the EU-level could therefore be an option to be explored for the medium or long-term.

Employer sponsorship

Employer sponsorship is another way of involving employers in the selection of foreign workers, while also boosting compliance with the immigration system, by holding the employer liable for any breaches. Australia for example, puts a greater responsibility on the employer through sponsorship. There are both temporary and permanent employer sponsorship systems⁸⁵.

In-country status changes

Most EU countries do not allow in-country status changes, and require the applicant to be recruited directly from abroad.⁸⁶ This is different from many other schemes studied in this annex, such as CAN, US and NZ. In these countries, there are possibilities to switch between visas through a combined track of permanent and temporary residence permits. This may open up greater opportunities for transitions from e.g. a student visa to an employment visa, as is the case in Australia. In NZ, most HSW have been in the country for some time before they are admitted to the Skilled Migrants Category, and are generally in an employment commensurate with their formal qualification level. Another tool is to offer bridging visas, which is also something that Australia is doing.

Caps and limits

While all limits to the schemes are capped e.g. in CAN, US, UK, NZ and Switzerland, these countries generally attract more prospective candidates than there are places available. This is not the case for the EU Blue Card. Furthermore, a number of these schemes operate through points-based systems (e.g. CAN and UK), which does not exist on EU-level today. Similar methods would therefore not be suitable within the current European context.

Changes in employment

International competitors do to a varying extent restrict migrant workers freedom to change employer, occupation and location. In the US, for instance, an H-1B worker who wishes to change employer needs to provide a new petition filed by the prospective employer before the expiration of the visa. In AUS on the other hand, the subclass 457 allows a foreign national to change employer without having to obtain a new visa. Under the Provincial Nominee Program in Canada, Provincial Nominees are expected to live in the province that nominated them, but all permanent residents gain unlimited mobility rights upon entry.

Permanent residency

The H-1B visa in the US does not grant immediate permanent residence, but the employer may sponsor the applicant for a Green Card. In AUS, it is possible, under certain conditions, to switch from the subclass 457 to a permanent residence permit. In NZ, the transition of

⁸⁵ Temporary Skilled Visa (subclass 457), Employer Nomination Scheme (subclass 186) and Regional Sponsored Migration Scheme (subclass 187).

⁸⁶ Chaloff, J., *The framework for labour migration in European Union countries and the policy impact of the EU Blue Card Directive*, DELSA/ELSA/MI(2015)3, OECD Publishing, Paris, 2016, p 4.

foreign workers from temporary visas to permanent residence occurs frequently. It is facilitated through the allocation of additional points under the Skilled Migrant Category.

Family reunification

While most international competitors grant the right to family reunification, they do not always allow family members to work. The US allows H-1B workers to be accompanied or joined by a spouse and unmarried children under the age of 21. Yet, the H-4 visa they receive, grants no access to the labour market. Consequently, if the family members of an H-1B visa holder wish to work, they are ought to apply for an independent work visa. In AUS, an Australian Spouse Visa allows married and registered partners of Australian permanent residents to enter and/or remain in the country, and accompanying family members have full employment rights. An Australian Spouse visa is initially granted as a temporary visa. After two years, the relationship is reassessed and if deemed genuine a permanent visa will be granted. Dependants of Subclass 457 visa applicants are also eligible to accompany the primary permit holder to Australia. Canadian permanent residents may sponsor Family Class immigrants (spouses or partners, dependent children, parents, grandparents and other close relatives) to become permanent residents. Once they have become permanent residents, they have the right to study and work, but until that moment eligible family members must be sponsored.

4. POTENTIAL IMPACTS ON COUNTRIES OF ORIGIN

'Brain drain' is, like migration itself, part and parcel of human development and history. Talented and skilled people have always been attracted by the prospect of better career opportunities and a higher quality of life. Nevertheless, the European Commission recognises that 'brain drain' can be damaging to developing countries because skilled workers, scientists, engineers and doctors play essential roles in a state's economic growth and development.

The EU's immigration policy aims to be a well-monitored and well-managed system which brings about an added-value and leads to the proverbial 'win-win-win' results, i.e. benefits for receiving countries through meeting labour market shortages, for sending countries through guaranteeing remittances for development, and for migrants themselves through offering employment and control over the use of their wages. The overall objective is to turn 'brain drain' into 'brain gain', both for receiving countries and for countries of origin.

At the same time, it must be noted that brain drain is not caused by the EU migration policy. It is clear, however, that EU migration policies can potentially have an impact on the migration decisions of individuals. The EU Blue Card may reduce human capital, knowledge capital, and hence growth and development prospects, if not accompanied by appropriate policy measures.⁸⁷ EU migration policy measures may also offer an opportunity to tackle some of the challenges involved.

4.1. The safeguard measures of directive 2009/50/EC

Research suggests that policies addressing the supply side of the labour market for HSW (such as direct education or skills subsidies) are the least efficient. This is especially the case

⁸⁷ Kancs, A., Ciaian, P., *The EU Blue Card – Managing Migration Challenges and Opportunities for Developing Countries*, Report EUR 27080 EN, Joint Research Centre, European Commission, Brussels, 2015, p 2.

for Least Developed Countries (LDCs) that are small relative to the EU, since these policies can enhance migration while not having a direct impact on the skilled labour stock in the LDC. Only if the LDC is large enough compared to the EU, the supply side policies may increase the stock of skilled labour in the LDC, as skilled migration decreases the international wage rate for skilled labour.⁸⁸

By contrast, policies implemented on the demand side of the labour market are more efficient.⁸⁹ In terms of feasibility, these policies targeting the labour market for HSW also appear to be less costly.⁹⁰ Indeed, some of the measures foreseen in the EU Blue Card Directive aim at addressing the issue of 'brain-drain' from the demand side by regulating ethical recruitment and encouraging circular migration.

Ethical Recruitment

Article 3(3) explicitly allows the EU and/or its Member States and one or more third countries to enter into agreements to protect the human resources of the developing countries which are signatories to these agreements. To this end, these agreements may list the professions which should not fall under the Blue Card Directive, in order to ensure ethical recruitment in sectors suffering from a lack of personnel. However it is true that currently, no Member State has entered into such an agreement with a third country.

Furthermore, the Blue Card Directive for highly qualified migrants foresees the possibility for Member States to include a mechanism under which they may reject an application for an EU Blue Card in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin, for example the healthcare, education and engineering sectors (Article 8(4)). BE, CY, DE⁹¹, EL, LU and MT have transposed this Article, but no rejections on these grounds have been reported.

Circular Migration

The Blue Card directive facilitates circular migration, the mobility of highly qualified third-country workers between the EU and their countries of origin. It gives migrants the possibility of longer 'time-outs', enabling them to return to their country of origin without being penalised with a loss of their residence permit, or expiration of the years of residence that count towards the right to long-term resident status. Firstly, derogations from Long-Term Residents Directive 2003/109/EC extend the maximum period of absence from the territory of the Community that will not lead to an interruption of the continuous residence necessary to be eligible for EC long-term resident status. Secondly, longer periods of absence than those provided for in directive 2003/109/EC are allowed after highly qualified third-country workers have acquired EC long-term resident status.

Circular migration is primarily considered as a spontaneous movement to achieve goals set within the migrant household. While circular migration may not provide a definite pathway to a more prosperous future, it is likely to support subsistence activities in areas of origin. The critical role played by circular migration is that it allows access to a more diverse resource

⁸⁸ Ibid, p 38.

⁸⁹ Ibid, p 2.

⁹⁰ Ibid, p 39.

⁹¹ DE foresees the option to use this derogation through a regulation (currently not).

base that improves well-being, thereby allows people to survive or even improve their circumstances.⁹²

Reporting Requirement

The Blue Card directive provides specific reporting provisions to monitor the implementation of this Directive, with a view to identifying and possibly counteracting its possible impacts in terms of 'brain drain' in developing countries and in order to avoid 'brain waste'. The Member States have to transmit the relevant data annually to the Commission.

Finally, in addition to the above, some Member States address brain drain and brain circulation through national legislation, bilateral agreements and/or cooperation with countries of origin.⁹³

4.2. The impact of directive 2009/50/EC on countries of origin

Policies specifically focused on circular migration are in their infancy and conclusions cannot be drawn concerning their impact or effects on source countries, destination countries and the migrants themselves.⁹⁴ Even though it is hard to estimate the real benefits or damages of 'brain drain' it can be assumed that small LDCs⁹⁵ close to powerful economic regions are more likely to suffer from 'brain drain' than larger countries. This type of emigration may put the state's economy at risk, and more directly, may affect the education system as well as the healthcare and engineering sector.

In 2013, 188 out of 12 963 Blue Cards (1,45 %) were granted to citizens of LDCs. The top three LDCs among the countries of origin in 2013 were Yemen (51), Bangladesh (39), and Nepal (30). In 2014, 203 out of 13 722 Blue Cards (1,48 %) were granted to citizens of LDCs. The top three least developed countries of origin in 2014 were Bangladesh (47), Yemen (39) and Nepal (34).

Given the low number of EU Blue Cards currently granted to highly qualified migrants from LDCs, the potential negative impacts of brain drain are likely limited for these countries. Middle-income developing countries (DCs) may, however, be exposed to a somewhat higher risk. In 2013, 9 978 Blue Cards (76,97 %) were granted to citizens of DCs. In 2014, this number increased to 10 455 (76,19 %). Nevertheless, in absolute terms the number of Blue Cards granted to citizens of DCs remains relatively low.

⁹² Skeldon, R., *Going round in circles: Circular migration, poverty alleviation and marginality*, IOM, 2012, p 53.

⁹³ European Migration Network (EMN), *Attracting Highly Qualified and Qualified Third-Country Nationals*, Synthesis Report, Brussels, 2013, p. 23.

⁹⁴ Joint Action Health Workforce Planning and Forecasting, *WP7 Report on Circular Migration of the Health Workforce*, Report-Version -02, Catholic University of Leuven, Belgium, Medical University of Varna, Bulgaria, 2015, p 31.

⁹⁵ LDC: least developed country as established by Committee for Development Policy (CDP) of the UN Economic and Social Council (ECOSOC).

EU Blue Cards by citizenship 2013⁹⁶

				LDCs ⁹⁷ :	DCs ⁹⁸ :	OECD
Total⁹⁹	12.963			1,45%	76,97%	18,07%
Asia	6.970	Southern Asia	3.314	188	9.978	2.342
		India	2.644		2.644	
		Iran	394		394	
		Pakistan	189		189	
		Bangladesh	39	39	39	
		Nepal	30	30	30	
		Sri Lanka	15		15	
		Afghanistan	3	3	3	
		Eastern Asia	1.511			
		China (including Hong Kong)	1.011		1.011	
		Japan	246			246
		South Korea	180			180
		Taiwan	63			
		Mongolia	10		10	
		North Korea	1		1	
		Western Asia	1.703			
		Syria	547		547	
		Turkey	409		409	409
		Jordan	290		290	
		Israel	96			96
		Lebanon	95		95	
		Georgia	71		71	
		Azerbaijan	62		62	
		Yemen	51	51	51	
		Armenia	47		47	
		Iraq	30		30	
		Saudi Arabia	3			
		United Arab Emirates	1			
		Bahrain	1			
		South Eastern Asia	350			
		Indonesia	120		120	
		Malaysia	68		68	

⁹⁶ EUROSTAT: *EU Blue Cards by type of decision, occupation and citizenship* [migr_resbcl]

⁹⁷ Least Developed Country (LDC) as established by Committee for Development Policy (CDP) of the UN Economic and Social Council (ECOSOC).

⁹⁸ Developing countries are defined as countries with a GNI of US\$ 11,905 and less (World Bank, 2013). There is no established convention for the designation of "developed" and "developing" countries or areas in the United Nations system. In common practice, Japan in Asia, Canada and the United States in northern America, Australia and New Zealand in Oceania, and Europe are considered "developed" regions or areas. In international trade statistics, the Southern African Customs Union is also treated as a developed region and Israel as a developed country; countries emerging from the former Yugoslavia are treated as developing countries; and countries of eastern Europe and of the Commonwealth of Independent States (code 172) in Europe are not included under either developed or developing regions.

⁹⁹ Regional groupings according to the UN Statistics Division - Standard Country and Area Code Classification

		Vietnam	67		67	
		Singapore	38			
		Philippines	32		32	
		Thailand	25		25	
		Central Asia	92			
		Kazakhstan	39		39	
		Uzbekistan	27		27	
		Kyrgyzstan	18		18	
		Tajikistan	6		6	
		Turkmenistan	2		2	
Americas	1.955	Northern America	982			
		United States	776			776
		Canada	206			206
		South America	655			
		Brazil	265		265	
		Colombia	140		140	
		Venezuela	62			
		Argentina	59		59	
		Peru	47		47	
		Chile	36			36
		Ecuador	22		22	
		Bolivia	14		14	
		Paraguay	5		5	
		Uruguay	4			
		Suriname	1		1	
		Central America	298			
		Mexico	249		249	249
		Costa Rica	18		18	
		Nicaragua	3		3	
		Guatemala	11		11	
		Honduras	9		9	
		Panama	2		2	
		El Salvador	5		5	
		Belize	1		1	
		Caribbean	20			
		Cuba	7		7	
		Trinidad and Tobago	7		7	
		Dominican Republic	2		2	
		Jamaica	2		2	
		Bahamas	1		1	
		Barbados	1		1	
Europe	2.561	Eastern Europe	1.689			
		Russia	994			
		Ukraine	536		536	
		Belarus	143		143	
		Moldova	16		16	
		Southern Europe	870			
		Serbia	412		412	
		Bosnia and	138		138	

		Herzegovina			
		Former Yugoslav Republic of Macedonia, the	116		116
		Kosovo (under United Nations Security Council Resolution 1244/99)	88		88
		Albania	89		89
		Montenegro	13		13
		Croatia	14		
		Western Europe	2		
		Monaco	1		
		Andorra	1		
Africa	1.214	Northern Africa	859		
		Egypt	450		450
		Libya	148		148
		Tunisia	130		130
		Morocco	88		88
		Algeria	28		28
		Sudan	15	15	15
		Middle Africa	150		
		Cameroon	136		136
		Gabon	6		6
		Rwanda	3	3	3
		Chad	2	2	2
		Congo	1		1
		Democratic Republic of the Congo	1	1	1
		Equatorial Guinea	1	1	1
		Southern Africa	75		
		South Africa	74		74
		Swaziland	1		1
		Western Africa	67		
		Nigeria	36		36
		Benin	6	6	6
		Côte d'Ivoire	6		6
		Ghana	5		5
		Senegal	4	4	4
		Mauritania	3	3	3
		Sierra Leone	2	2	2
		Togo	2	2	2
		Guinea	1	1	1
		Mali	1	1	1
		Burkina Faso	1	1	1
		Eastern Africa	63		
		Mauritius	31		31
		Ethiopia	15	15	15

		Kenya	8		8	
		Madagascar	4	4	4	
		Tanzania	2	2	2	
		Eritrea	1	1	1	
		Malawi	1	1	1	
		Seychelles	1		1	
Oceania	144		144			
		Australia	106			106
		New Zealand	38			38
Rest	119		119			
		Unknown	119			
		Stateless	-			

EU Blue Cards by citizenship 2014 (Source: Eurostat¹⁰⁰)

				LDCs:	DCs:	OECD
Total	13.722			1,48%	76,19%	18,19%
Asia	6.946	Southern Asia	3.332	203	10.455	2.496
		India	2.585		2.585	
		Iran	426		426	
		Pakistan	219		219	
		Bangladesh	47	47	47	
		Nepal	34	34	34	
		Sri Lanka	13		13	
		Afghanistan	8	8	8	
		Eastern Asia	1.420			
		China (including Hong Kong)	998		998	
		Japan	199			199
		South Korea	150			150
		Taiwan	66			
		Mongolia	5		5	
		North Korea	2		2	
		Western Asia	1.739			
		Syria	554		554	
		Turkey	442		442	442
		Jordan	176		176	
		Israel	121			121
		Azerbaijan	107		107	
		Lebanon	105		105	
		Armenia	82		82	
		Georgia	63		63	
		Yemen	39	39	39	
		Iraq	35		35	
		Saudi Arabia	10			
		Oman	2			
		Kuwait	1			
		United Arab	1			

¹⁰⁰ EUROSTAT: EU Blue Cards by type of decision, occupation and citizenship [migr_resbc1].

		Emirates			
		Bahrain	1		
		South Eastern Asia	358		
		Indonesia	118	118	
		Vietnam	79	79	
		Malaysia	59	59	
		Philippines	39	39	
		Singapore	35		
		Thailand	28	28	
		Central Asia	97		
		Kazakhstan	41	41	
		Uzbekistan	36	36	
		Kyrgyzstan	9	9	
		Turkmenistan	6	6	
		Tajikistan	5	5	
Americas	2.103	Northern America	1.060		
		United States	837		837
		Canada	223		223
		South America	705		
		Brazil	289	289	
		Colombia	144	144	
		Venezuela	74		
		Argentina	65	65	
		Peru	41	41	
		Chile	49		49
		Ecuador	18	18	
		Bolivia	18	18	
		Paraguay	6	6	
		Uruguay	1		
		Central America	306		
		Mexico	269	269	269
		Costa Rica	9	9	
		Guatemala	9	9	
		Nicaragua	2	2	
		Honduras	5	5	
		Panama	5	5	
		El Salvador	7	7	
		Caribbean	32		
		Cuba	14	14	
		Trinidad and Tobago	7		
		Dominican Republic	9	9	
		Jamaica	1	1	
		Bahamas	1		
Europe	3.024	Eastern Europe	2.117		
		Russia	1.175		
		Ukraine	761	761	
		Belarus	163	163	
		Moldova	18	18	

		Southern Europe	905			
		Serbia	402		402	
		Bosnia and Herzegovina	149		149	
		Former Yugoslav Republic of Macedonia, the	169		169	
		Kosovo (under United Nations Security Council Resolution 1244/99)	73		73	
		Albania	103		103	
		Montenegro	9		9	
		Western Europe	2			
		Andorra	2			
Africa	1.336	Northern Africa	1.000			
		Egypt	464		464	
		Libya	156		156	
		Tunisia	260		260	
		Morocco	84		84	
		Algeria	23		23	
		Sudan	13	13	13	
		Middle Africa	115			
		Cameroon	107		107	
		Gabon	4		4	
		Angola	1	1	1	
		Central African Republic	1	1	1	
		São Tomé and Príncipe	1		1	
		Democratic Republic of the Congo	1	1	1	
		Southern Africa	59			
		South Africa	54		54	
		Botswana	3		3	
		Swaziland	2		2	
		Western Africa	84			
		Nigeria	38		38	
		Benin	4	4	4	
		Côte d'Ivoire	2		2	
		Cape Verde	1		1	
		Ghana	13		13	
		Liberia	1	1	1	
		Niger	1	1	1	
		Senegal	9	9	9	
		Mauritania	6	6	6	
		Sierra Leone	2	2	2	
		Togo	3	3	3	
		Guinea	1	1	1	

		Burkina Faso	3	3	3	
		Eastern Africa	78			
		Mauritius	20		20	
		Ethiopia	17	17	17	
		Rwanda	6	6	6	
		Zambia	1		1	
		Zimbabwe	9		9	
		Kenya	15		15	
		Uganda	3		3	
		Somalia	1		1	
		Madagascar	2	2	2	
		Tanzania	4	4	4	
Oceania	207		207			
		Tonga	1		1	
		Australia	162			162
		New Zealand	44			44
Rest	106		106			
		Unknown	82			
		Stateless	24			

4.3. The specific sensitivity of brain drain of healthcare workers

The risk of 'brain-drain' is particularly pronounced in the health care sector. According to the WHO, the global number of healthcare workers falls short of global demand. Both developed and developing countries are struggling to cope with the huge challenges posed by the imbalance between increasing demand and faltering supply.¹⁰¹

As regards doctors and nurses, most OECD countries have stepped up their education and training efforts since 2000/01 in response to expected shortages in the context of population ageing, (increasing the demand) and the parallel ageing of the medical and nursing workforce (reducing the supply). These efforts have partly slowed down the increase in international recruitment. It appears that within the EU, mobility actually exerted a balancing effect on labour markets by reducing the risks of under-employment within this group in countries sorely hit by the economic crisis.¹⁰²

The WHO Global Code of Practice on International Recruitment of Health Personnel

Where countries encourage circular migration of health workers, they should take into account the WHO Global Code of Practice (The Code) as a starting point for developing circular migration initiatives. The Code is an example of an initiative to reduce brain drain in the health sector. It is a multilateral framework for tackling shortages in the global health workforce and addresses challenges associated with the international mobility of health workers. The Code does not aim at stopping migration, but rather to guide countries to address some of the aspects of health workforce migration that may have a detrimental impact upon countries, and source countries in particular. It establishes and promotes voluntary principles and practices for ethical international recruitment of health personnel. Key principles governing the Code include the right of all people to the highest attainable standard

¹⁰¹ Migration and Health Workers – WHO Code of practice and the global economic crisis, p 1.

¹⁰² OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 108.

of health care and the right for any individual, including health personnel, to leave any country and to migrate to any other country that wishes to admit and employ them.¹⁰³ Another key principle of the WHO's Code of Practice is to train sufficiently large numbers of health workers in order to curb dependence on immigration. Hence, receiving countries' chief means of expanding the supply of doctors and nurses should be to boost their education and training capacities. Policies by sending countries to improve wages and working conditions can also serve as incentives to come home or not to migrate.¹⁰⁴

The Code has been adopted by all 192 WHO Member States and already implemented by 24 EU Member States. Several EU policies in the fields of education, development aid and migration policy support the implementation of the WHO Global Code and reinforce Member States' commitment to the Code to help reduce the negative impact of migration flows on fragile healthcare systems. The EU promotes Member States' endeavours to facilitate circular migration of health personnel, so that skills and knowledge can be acquired to the benefit of both source and destination countries.

Overall, 37 countries have taken a range of steps towards implementing the Code. Already, 33 have reported taking actions to communicate and share information on the recruitment of health workers, related migration issues and the Code among relevant ministries, departments and agencies. In some cases, the Code has been translated into the national language (e.g. in Finland, Norway and Thailand). Some changes to relevant laws or policies are being considered. However, only 10 countries say they maintain records of all recruiters authorized by competent authorities to operate within their jurisdiction, and only nine say that good practices are encouraged and promoted among recruitment agencies.¹⁰⁵

Countries have adopted multiple approaches to raise awareness of the Code and promote dialogue concerning it. For example, the Canadian government is working on disseminating awareness materials for foreign workers entering the country at embassies and high commissions abroad. Norway has reported a number of strategic objectives aimed at addressing its health workforce challenges. The Philippines have adopted a participatory multi-stakeholder assessment process.

As a voluntarily adopted instrument, the Code is still in its early years. Yet, its implementation has stimulated small but encouraging moves from principles to actions.¹⁰⁶ The European Commission has followed these developments closely, has lent its support to the Code and continues to carefully follow its implementation.

5. COUNTRY FICHES OF SELECTED COMPETITORS

This chapter presents in detail the national schemes of four selected international competitors having relevant systems in place to attract highly qualified workers, namely: the United States, Canada, Australia and China. The fiches are prepared by an external contractor (ICF International) as a part of a study to support the Impact Assessment. The contractor remains responsible for the data included in the fiches and the accuracy thereof.

¹⁰³ Migration and Health Workers – WHO Code of practice and the global economic crisis, p 10.

¹⁰⁴ OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015.

¹⁰⁵ Migration and Health Workers – WHO Code of practice and the global economic crisis, p 11.

¹⁰⁶ *Ibid*, p 14.

National schemes for attracting highly qualified workers

Country Fiche: United States

Key Points to note:

- The labour market immigration policy in the United States (US) is demand-driven and employer-led.
- Highly qualified third country nationals (TCNs) can enter the US either through temporary admission for employment purposes (temporary workers visas H-1B and O-1) or through lawful permanent residence status (employment-based 'Green Cards').
- The H-1B visa is comparable to the EU Blue Card and is thus discussed in detail.
- To be eligible for an H-1B visa, a TCN must hold a higher education degree (or equivalent) and be sponsored by an US employer.
- No labour market test is applied for the H-1B visa.
- The number of H-1B visas issued is set to a maximum of 65,000 visas annually.
- In the 1990s (economic boom years), the US Congress periodically, and only for a limited period of time, increased the cap, which went as high as 195,000 H-1B visas issued annually.
- As of 2015, the US Congress is debating on new legislation on highly qualified TCNs.

1. Overview of the scheme

The United States (US) attract a high level of interest from highly qualified third country nationals (TCNs). The public debate on labour immigration, rather than being dominated by attracting foreign talent, is focused on illegal migration and regularisation issues.

The labour market immigration policy in the US is demand-driven and employer-led¹⁰⁷. Almost all persons that enter the US for employment purposes, may only enter through an employer sponsor, and their right to remain in the country depends on continued employment with their sponsor (or on securing a new one). Also caps on legal migration influxes are implemented.

Highly qualified TCNs can enter the US either through:

- lawful permanent residence status (employment-based ‘Green Cards’);
- temporary admission for employment purposes (temporary workers visas H-1B and O-1).

1.1 Entry through lawful permanent residence status

Entry to the US is possible through employment-based ‘**Green Cards**’ which grant the TCN **lawful permanent residence (LPR)** status. LPR status is mainly granted on the basis of so-called ‘family-sponsored preference’ and ‘employment-based preference’. Employment-based preferences consist of five categories of workers (and their spouses and children). Only the categories EB1 (Employment First Preference) and EB2 (Employment Second Preference) workers can be considered as highly qualified workers (HQWs), as per the EU Blue Card definition¹⁰⁸. EB1 include:

- Persons with extraordinary ability in the sciences, arts, education, business, or athletics¹⁰⁹;
- Outstanding professors and researchers with at least three years’ experience in teaching or research, who are recognized internationally;
- Multinational managers or executives who have been employed for at least one of the three preceding years by the overseas affiliate, parent, subsidiary, or branch of the U.S. employer.
- (EB2) cover professionals with advanced degrees¹¹⁰ or aliens of exceptional ability¹¹¹.

¹⁰⁷ Papademetriou, D. et al (2009), “Aligning Temporary Immigration Visas with US Labour Market Needs: The Case for a new System of Provisional Visas”, Washington DC: Migration Policy Institute

¹⁰⁸ Higher professional qualifications: (1) evidence of higher education qualifications: any diploma or other evidence of formal qualifications issued by a higher education institution attesting the successful completion of a post-secondary education programme of at least three years; (2) when provided by national law: by at least five years of professional experience of a level comparable to higher education qualifications relevant for the profession/sector.

¹⁰⁹ Applicants in this category must have extensive documentation showing sustained national or international acclaim and recognition in their fields of expertise. Such applicants do not have to have specific job offers, so long as they are entering the U.S. to continue work in the fields in which they have extraordinary ability.

¹¹⁰ Professionals with advanced degrees concern those who hold degrees beyond a baccalaureate degree, or a baccalaureate degree and at least five years progressive experience in the profession.

¹¹¹ Persons with exceptional ability in the sciences, arts, or business. Exceptional ability means having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Since 1990, the annual employment-based preference is capped to 140,000 (plus any unused visas in the family-sponsored preferences from the previous year). This cap also covers the family members of the primary worker¹¹².

In 2013, 158,466 persons accessed LPR status through the employment-based preference¹¹³, i.e. 16% of the total LPR flow¹¹⁴. Around 28% of the total of employment-based preference LPR is allocated to each of the first three employment preferences, EB1 and EB2 included¹¹⁵. The visas are allocated according to a cascading system, i.e. when there is a number of visas available under the highest preference category, they can be used by the next preference category.

The first preference (EB1 priority workers) accounted for 24 percent of new employment-based LPRs. There are more EB1 visas available than used. Most of the unused EB1 visas (extraordinary ability visas) in 2013 were used in the second preference (EB2 professionals with advanced degrees) which represented 39 percent of new employment-based preference LPRs¹¹⁶.

1.2 Entry via temporary admission for employment purposes

Amongst the temporary workers visas, **the H-1B visa for temporary workers in “specialty occupations”** is a visa of a duration of up to three years. The visa is one-time-renewable. It was included in the Immigration Act of 1990 to help employers deal with what was perceived to be temporary labour market mismatches. It was created to give employers easy access to foreign workers to fill jobs that “*require theoretical and practical application of highly specialized knowledge to perform fully.*” To be eligible for this visa, the HQW must hold a higher education degree or its equivalent and be sponsored by an US employer¹¹⁷. Since 1990, the number of H1-B visas to be issued has been capped to 65,000 visas annually. In 2005, the US Congress created an “advanced degrees exemption” excluding from the cap the first 20,000 petitions filed on behalf of beneficiaries with an US master’s degree or higher. Additional exemptions were created for foreign employees of non-profit organisations, educational and research organisations, thus bringing the total annual number of H1-B visas to about 130,000. Due to high demand H1-B visas are allocated by the US Citizenship and Immigration Services (USCIS) on the basis of a random selection of the petitions needed to meet the cap.

The O-1 visa is for individuals who possesses extraordinary ability in the sciences, arts, education, business, or athletics, or who demonstrated record of extraordinary achievement in the motion picture or television industry and have been recognized nationally or internationally for those achievements. Special visas exist for workers accompanying and assisting O-1 workers (O2) and for spouses and children of O-1 and O2 (O3). This is the only category which doesn’t require the HQW to hold a job offer.

¹¹² There were 18,466 unused numbers in the family-sponsored preferences in 2012. The annual limit was higher in 2013 than 2012 because there were more unused family preference visas in 2012 than in 2011; from Office of Immigration Statistics, *Annual Flow report, U.S. Lawful Permanent Residents: 2013*, May 2014.

¹¹³ Office of Immigration Statistics policy directorate, Randall Monger and James Yankay, *Annual Flow report, U.S. Lawful Permanent Residents: 2013, May 2014.*
http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2013.pdf

¹¹⁴ Ibid

¹¹⁵ Ibid

¹¹⁶ Ibid

¹¹⁷ Before an application for a temporary worker visa (H1-B) at an U.S. Embassy or Consulate can be launched, a Petition for a Non-immigrant Worker, Form I-129, must be completed by the prospective employer of the HQW. This form includes fields on the job offer.

H1-B visa allows foreigners to enter the US for a specific limited stay but it also permits employers to apply immediately for permanent resident status for their sponsored foreign-born employee. According a study conducted by the US Congressional Research Service, 90% of employment-based green cards (permanent visas) were awarded to individuals who originally entered the US as foreign students and temporary workers, many of whom hold H1-B and L visas. The temporary-to-permanent resident transition amongst highly-qualified TCNs is a key characteristic of the US labour market immigration system. This being said, this transition is much more difficult, from an administrative point of view, for holders of the O visas or other temporary visas¹¹⁸.

Further temporary visas are:

- Visas for intra-company transfers of high-level managers in multinational companies (L1). Profiles of L1 visa holders are, according to an expert interviewed, similar to those coming under a H1-B category. Around 50,000 – 70,000 L category visas are issued on an annual basis. L visas permit corporate transferees to apply for permanent resident status.
- Exchange visitors visas (J1) which concerns professionals in an exchange situation which can last up to several years, i.e. University professors, researchers.

The following sections focus on the H1-B visa, as it was identified as the permit best comparable with the EU Blue Card.

1.3 Design of the scheme

To benefit from a H1-B visa, the foreign national must hold a higher education degree (or its equivalent) and be sponsored by a US employer. The employer must submit a Labour Condition Application (LCA) to the Department of Labour¹¹⁹.

There is no labour market test under the H1-B visa category (contrary to other entry routes). However, the Department of Labour requires that employers asking for an H1-B visa must certify in a Labour Condition Application stating that:

- they meet the wage requirement;
- the admission of the temporary foreign worker will not affect the outcome of a labour dispute¹²⁰;
- the employer gives public notice at the place of employment about their wish to hire a H1-B worker.

The Department of Labour checks whether the LCA is complete and the three requirements are met. Once the LCA is accepted by the Department of Labour, the employer is able to submit a completed 'Form I-129' or Petition for a Non-immigrant Worker – which is the application form for the temporary visa for the qualified worker - to USCIS. Once the Form I-129 petition has been approved, the prospective H1-B worker who is outside the United States may apply with the US Department of State (DOS) at a US embassy or consulate abroad for

¹¹⁸ Koslowski, Rey (2014) "Selective migration policy models and changing realities of implementation", *International Migration* Vol. 52 (3).

¹¹⁹ Website of the Department of Homeland Security (2015), "Webpage presenting the overview of Temporary Worker Visas", available at <http://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models> (accessed mid November 2015)

¹²⁰ That the employer does not bring in a foreign worker in the case of a Labour dispute with a Trade union / employee.

an H-1B visa. The prospective H-1B worker must then apply to US Customs and Border Protection (CBP) for admission to the US in H-1B classification. There are several steps in the visa application process. The order of these steps and how the TCN completes them may vary from one US Embassy or Consulate to another. Consular officers have the discretion to require an interview of any applicant. There is a non-refundable visa application fee of \$190¹²¹.

The Immigration and Nationality Act (INA) requires that the hiring of a foreign worker will not adversely affect the wages and working conditions of US workers comparably employed. To comply with the statute, the Department's regulations require that the wages offered to a foreign worker must be the prevailing wage rate for the occupational classification in the area of employment¹²². Since 2010, employers can obtain this wage rate by submitting a request to the National Prevailing Wage Centre (NPWC), or by accessing other legitimate sources of information such as the Online Wage Library, available for use in some programs¹²³.

There are four visa processing application centres in the US. Additional fees can be paid to speed decision-making on an application. Immigration lawyers can also be paid by employers to conduct the visa application process (approx. \$5-7,000). In some cases the prospective employee has to bear the costs¹²⁴.

H-1B holders are upon dismissal from employment immediately considered as illegally present in the US, unless an application for another temporary visa is currently pending¹²⁵.

Spouses have no access to the labour market, unless they successfully apply themselves for a new H-1B visa. This is an important difficulty for HQWs¹²⁶.

1.4 Statistical overview

The number of H-1B visas issued was capped in legislation to 65,000 H1-B. In the 1990s (economic boom years), the US Congress periodically, and only for a limited period of time, increased the cap, which went as high as 195,000.

It has been extremely difficult to reach an agreement in the US Congress on the change in the cap number, despite pressure from certain employers, especially in STEM (science, technology, engineering and math) fields¹²⁷. As a result, exemptions, as a default solution, have been created, thus allowing highly qualified workers to be granted an H1-B visa. In 2005 for example, an extra 20,000 H-1B visas were allowed for those with advanced degrees mainly in STEM fields¹²⁸. Foreign nationals working for non-for-profit organisations (this includes universities, research labs, think tanks) are also not subject to H1-B caps.

¹²¹ Website of the US Department of State – Bureau of Consular Services, available at <http://www.travel.state.gov/content/visas/en/employment/temporary.html#overview> (accessed mid November 2015)

¹²² Website of the US Department of Labor, available at <http://www.foreignlaborcert.doleta.gov/pwscreens.cfm> (accessed mid November 2015)

¹²³ *ibid*

¹²⁴ Interview with Dimitri Papademetriou on 30 November 2015

¹²⁵ Lucy Haley, “The Challenges to Lawmaking With Respect to Highly Qualified Immigration: A Comparison of the European Union and United States”, *European Union Law Working Papers - No. 8*, Stanford Law School and University of Vienna School of Law, 2012.

¹²⁶ Interview with Dimitri Papademetriou on 30 November 2015

¹²⁷ Martin, P. (2012) Attracting Highly Skilled Migrants: US Experience and Lessons for the EU. Robert Schuman Centre for Advanced Studies.

¹²⁸ Kaushal, N. and Fix, M. (2006), “The Contributions of High-Skilled Immigrants”, Migration Policy Institute Insight, July 2006, No. 16

Considering all of the existing exemptions, the total number of H-1B visas issued is in reality close to double the official cap at 65,000, as shown in the table below. The table presents the main class of temporary visas issued to highly qualified or qualified TCNs. Most TCNs were from Asia, specifically from India (108,817 in 2014)¹²⁹.

Table 1. Number of temporary visas issued to foreign nationals - 2012-2014

	2012	2013	2014 ¹³⁰
Temporary workers in specialty occupations (H1-B)	135,530	153,223	161,369
Workers with extraordinary ability or achievement (O-1)	10,590	12,359	12,706
Intra-company transferees (L1)	62,430	66,700	71,513
Temporary visitors for business (B1)	35,341	41,956	44,880

Source: US Department of State, Bureau of Consular Affairs, available at <http://travel.state.gov/content/visas/en/law-and-policy/statistics/non-immigrant-visas.html> (accessed mid November 2015)

The table below presents the total number of persons who received lawful permanent resident status from 2010 to 2013 and how many, out of those, obtained it via the employment-based preferences, and specifically via the First Preference (EB1): Priority workers and Second Preference (EB2): Professionals with advanced degrees or aliens of exceptional ability.

The table also shows whether LPR status was obtained via a status adjustment process or directly upon arrival to the US.

Table 2. Persons obtaining lawful permanent resident status by type and major class of admission: fiscal years 2010 to 2013 - new arrivals and adjustments of status included

Type and class of admission	2010	2011	2012	2013
Total Persons obtaining lawful permanent resident status	1,042,625	1,062,040	1,031,631	990,553
Total Employment-based preferences	148,343	139,339	143,998	161,110
EB1 : Priority workers	41,055	25,251	39,316	38,978
EB2 : Professionals with advanced degrees or aliens of exceptional ability	53,946	66,831	50,959	63,026
Out of which: total adjustment of status	136,010	124,384	126,016	140,009
EB1 First: Priority workers	39,070	23,605	37,799	37,283
EB2 Second: Professionals with advanced degrees or aliens of exceptional ability	52,388	65,140	49,414	60,956
Out of which: total new arrivals	12,333	14,955	17,982	21,101
EB1 First: Priority workers	1,985	1,646	1,517	1,695
EB2 Second: Professionals with advanced degrees or aliens of exceptional ability	1,558	1,691	1,545	2,070

Source: U.S. Department of Homeland Security

¹²⁹ Non-immigrant Visa Issuances by Visa Class and by Nationality <http://travel.state.gov/content/visas/en/law-and-policy/statistics/non-immigrant-visas.html>

¹³⁰ Data as of 09/30/2014.

1.5 Comparative overview of the national scheme and the EU Blue Card

The United States is one of the countries which attracts the most interest from highly qualified TCNs, for cultural and economic (prospects) reasons. Canada and Australia are the main competitors to the US in terms of attracting TCNs who otherwise might have migrated to the USA. This is also due to the fact that both countries aim specifically to attract close to two thirds of TCNs through the employment category.

The Blue Card system provides for more protection for the foreign workers: it allows for family reunification and unlike the H1-B programme, it gives EU Blue Card holders dismissed by their employers a three months period for them to secure new employment. Also, unlike under the H1-B programme, EU Blue Card holders are not dependent on their employers to apply for long-term residence¹³¹.

2 Evaluation of the US schemes for attracting highly qualified workers

2.1 Advantages

The temporary-to-permanent resident transition which is a key characteristic of the qualified US labour market immigration system has the advantage of allowing immigration services and employers to use information about economic and other forms of integration during the initial, temporary residence period in order to decide on permanent residence¹³².

2.2. Disadvantages

The qualified US legal labour migration system is known to be complex and constraining.

The system has been criticized as giving too much power to employers. The bonus on applying for permanent resident status is on employers who send the application for their sponsored foreign-born employee.

A study by the Robert Schuman Centre for Advanced Studies in 2012 indicated that the employer-led H-1B program has the potential of leading to abuses of workers hard to detect and correct: “*since many H-1B visa-holders hope to be sponsored by their employers for immigrant visas, they rarely complain, giving DOL few opportunities to investigate.*”¹³³

Similarly, the *prevailing wages* concept is a hard one to implement as its accuracy relies on proprietary information on wages from employers¹³⁴. The labour department therefore relies on figures which may not be close enough to reality to establish when an employer is underpaying the worker. In addition there is no obligation to increase the worker’s wage during the maximum duration of three years of the H-1B visa. Also, an immigrant who changes employers – or accepts a raise or promotion from a current employer – will have to start over the application to LPR status¹³⁵.

¹³¹ Lucy Haley, “The Challenges to Lawmaking With Respect to Highly Qualified Immigration: A Comparison of the European Union and United States”, European Union Law Working Papers - No. 8, Stanford Law School and University of Vienna School of Law, 2012.

¹³² IOM Labour Shortages and Migration Policy 2012.

¹³³ Martin, P. Attracting Highly Skilled Migrants: US Experience and Lessons for the EU. Robert Schuman Centre for Advanced Studies, 2012.

¹³⁴ Interview with Dimitri Papademetriou on 30 November 2015.

¹³⁵ Puneet Arora, Congress must address employment-based Green Card backlog, THE HILL (July 28, 2011) <http://thehill.com/blogs/congress-blog/civil-rights/174049-congress-must-address-employment-based-green-cardbacklog>, cited in Lucy Haley, “The Challenges to Lawmaking With Respect to Highly Qualified

The lottery system for the allocation of the H1-B visas was designed by default. It is a reflection of unresolved issues between the supply of visas and the demand for workers by employers and the US Congress' unwillingness to create flexible quotas. It incentivizes employers to apply for more visa applications than they need. This creates a higher administrative burden for employers and the lawyers they employ to file those applications before 1 April.

This system creates a fundamental problem: admissions are random rather than selective, and very highly qualified candidates may be turned away simply because there were not selected due to the random nature of the selection¹³⁶.

The cap system, which has not changed much since the 1990s, does not allow fluctuating economic needs to be reflected and addressed in the migration system. There is a political deadlock preventing the cap system to be revisited: the Republican Party and large companies are in favour of attracting a higher number of HQWs, whilst labour unions and some engineering professions supported by key senators from both political parties are against raising the cap. Whilst some employers argue that labour shortages persist in the STEM fields, those are occupations where unemployment rates are low (3-4%) but considered nonetheless significant. In addition, this issue has been politically tied to the issue of the regularization of millions of illegal migrants in the US¹³⁷.

2.3. Recent developments

At present, the US Congress is currently considering the following legislation on highly qualified TCNs¹³⁸:

- Immigration Innovation Act: A bipartisan bill introduced in the US Senate in January 2015 that would almost double the number of visas for temporary high qualified TCNs (H-1B visas), from 65,000 to 115,000, and eliminate annual per-country limits for employment-based green cards.
- Start-Up Act: A bipartisan bill introduced in the Senate in January 2015 (three prior versions had been introduced) that proposes creating an entrepreneurs visa for TCNs and a STEM visa for US-educated foreign-born workers with advanced degrees in science, technology, engineering or mathematics, and eliminating per-country caps on employment-based immigration visas.

Difficulties in building a consensus across partisan lines make it unlikely for either bills to go through at least until the next presidential elections¹³⁹.

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¹³⁶ IOM Labour Shortages and Migration Policy 2012.

¹³⁷ Interview with Dimitri Papademetriou on 30 November 2015

¹³⁸ "The U.S. Immigration Debate", Author: Danielle Renwick, The Council on Foreign Relations, <http://www.cfr.org/immigration/us-immigration-debate/p11149>

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National schemes
for attracting
highly qualified
workers

Country Fiche: Canada

Key Points to note¹⁴⁰:

Permanent residence programs:

- *There are three federal-level programs that support the permanent residence of skilled migrants: the Federal Skilled Trades Program (FSTP), the Federal Skilled Worker Program (FSWP) and the Canadian Experience Class (CEC). These include a points-based assessment of candidates' 'human capital factors', such as age, education, language proficiency and work experience.*
- *Since 1 January 2015, all applicants for the three programs must apply through 'Express Entry', an online 'filtering and ranking' stage. The highest-ranked candidates then receive an Invitation to Apply (ITA) to individual programs.*
- *Having skilled work experience and minimum language proficiency in English and/or French are conditions of entry for all programs (FSWP, FSTP and CEC).*

Temporary residence programs

- *There are two temporary residence schemes for skilled workers: the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP).*
- *Applications through the TFWP must always be supported by a job offer and a positive Labour Market Impact Assessment (LMIA). The IMP is mostly regulated by international agreements and applications do not require LMIA's.*
- *Most entrants under the TFWP are low-skilled, although there is a 'high-wage' stream within the scheme. Workers under the TFWP normally receive employer-specific work permits, whereas IMP workers generally have greater labour market mobility.*

Key points:

- *Under Express Entry (EE), the government has high control over intake. There are no longer any caps for new applicants to permanent residence programs.*
- *Although having a job offer is not necessary to apply through EE, individuals with pre-arranged employment are far more likely to gain entry to Canada. The new system of EE gives the employers and provincial governments' greater role in the process.*
- *It is too early to assess the full impacts of Express Entry. However, according to Citizenship and Immigration Canada (CIC), this acts as a "means of selecting those best placed to succeed" and having a "managed migration system" is one of the strengths of Canada's approach to skilled migration¹⁴¹.*
- *In terms of unemployment rates, 'landed immigrants' appear relatively well-integrated into the labour market. However, the underemployment of skilled*

¹⁴⁰ While this research was being conducted, the government department responsible for immigration, Citizenship and Immigration Canada (CIC), was renamed as Immigration, Refugees and Citizenship Canada (November 2015). This change is in the process of being applied to the CIC website and resources, but is not yet complete. For ease, the acronym 'CIC' has been used throughout this document.

¹⁴¹ Citizenship and Immigration Canada (CIC). Phone interview, 20 Nov 2015.

immigrants (i.e. entry in low-income/low-skill jobs) can be an issue (hence the emphasis on employer involvement under EE).

- *The target to process 80% EE applications in six months seems on track.*
- *Amongst high-skilled permanent residents, roughly half have previous work experience as temporary workers in Canada¹⁴².*

2. Overview of the scheme

The economic stream of Canada's migration system is built on a points-based assessment of candidates, considering a range of human capital factors to determine immigrant eligibility and impacted by a range of additional variables, such as employer or provincial nomination. Since the introduction of the points system in 1967, Canada has sought to ensure that immigration coincides with the country's evolving needs and interests¹⁴³.

Skilled migration programs that support **permanent residence** include the Federal Skilled Trades Program (FSTP), the Federal Skilled Worker Program (FSWP) and the Canadian Experience Class (CEC). These programs assess applicants against a range of 'human capital factors', such as age, education, language proficiency and work experience. Having skilled work experience is a condition of entry for all three programs. Applicants are not always required to have a formal job offer or Canadian work experience, although such features dramatically strengthen the chances of their application being successful, depending on the program through which they apply. Since 1 January 2015, all applicants for permanent residence under the skilled migration programs must apply through Canada's new online application management system, 'Express Entry'¹⁴⁴, rather than applying directly to individual programs. Express Entry serves as an additional 'filtering and ranking' stage, introduced to respond to an excessive supply of applicants for the places available¹⁴⁵.

In addition to the permanent residence programs, there are **two temporary schemes** through which skilled workers can enter Canada: the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP). Applications through the TFWP must always be supported by a job offer and a positive Labour Market Impact Assessment (LMIA) (see below for more details). In contrast, the IMP is mostly regulated by international agreements and applications are exempt from the requirement for LMIA's. The majority of entrants under the TFWP are low-skilled, although there is a stream for 'high-wage' workers.

2.1 Design of the scheme

Permanent residence programs

All applicants to the economic stream of the permanent residence programs (FSWP, FSTP and CEC) must make an initial application through the Express Entry system. This is used as a 'first filter' for establishing whether applicants are eligible for one or more of the three federal programs (FSWP, FSTP, CEC), or the Provincial Nominee Program (PNP)¹⁴⁶. Those

¹⁴² Estimate by CIC. Phone interview, 20 November 2015.

¹⁴³ Challinor, A.E. (2011), "Canada's Immigration Policy: a focus on Human Capital", Migration Policy Institute, available at <http://www.migrationpolicy.org/article/canadas-immigration-policy-focus-human-capital>

¹⁴⁴ <http://www.cic.gc.ca/english/express-entry/index.asp>

¹⁴⁵ CIC. Phone interview, 20 November 2015. See full interview citation in references at the end.

¹⁴⁶ The PNP is a system of provincial/territorial nomination of immigrants. Only the federal programs will be presented in this analysis. For more information on the PNP, see <http://www.cic.gc.ca/english/immigrate/provincial/>

who fulfil the eligibility criteria will be moved into a 'pool of candidates', where they will be ranked using the Comprehensive Ranking System (points-based)¹⁴⁷. Only those candidates who are ranked highly enough will be issued with an Invitation to Apply (ITA) for permanent residence, *at which point* they can begin the application process for the individual programs mentioned above (FSWP, FSTP and CEC).

During the ranking of candidates through Express Entry, the features that receive the most weight are the candidates' core human capital factors (age, level of education, official language proficiency and Canadian work experience) and (if held) an offer of arranged employment (supported by a Labour Market Impact Assessment) or the provincial nomination. However, applicants may also gain some (minor) points for a range of additional features, such as the language proficiency of their spouse or common-law partner and the transferability of their skills¹⁴⁸. The CIC aims to process 80% applications through Express Entry within six months. After receiving the ITA, candidates have 60 days to apply for permanent residence, and fulfil the entry criteria specified under individual programs (see below).

Temporary residence programs

There are two forms of entry for the Temporary Foreign Worker Program: the 'high-wage' and 'low-wage' stream¹⁴⁹. Only the procedure for the 'high-wage' stream is presented here, as this is more likely to cover the skilled category of workers.

Under the high-wage stream, employers must obtain a positive Labour Market Impact Assessment (LMIA) from Employment and Social Development Canada (ESDC), proving that the worker is needed for a specific position¹⁵⁰. A positive LMIA shows that there is a need for a foreign worker for a specific position, and that no Canadian worker is available to take up the position. A positive LMIA is occasionally referred to as a confirmation letter. Employers can use either the Temporary Foreign Worker Web Service or a paper application form to apply for the LMIA. The cost of each LMIA (for each position requested) is CAN \$1000. The temporary worker must then apply for a work permit, using their LMIA-supported confirmation letter (provided by the employer). Once an LMIA is issued, it is valid for six months. Employers can only apply for the TFWP with a valid LMIA.

As part of the high-wage stream, unless the position is of a limited duration, employers must submit a Transition Plan showing how they will recruit and train Canadians and how they will support the TFWs to become permanent residents. These activities must be undertaken over the course of the employment period¹⁵¹. In future, if employers are inspected or apply for an additional LMIA in similar circumstances, they will have to report back on their progress against the commitments they made in the Plan.

In order for the foreign national to apply for a temporary work permit through the International Mobility Program, employers first need to submit an Offer of Employment form and compliance fee (CAN \$230) through the 'Employer Portal'. Since February 2015,

¹⁴⁷ This takes account skills and experience factors; whether they have a job offer; whether they have a nomination from a province or territory. Extra points are available for a job offer backed by a Labour Market Impact Assessment (LMIA) and/or provincial nominations.

¹⁴⁸ For more information, see the Express Entry Comprehensive Ranking System: <http://www.cic.gc.ca/english/express-entry/grid-crs.asp#a1>

¹⁴⁹ The high-wage stream covers those earning at or above the provincial/territorial median hourly wage.

¹⁵⁰ Government of Canada Website, Employment and Social Development Canada; http://www.esdc.gc.ca/eng/jobs/foreign_workers/high_low_wage/low_wage/index.shtml#tab5

¹⁵¹ Government of Canada Website, Employment and Social Development Canada; http://www.esdc.gc.ca/eng/jobs/foreign_workers/high_low_wage/high_wage/index.shtml

employers of foreign nationals are required to fill in the new compliance form (IMM5802), making declarations about the employee. After an offer of employment has been successfully added to the Employer Portal, an employment ID number will be provided to the employer, who will pass this on to foreign national to include in their work permit application form¹⁵².

2.2 Application procedure

The following table provides an overview of the entry requirements for the main federal programs in Canada for skilled migration. Full details of the precise entry requirements for individual programs are given in the **Annexes** at the end of this document. In addition, the Annexes include the 'Comprehensive Ranking System' of Express Entry, which is used as a first filter before individuals are judged against the entry requirements of individual programs.

¹⁵² Government of Canada Website, International Mobility Program: Employer-specific work permits with Labour Market Impact Assessment exemptions;
<http://www.cic.gc.ca/english/resources/tools/temp/work/admissibility/specific.asp>

Table 1: Summary table of entry requirements

Name of program							
Entry requirements	Federal Worker Program (permanent)	Skilled Program	Federal Skilled Trade Program (permanent)	Canadian Experience Class (permanent)	Class	Temporary Foreign Worker Program (temporary)	Class
High skills requirements	E		E	E		N (employers' responsibility)	
Minimum language proficiency (English and/or French)	E		E	E		N (employers' responsibility)	
Minimum educational requirements	E		A (certificate of qualification in the skilled trade issued by territorial or provincial body)	A		N (employers' responsibility)	
Formal job offer	A (although to be valid it must be supported by LMIA and fulfil conditions)		A (although to be valid it must be supported by LMIA and fulfil conditions)	A (although to be valid it must be supported by LMIA and fulfil conditions)		E (must always be supported by LMIA and fulfil conditions)	
Labour market impact assessment (LMIA)	A (LMIA is essential if job offer is used to support entry)		A (LMIA is essential if job offer is used to support entry)	A (LMIA is essential if job offer is used to support entry)		E (always essential to support job offer)	
Canadian work experience	A		A	E		N	
Skilled work experience	E		E	E		N	
Upper salary threshold	N		N	N		N	
Other conditions	Candidates must fulfil 'admissibility requirements' ¹⁵³ Applicants must plan to live outside the province of Quebec. The province has its own rules for choosing immigrants who will adapt well to living there ¹⁵⁴ .					n/a	

Key: E = essential; A = advantageous; N = not needed. Note that the International Mobility Program is excluded from this table, due to the diversity of the sub-programs it covers.

Language, education and skilled work experience Permanent residence programs

All applicants for permanent residence under FSTP, FSWP and CEC are expected to fulfil minimum language requirements in English and/or French. Candidates must prove their ability in listening, speaking, reading and writing by taking a language test through CIC, assessing their level based on the Canadian Language Benchmark (CLB). The precise language requirements depend on the program through which candidates apply. The expected language proficiency of applicants for the Federal Skilled Worker Program is higher than that

¹⁵³ Amongst others, applicants may be deemed inadmissible for security reasons (e.g. espionage, subversion, terrorism), human or international rights violations, criminal convictions, health grounds, financial reasons (e.g. lacking the resources to support themselves and their family members) etc. For a full list, see <http://www.cic.gc.ca/english/information/inadmissibility/who.asp>

¹⁵⁴ More info at Government of Canada Website, Home, Immigration and citizenship, Immigrate, Quebec-selected skilled workers; <http://www.cic.gc.ca/english/immigrate/quebec/index.asp>

for the Federal Skilled Trades Program. However, the language requirements for Canadian Experience Class depends on the skill type of their Canadian work experience¹⁵⁵.

Canada's skilled migration programs for permanent residence place greater emphasis on the skilled work experience of candidates than on their formal educational attainment. All of the main permanent residence programs (Federal Skilled Worker Program, Canadian Experience Class and Federal Skilled Trades Program) have minimum skilled work experience requirements (see full details in Annex table at the end of this document). Despite the low/non-existent educational requirements for the FSTP, FSWP and CEC, candidates under all these programs can gain additional points for their education during the Express Entry stage if they have either a Canadian post-secondary certificate, diploma or degree or an equivalent foreign credential that is supported by an Educational Credential Assessment (ECA)¹⁵⁶.

Furthermore, one of the core entry conditions for FSTP candidates is that they have **either** a provincial certification, **or** a valid job offer, covering one of eligible skilled trades (all NOC skill type B). As of November 2015, these trades are: industrial, electrical and construction trades (Major Group 72); maintenance and equipment operation trades (Major Group 73); supervisors and technical jobs in natural resources, agriculture and related production (Major Group 82); processing, manufacturing and utilities supervisors and central control operators (Major Group 92), chefs and cooks (Minor Group 632), and butchers and bakers (Minor Group 633)¹⁵⁷.

Temporary residence programs

Under the Temporary Foreign Worker Program, employers have responsibility for ensuring that the workers they sponsor have the appropriate level of training, education and experience to perform the role for which they are being recruited¹⁵⁸. As explained in the table above, the International Mobility Program does not set a common minimum requirement across sub-programs when it comes to education, work experience, skills, etc. For intra-company transferees coming through the IMP, it is possible for them to transfer to a position in a specialised knowledge capacity (amongst other things)¹⁵⁹.

Job offer and salary threshold

Permanent residence programs

Unlike the Blue Card, applications to the permanent residence programs do not require candidates to have a formal job offer. However, it is a fundamental asset for candidates, as it

¹⁵⁵ Government of Canada Website, Home, Immigration and citizenship, Immigrate, Express Entry, Candidate, Eligibility, Language requirements — Skilled immigrants (Express Entry); <http://www.cic.gc.ca/english/immigrate/skilled/language.asp>

¹⁵⁶ The ECA certifies that their educational level is equivalent to Canadian post-secondary level. Note that education can be important for meeting the minimum number of points in Express Entry but is more important for moving into the pool of candidates, which is filled by the top candidates only

¹⁵⁷ Government of Canada Website, Home, Immigration and citizenship, Immigrate, Express Entry, Candidate, Eligibility, Determine your eligibility – Skilled trades; <http://www.cic.gc.ca/english/immigrate/trades/apply-who.asp#noc>

¹⁵⁸ Government of Canada Website, Employment and Social Development Canada, Home, Jobs and Training, Temporary Foreign Workers, Stream for Low-wage Positions; http://www.esdc.gc.ca/eng/jobs/foreign_workers/high_low_wage/low_wage/index.shtml

¹⁵⁹ According to the group Pro-link Global, in 2014, "the "Specialized Knowledge" requirement [was] strengthened to requiring an employee to hold both proprietary knowledge and an advanced level of expertise, both of which must be considered "unique and uncommon" within the industry". <https://pro-linkglobal.com/canada-significant-changes-throughout-canadian-temporary-foreign-worker-programs/>

makes them much more likely to receive an Invitation to Apply (ITA) for permanent residence¹⁶⁰. Specifically, in Express Entry, 600 out of 1200 points in the Comprehensive Ranking System are based upon having either "arranged employment with a positive Labour Market Assessment" or a provincial or territorial nomination. According to CIC, without a valid job offer, applicants may not score enough points for entry, as they could lose additional points based on age, education level, etc.¹⁶¹. Indeed, part of the rationale for introducing Express Entry was to put employers and the provincial/territorial authorities "front and centre" under the new system¹⁶². Furthermore, having a valid job offer is a specific way for candidates to demonstrate eligibility for the FSTP.

In order to be valid for points, job offers **must** be supported by a positive Labour Market Impact Assessment (LMIA) from Employment and Social Development Canada. They must also fulfil some core criteria under each individual program, as outlined below. There is no LMIA fee for permanent residency applications.

Federal Skilled Worker Program and the Canadian Experience Class	Federal Skilled Trade Program
<p><i>Valid job offers must be:</i></p> <p>Permanent, non-seasonal, full time;</p> <p>Supported by a positive LMIA; and</p> <p>One of the following skill types: Skill Type 0 (managerial occupations), Skill Level A (professional occupations) or B (technical occupations and skilled trades) on the Canadian National Occupational Classification (NOC) list.</p>	<p><i>Valid job offers must be:</i></p> <p>For at least one year of full-time work;</p> <p>Supported by a positive LMIA; and</p> <p>At Skill Level B (technical occupations and skilled trades) in one of the eligible occupations under the National Occupational Classification (NOC)¹⁶³.</p> <p>They must also have wages and working conditions comparable to those offered to Canadians working in the occupation.</p>

There are no minimum salary requirements for the FSTP, FSWP or CEC, although applicants who are not currently authorized to work in Canada or who lack a valid job offer from an employer in Canada must prove that they have sufficient funds to support themselves and their family on arrival. The amounts range from \$CAN 11,931 for a family of 1 to \$CAN 31,574 for a family of 7 or more¹⁶⁴.

¹⁶⁰ In Express Entry, 600 out of 1200 points in the Comprehensive Ranking System are based upon having either "arranged employment with a positive Labour Market Assessment" or a provincial or territorial nomination. According to CIC, without a valid job offer, applicants may not score enough points for entry, as they could lose additional points based on age, education level, etc. CIC. Phone interview, 20 November 2015

¹⁶¹ CIC. Phone interview, 20 November 2015

¹⁶² Demetri Papademetriou, President of Migration Policy Institute (MPI) Europe, Phone call, 17 December 2015.

¹⁶³ As explained above, these are: industrial, electrical and construction trades (Major Group 72); maintenance and equipment operation trades (Major Group 73); supervisors and technical jobs in natural resources, agriculture and related production (Major Group 82); processing, manufacturing and utilities supervisors and central control operators (Major Group 92), chefs and cooks (Minor Group 632), and butchers and bakers (Minor Group 633)

¹⁶⁴ Government of Canada Website, Home, Immigration and citizenship, Immigrate, Express Entry, Candidate, Eligibility Proof of funds – Skilled immigrants (Express Entry); <http://www.cic.gc.ca/english/immigrate/skilled/funds.asp>

Temporary residence programs

As explained above, employers wishing to bring skilled foreign workers into Canada temporarily must generally submit a formal job offer to the CIC, when applying under the TFWP. Although it differs by sub-program, this is generally also true of the IMP. However, job offers through the TFWP must be LMIA-supported, whereas this is not a requirement for the IMP. Furthermore, job offers under the TFWP must be full-time positions (minimum 30 hours of work each week)¹⁶⁵.

Through the TFWP, employers must commit to paying the TFW at least the 'prevailing wage' for the occupation and work location of the job¹⁶⁶. If they pay the foreign national a wage that is above the prevailing wage, this must be in the same range as the wages of their current equivalent employees. Generally speaking, IMP represents a collection of several different programs and there is no common salary threshold. However, all ICT applicants must receive at least the provincial/territorial prevailing wage for their specific occupation¹⁶⁷.

2.3 Rights granted under the scheme

All foreign nationals working in Canada (both temporary and permanent residents) should have the same working standards and equal labour rights to residents born in Canada. Once permanent residents, skilled foreign workers do not face any restrictions to their labour market access or mobility.

For permanent residence programs, provincial and territorial governments have responsibility for enforcing labour standards (applicable on equal terms to those born in Canada and landed immigrants, i.e. immigrants with a right to permanent residence). The CIC would only get involved when working with its provincial counterparts. For temporary foreign workers, ESDC has responsibility for following up with employers, who may be subject to inspection.

The length of the work permit issued to temporary foreign workers tends to depend on the judgement of Service Canada and the ESDC. Workers under the TFWP normally receive employer-specific work permits¹⁶⁸, whereas IMP workers generally have open work permits, which give them greater mobility and do not tie them to specific employers. In some cases, IMP entrants will have 'open restricted permits', which do not limit them to particular employers but may restrict the occupations or locations in which they can work.

According to the CIC, there are different kinds of 'settlement services' for foreign nationals, but these tend to be fairly limited for high-skilled entrants. For instance, they already have to meet the minimum language requirements before they come (at least average level language skills in English and/or French), so access to language training is fairly limited. Experience shows that they do not normally require access to other kinds of support. Indeed, the majority of integration support goes to refugees or those needing other kinds of social assistance. As opposed to formal governmental provision, support is normally offered through a system of grants and contributions to service-providing organisations.

¹⁶⁵ However, an offer of employment is not needed if employers are hiring a temporary worker with an open work permit.

¹⁶⁶ Under the Temporary Foreign Worker Program, the prevailing wage rate is the median hourly wage (or annual salary) for the work location and occupation, as published on Job Bank.

¹⁶⁷ Pro-Link GLOBAL Website; <https://pro-linkglobal.com/canada-significant-changes-throughout-canadian-temporary-foreign-worker-programs/>

¹⁶⁸ Government of Canada Website, Employment and Social Development Canada; http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/index.shtml

2.4 Statistical overview

The 'economic class' under Canada's permanent residence programs have the primary objective of ensuring the entry and integration of highly-skilled people into the country¹⁶⁹. The expansion of the economic class in Canada has led to a change in the types of immigrants entering. In the mid-1980s, 50% of immigrants were admitted based on family preferences, 30% were economic migrants and 18% were refugees. By 2009, these proportions changed to 38%, 47% and 9% respectively. In other words, the largest single bloc of entrants were skilled persons. In 2013, this pattern was yet more pronounced: of the 258,953 permanent residents admitted in this year, 148,181 (57%) came under the economic class of migration programs, whereas 81,831 (32%) came under the family class and 28,941 (11%) came as refugees, for humanitarian and compassionate grounds or in an 'other' way¹⁷⁰. However, it is worth noting that the economic class also includes dependents.

Since the establishment of the Express Entry system on 1 January 2015, there are no longer any caps in place for the permanent economic immigration programs, although those previously in place for the FSTP and FSWP are being applied to pre-2015 candidates¹⁷¹. Under the new system, the government has a high level of control over intake, as it can determine the frequency of draws/rounds from the 'pool of applicants' and the number of invitations issued. According to CIC, Express Entry acts as a "means of selecting those best placed to succeed or economically establish"¹⁷².

In 2014, there were 165,089 economic immigrants (permanent residents) to Canada, of which 28,773 were skilled workers (principal applicants) and a further 38,712 were skilled workers who applied as spouses and dependents. Overall, men were slightly more likely to enter as skilled workers, although women were more likely to be amongst the skilled applicants who applied as spouses and dependents. Of the 28,773 skilled workers (principal applicants), 11,293 were female and 17,480 were male. Of the 38,712 skilled workers (spouses and dependents), 17,514 were male and 21,197 were female¹⁷³.

There are strong signs that Canada's programs for economic immigration attract far more interest from highly-skilled workers than there are places available. As shown by the table below, nearly 37% (41,218) of those who applied through Express Entry between 1 January and 6 July 2015 were deemed eligible to enter the 'pool of candidates', meaning these individuals fulfil the conditions for one or more economic programs. However, only (12,017) (11% of all applicants, 29% of those in the pool) had so far been issued with an invitation to apply for permanent residence¹⁷⁴.

¹⁶⁹ CIC. Phone interview, 20 November 2015.

¹⁷⁰ Government of Canada Website, Departments and agencies, Citizenship and Immigration Canada, Publications and manuals; <http://www.cic.gc.ca/english/resources/publications/annual-report-2014/index.aspx#sec-1>

¹⁷¹ In other words, those who applied prior to 1 Jan 2015 are being processed according to the requirements that were in place when the application was received. Between 1 May 2014 and 31 December 2014, the government was applying a cap of 25,000 new applications for the FSWP, 8,000 applications for the CEC and 5,000 applications for the FSTP. <http://www.cicnews.com/2014/04/breaking-news-reopening-federal-skilled-worker-program-043382.html#sthash.EFUznUqI.dpuf%22>

¹⁷² CIC. Phone interview, 20 November 2015.

¹⁷³ Government of Canada Website, Departments and agencies, Citizenship and Immigration Canada, Research and statistics; <http://www.cic.gc.ca/english/resources/statistics/facts2014/permanent/02.asp>

¹⁷⁴ However, some of those in the pool may receive an invitation at a later stage.

Table 2: Overview of applications through Express Entry (covering FSWP, FSTP, CEC and PNP, 1 January - 6 July 2015)¹⁷⁵

Applications received ('Express Entry' profiles created)	Number of individuals not eligible through Express Entry	Number of individuals active in the 'pool of candidates'	Number of individuals in Express Entry invited to apply for permanent residence	Number of applications for permanent residence received	Number of permanent residence applications approved for principal applicants / Number of permanent residence visas issued for principal applicants and their dependents.
112,701	48,723	41,218	12,017	7,528	655 / 844

This aggregate data covers Federal Skilled Worker Program (FSWP); Federal Skilled Trades Program (FSTP); Canadian Experience Class (CEC); and a portion of the Provincial Nominee Programs (PNP). Some program-specific data is available on the number of invitations: of the 12,928 ITAs issued, 5,534 were for the CEC, 4,809 were for the FSWP, 1,887 were for the FSTP and 698 were for provincial nominees¹⁷⁶. However, it is not known if which of these recipients were amongst those who applied for or gained permanent residence.

Data by nationality on issued work permits is not available, although there is data on invited candidates through the Express Entry scheme (again, note that invited candidates do not necessarily gain permanent residence). Through Express Entry, the top ten countries of citizenship of invited candidates, as of 6 July 2015, were India (2,687 invited candidates), Philippines (2,514), UK (951), Ireland (682), China (531), US (521), South Korea (327), France (258), Australia (257) and Mexico (249).¹⁷⁷

Expenditure by program reflects that the Federal Skilled Workers Program is by far the largest permanent residence program, followed by the Provincial Nominee Program and the Canadian Experience Class. In the year 2014-2015, the FSWP accounted for around 47% of program expenditure. By way of contrast, the Federal Skilled Trades Program represented only 1.2% of actual program expenditure in this period.

Table 3: Actual Program Expenditures (CAN \$)

1.1 Permanent Economic Residents		2013-14	2014-15
6901	Federal Skilled Workers	19,685,862	25,400,719
6902	Federal Skilled Trades	-	647,866
6909	Canadian Experience Class	2,457,886	4,424,254

¹⁷⁵ Government of Canada Website, Departments and agencies, Citizenship and Immigration Canada, Reports and statistics; <http://www.cic.gc.ca/english/resources/reports/ee-midyear-2015.asp>

¹⁷⁶ "The number of candidates invited is lower than the number of invitations sent because some candidates have received more than one invitation. Express Entry candidates may decline an invitation, return to the Express Entry pool and may be eligible to receive another invitation." <http://www.cic.gc.ca/english/resources/reports/ee-midyear-2015.asp>

¹⁷⁷ Government of Canada Website, Departments and agencies, Citizenship and Immigration Canada, Reports and statistics; <http://www.cic.gc.ca/english/resources/reports/ee-midyear-2015.asp>

6905	Provincial Nominees	4,159,670	5,327,161
-	Other programs <i>Quebec Skilled Workers</i> <i>Live-in Caregivers</i> <i>Federal Business</i> <i>Quebec Business</i> <i>Immigrant</i>	14,685,937	17,975,827
	TOTAL	40,989,355	53,775,827

Source: Maureen Collins, Assistant Director of the CIC. Email. 30 November 2015.

Comparing the employment situation of those born in Canada and 'landed immigrants' (i.e. with a right to permanent residence) suggests that landed immigrants are relatively well-integrated into the labour market, although they are slightly less likely to be employed and are slightly more likely to be unemployed than the total population and those born in Canada.

Table 4: rates of those aged 15 and over, October 2015¹⁷⁸

	Total population	Population born in Canada	Population of landed immigrants	Population of those born in Canada with university degree	Landed immigrants with university degree
Employment (%)	61.3 ¹⁷⁹	62.9	58.8	76	70.6

Interestingly, landed immigrants with no degree, certificate or diploma face similar (slightly lower) levels of unemployment than those born in Canada (landed immigrants: 11.4%; born in Canada: 11.6%). However, there are large gaps between those with a higher level of educational attainment; landed immigrants with a university degree face a rate of unemployment (7.2%) that is more than twice that of those born in Canada (3%).

Overall, higher levels of educational attainment correlate with lower levels of unemployment for each of the groups presented (total population, landed immigrants and population born in Canada). The only exception to this is landed immigrants with a university degree, who appear to fare worse than those only with a post-secondary certificate or diploma.

Table 5: Unemployment rates of those aged 25 to 54, 2014

	All education levels	No certificate or diploma	degree, or high school graduate	Post-secondary certificate or diploma	University degree
Unemployment rate (%)					
Total population	5.8	11.4	6.5	5.1	4.6
Landed immigrants	7.4	11.4	7.8	6.5	7.2
Born in Canada	5.2	11.6	6.2	4.8	3.0

¹⁷⁸ Government of Canada Website, Statistics Canada, available: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=2820105&&pattern=&stByVal=1&p1=1&p2=31&tabMode=dataTable&csid=>

¹⁷⁹ Government of Canada Website, Statistics Canada; <http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=2820087&&pattern=&stByVal=1&p1=1&p2=31&tabMode=dataTable&csid=>

It is important to note that *unemployment* is not the only issue that highly skilled immigrants may face, however. Studies have attested to the significant phenomenon of underemployment of immigrants in Canada – in other words, their employment in jobs that are not commensurate with their skills and qualifications. For instance, a 2008 study revealed that 42% of immigrants (25-54) held educational qualifications that were not necessary for the jobs they held.¹⁸⁰ Entrants with tertiary education who entered within the last five years are particularly likely to go into low-skill, low-income occupations¹⁸¹. Many factors can lead to skilled immigrants being unemployed or underemployed, such as difficulties in having their qualifications recognised, employer preferences for Canadian-born applicants, lack of Canadian work experience or language skills on the part of applicants, discrimination, lack of employer awareness and others¹⁸². To some degree, these challenges explain why the new system of Express Entry places greater emphasis on employer or provincial nomination of candidates: to avoid a waste of human capital¹⁸³.

Some earlier data is available on *temporary permit holders*, as presented in the table below. This shows that in 2013 it was more common for foreign nationals to enter through the International Mobility Program than the TFWP. The profile of entrants appears to be different; approximately a third of those coming in through the TFWP were highly qualified workers (HQW), whereas a majority of workers that enter through the IMP are believed to be high-skilled. Potentially due to Canada's emphasis on skilled migration, a higher number of foreign nationals came in through the IMP (137,533) than the TFWP (83,740)¹⁸⁴.

¹⁸⁰ Cited in Challinor, A.E. (2011), "Canada's Immigration Policy: a focus on Human Capital", Migration Policy Institute, available at <http://www.migrationpolicy.org/article/canadas-immigration-policy-focus-human-capital>

¹⁸¹ Challinor, A.E. (2011), "Canada's Immigration Policy: a focus on Human Capital", Migration Policy Institute, available at <http://www.migrationpolicy.org/article/canadas-immigration-policy-focus-human-capital>

¹⁸² See Penny Becklumb, Law and Government Division, Sandra Elgersma, Political and Social Affairs Division (Revised 8 October 2008), Recognition of the Foreign Credentials of Immigrants. <http://www.parl.gc.ca/Content/LOP/researchpublications/prb0429-e.htm#fn21>

¹⁸³ Demetri Papademetriou, President of Migration Policy Institute (MPI) Europe. Phone call. 17 December 2015.

¹⁸⁴ Indeed, the president of the CFIB argued that access to the TFWP has become more restricted in recent years. CFIB. Phone interview. 19 November 2015.

Table 5: Temporary work permit holders, 2013¹⁸⁵

Program	Number of entrants (all skills level), 2013	Number of high-skilled entrants, 2013	Details on countries of citizenship of permit holders	Extra details
TFWP¹⁸⁶	83,740 entrants with work permits	27,672 high-skilled entrants with a work permit	Of the TFW work permit holders with permits signed in 2013, the top countries of citizenship were: Philippines (30,193), Mexico (21,842), US (10,701), Jamaica (9,116), India (5,906), Guatemala (5,326), UK and colonies (4,449), France (2,223), Republic of Korea (2,204), Ireland (1,559).	-
IMP	137,533	Unavailable, most are considered to be high-skilled	Of the IMP work permit holders whose permits were signed in 2013, the top countries of citizenship of holders were: US (30,399), France (19,971), India (14,251), UK and colonies (10,189), Australia (9,840), Ireland (7,076), Japan (6,723), Philippines (6,703), Germany (6,386), Republic of Korea (5,885)	Of the 137,533 foreign nationals who entered as temporary residents through the IMP program in 2013, 28,073 came through international arrangements (e.g. Bilateral agreements), 107,856 came for "Canadian interests" (i.e. because they offer social, cultural or economic benefit to Canada) and 1,604 were permanent resident applicants.

The TFWP sets a limit on the proportion of low-wage TFWs (10%) that can make up an employer's workforce, but these do not apply to high-wage workers or the IMP.

Comparative overview between the national scheme and the EU Blue Card

Canada has a long history of assessing potential immigrants on the basis of 'human capital factors'. By taking a points-based approach and considering a range of attributes alongside each other, the system widens the potential talent pool, as well as leaving the government greater flexibility to select the candidates it deems best-placed to have economic success in the country.

Table 6: Comments against the objectives of a 'successful' scheme

¹⁸⁵ Government of Canada Website, Employment and Social Development Canada; http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/index.shtml

¹⁸⁶ Government of Canada Website, Employment and Social Development Canada; http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/index.shtml

Objectives of scheme	Comments on the Canadian programs
<p>Increase the number of TC HQWs arriving in the country</p>	<p>Given the number of applicants, increasing the number of HQW is not a precise objective of Canada's programs; instead the focus is on ensuring that the 'correct' workers are selected to enter. To some degree, the need to consider the quality of the applicant pool arose from concerns about the underemployment and slower upwards mobility of migrants with higher education¹⁸⁷.</p> <p>The Express Entry application management system was adopted partly in response to the excessive supply of people eligible to apply to Canada. Because the supply of applicants under the previous system was too great, the CIC faced backlogs and were forced to take either a 'first come, first served' approach (entailing long processing times) or to consider other policy tools (for example, a system of caps and occupational filters on federal programs, which would be highly dependent on having up to date labour market information). Through introducing Express Entry as a 'first bar' selecting the most appropriate candidates from a 'pool', the government can control intake more effectively. In an interview, the CIC argued that Canada's "managed migration system" represents one of the system's strengths.</p>
<p>Labour market shortages in HS sectors are filled by foreign nationals</p> <p>Contributing to the national economy's competitiveness</p>	<p>All applications through the Temporary Foreign Worker Program must be supported by a Labour Market Impact Assessment, aligning the profile of entrants to the needs of the labour market. Furthermore, when job offers are used to support permanent residence applications, these must also include a positive LMIA.</p> <p>In December 2012, a relevant Parliamentary Standing Committee warned of labour and skills shortages in these areas: A. Sciences, technology, engineering and mathematics occupations; B. Occupations in the Information and Communications Technology field; C. Health occupations; D. Skilled trades¹⁸⁸. Employer witnesses from these occupations gave evidence to the Standing Committee, attesting to the importance of migration programs in supporting them to recruit workers to fill shortages, whilst also highlighting the need for long-term skills training programs for Canadian residents.</p> <p>Some issues raised in the report (2012) of the Committee in integrating foreign nationals into HS sectors with shortages were: lack of knowledge/awareness of newcomers of the requirements of the position available; difficulties and delays in validating foreign educational credentials; and language issues¹⁸⁹. However, it is worth noting that there have been reforms to the TFWP and permanent immigration programs since 2012, and the Federal Skills Trade Program (first launched July 2012) has had more time to become established.</p> <p>Skills and labour shortages continue to be an issue in Canada. According to the CFIB Business Barometer, the percentage of business owners concerned about the shortage of skilled labour has risen over the period 2009-2014¹⁹⁰. This is a particular issue for small independent business owners¹⁹¹. According to the Digital Adoption Compass Community, the ICT sector is particularly reliant on the entry</p>

¹⁸⁷ Demetri Papademetriou, President of Migration Policy Institute (MPI) Europe. Phone call. 17 December 2015.

¹⁸⁸ Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (December 2012), 41st Parliament, First Session, 'Labour and Skills Shortages in Canada: Addressing Current and Future Challenges'. Note that the report also warned of shortages in low-skilled occupations.

¹⁸⁹ Ibid, pp.37-41.

¹⁹⁰ CFIB (December 2014), Taking the Temporary Out of the TFW Program, pp. 3-6.

¹⁹¹ Ibid.

Objectives of scheme	Comments on the Canadian programs
	<p>of high-skilled workers to fill shortages; over a third of the ICT workforce are immigrants (a higher share than in other sectors)¹⁹². A "conservative forecast" of the ICTC is that 182,000 more workers will be needed in the ICT sector by 2019¹⁹³.</p> <p>Employers see the immigration of high-skilled workers as "critical" for responding to shortages¹⁹⁴. According to the president of the CFIB, Canada's programs work quite well to address skills shortages, although more could be done to support 'bridging aspect' of migration programs (see below). In his opinion, the creation of Express Entry has been an important move towards increasing the involvement of employers in Canada's migration policy. Likewise, the ICTC argued migration programs have moved towards becoming labour market-driven with the introduction of Express Entry and the enhanced ability of provinces and employers to focus on their needs. However, it is too early to assess the full impacts.</p>
<p>Attractiveness of the scheme</p>	<p>As shown above, the supply of applicants for the permanent economic programs exceeds the number of places available.</p> <p>Between 1 January and 6 July 2015, 41,218 of those who applied through Express Entry were deemed to fulfil the conditions for one or more permanent economic programs. However, only 12,017 (11% of all applicants, 29% of those in the pool) had so far been issued with an invitation to apply for permanent residence. To some extent, this may imply a 'creaming off effect' of the invitation to apply¹⁹⁵.</p> <p>Employers are also quite positive about the Express Entry scheme and the level of input they have¹⁹⁶.</p> <p>The target to process 80% Express Entry applications within six months appears to be on track.</p>

Pathways to permanent residence within the systems

The CIC estimates that, amongst high-skilled permanent residents, roughly half have previous work experience as temporary workers in Canada (estimated)¹⁹⁷. According to the CIC, historic research indicates that permanent residents with previous work experience were more successful, as they had "already had an opportunity to establish themselves in the labour market" and "to establish a reputation with the employer or in the sector", as well as having "made the decision to attempt to become a permanent resident based on their desire and experience having lived in Canada on a temporary basis"¹⁹⁸. The Canadian Experience Class program is clearly targeted at such individuals.

The Canadian Federation of Independent Business has recommended that the 'bridging aspect' could be a useful part of the national immigration structure. To demonstrate this, the CFIB

¹⁹² Digital Adoption Compass Community Website ; <http://www.digcompass.ca/labour-market-outlook-2015-2019/highlights/>

¹⁹³ Estimate based on ICTC research; cited in: ICTC. Phone interview. 3 December 2015.

¹⁹⁴ ICTC, Phone interview, 3 December 2015.

¹⁹⁵ Demetri Papademetriou, President of Migration Policy Institute (MPI) Europe. Phone call. 17 December 2015.

¹⁹⁶ Phone interviews with CFIB (19 November 2015) and ICTC (3 December 2015).

¹⁹⁷ CIC. Phone interview, 20 November 2015.

¹⁹⁸ CIC. Phone interview, 20 November 2015.

cited the example of the Provincial Nominee Program (PNP), which enables provincial governments to support the permanent residence of workers that support their regional labour market needs. According to the CFIB, there are signs that this is effective; research in Manitoba shows that if people immigrate to a particular region, they are likely to stay there, bringing longer-term benefits and spreading the immigrant population across the country. The CFIB believes that this should be the model for the future, putting people onto the pathway towards permanent residence through a new 'Introduction to Canada' visa¹⁹⁹.

Specific advantages and disadvantages of the Canadian schemes

Advantages:

- In Canada, there are multiple schemes supporting the entry of different categories of skilled workers
- Despite existence of multiple schemes, there is a centralised online application system for all permanent residence applications (Express Entry) and online application processes for the TFWP and IMP
- Extensive efforts have been made by the CIC to engage employers in the system (employer liaison network, Employer Portal, Job Bank). For example, representatives from the Canadian Federation of Independent Business (CFIB) and the Information and Communications Technology Council (ICTC) are relatively positive about, and aware of, the new system of Express Entry, believing that it gives employers a greater role in the system²⁰⁰.
- The attractiveness of Canada's schemes leaves the government well-placed to choose the best candidates to respond to its skills/labour shortages.
- Express Entry serves as a key filter for applicants, removing the need for caps on occupations.
- One reason for the introduction of Express Entry was to improve processing times. It is early to assess, but early evidence is favourable. So far, the CIC seems to be on track to meet government target of processing 80% of applications within 6 months²⁰¹.
- Emphasis on minimum levels of *skilled work experience* in the permanent residence programs, as opposed to meeting minimum educational requirements, fulfilling a salary threshold or having a binding job offer. This may enable a wider pool of skilled candidates to apply, although not to gain entry (except in certain circumstances, such as through a skilled trade or with a provincial nomination).
- Language requirements for Express Entry mean that few individuals who gain permanent residence require language training²⁰².
- No restrictions to labour market access of skilled foreign workers once they are permanent residents.
- There is an option for 'bridging open work permits' for temporary foreign workers who are close to having their permanent residence applications approved

¹⁹⁹ For more information, see CFIB (December 2014), Taking the Temporary Out of the TFW Program.

²⁰⁰ Phone interviews with CFIB (19 November 2015) and ICTC (3 December 2015).

²⁰¹ CIC. Phone interview, 20 November 2015.

²⁰² CIC. Phone interview, 20 November 2015.

Final observations:

- It is too early to assess full impacts of Express Entry scheme.
- According to the president of the CFIB, the concept of Job Bank, Employer Portal is a good idea, but is less successful in the more 'passive' sense, i.e. employers are unlikely to 'mine' the list of applicants and are more far likely to support the applications of pre-selected candidates²⁰³. The ICTC representative also made similar remarks²⁰⁴. This reflects that the fact that not all skilled workers who are eligible for permanent economic programs will receive an ITA through Express Entry. Some employers believe that there should be an expedited process for bringing in skilled workers to fulfil urgent needs. For instance, the pilot Facilitated Process for IT workers from the 1990s (now abolished) fast-tracked IT workers' applications, and some ICT employers would like to see something similar re-introduced²⁰⁵. More may need to be done to engage small and medium enterprises in the immigration processes²⁰⁶.

Table 7: In-depth entry requirements for skilled migration programs

Program name	Detailed entry requirements
Federal Skilled Worker Program (permanent residence)	<p>Candidates must first receive an Invitation to Apply (ITA) through Express Entry, judged against the extensive ranking criteria described above.</p> <p>To be eligible for the FSWP, candidates must fulfil these conditions:</p> <ul style="list-style-type: none"> ■ Skilled work experience of at least one year full-time (1,560 hours total / 30 hours per week), which was paid; within the last 10 years, and at skill type 0, or skill levels A or B of the 2011 National Occupational Classification (NOC); ■ Minimum language requirements in English and/or French (CLB 7, proven by CIC test) ■ Minimum educational attainment of either a Canadian secondary (high school) or post-secondary certificate, diploma or degree or a completed foreign credential that is supported by an Educational Credential Assessment (ECA) report. <p>Assuming they meet all the detailed entry requirements for FSWP, they will then be ranked against a points-based selection criteria (maximum 100 points). The selection factors²⁰⁷ are:</p> <ul style="list-style-type: none"> ■ Their language skills in English and/or French; ■ Their education; ■ Their work experience; ■ Their age; ■ Whether they have a valid (LMIA-supported) job offer; and ■ Their adaptability (how well they are likely to settle in Canada). <p>To qualify, FSWP applicants must receive the pass mark of 67 out of 100 and fulfil the admissibility requirements.</p>
Federal Skilled Trades Program (permanent)	<p>Candidates must first receive an Invitation to Apply (ITA) through Express Entry, judged against the extensive ranking criteria described above.</p> <p>To be eligible for FSTP, candidates must fulfil these requirements²⁰⁸:</p> <p>Either have an offer of full-time employment for a total period of at least one year or a certificate of qualification in that skilled trade issued by a provincial or</p>

²⁰³ CFIB. Phone interview, 19 November 2015.

²⁰⁴ ICTC. Phone interview, 3 December 2015.

²⁰⁵ ICTC. Phone interview, 3 December 2015.

²⁰⁶ ICTC. Phone interview, 3 December 2015.

²⁰⁷ Government of Canada Website, Immigration and Citizenship; <http://www.cic.gc.ca/english/immigrate/skilled/apply-who.asp>

²⁰⁸ Government of Canada Website, Immigration and Citizenship; <http://www.cic.gc.ca/english/hire/fstp.asp>

Program name	Detailed entry requirements
	<p>territorial body; Have valid third-party language test results (that show they meet the minimum language threshold), Have at least two years of full-time experience in a skilled trade within the five years before they apply, and Meet all job requirements for the skilled trade as set out in the National Occupational Classification (NOC).</p>
Canadian Experience Class (permanent)	<p>Candidates must first receive an Invitation to Apply (ITA) through Express Entry, judged against the extensive ranking criteria described above. To be eligible for CEC, candidates must fulfil these requirements²⁰⁹:</p> <ul style="list-style-type: none"> ■ Have at least 12 months of full-time (or an equal amount in part-time) skilled work experience in Canada in the three years before application; ■ have gained the work experience in Canada with the proper authorization; ■ meet the required language levels needed for your job for each language ability (speaking, reading, writing and listening)²¹⁰; ■ plan to live outside the province of Quebec. <p>Note that the self-employed are not eligible. Skilled work experience must be in one of the following areas: Managerial jobs (NOC skill level 0); Professional jobs (NOC skill type A); Technical jobs and skilled trades (NOC skill type B)</p>
Temporary Foreign Worker Program (temporary)	<p>Employer must obtain a positive Labour Market Impact Assessment (LMIA) from Employment and Social Development Canada (ESDC), proving that the worker is needed for a specific position. The temporary worker must then obtain a copy of the confirmation letter and apply for a work permit.</p> <p>The TFWP was reformed in 2015, meaning that the provincial or territorial median hourly wage is now used to set program requirements, rather than the National Occupational Classification (NOC) skill levels²¹¹. Employers must now apply for the TFWP under one of two streams: the Stream for High-wage positions or the Stream for low-wage positions²¹².</p>
International Mobility Program (temporary)	<p>The IMP acts as a collection of several different programs, regulated by international agreements. There is not a common minimum requirement across the IMP (education, experience, etc.), as these factors depend on the purpose and features of the sub-program in use²¹³. One common feature of IMP applications is that they never require a LMIA from the ESDC.</p> <p>Generally speaking, workers that enter through the IMP are expected to bring "broader economic, cultural or other competitive advantages for Canada"²¹⁴. The IMP is normally used to bring in high-skilled workers, such as intra-company transferees.</p>

'Comprehensive Ranking System' of Express Entry

Applicants through Express Entry can gain a maximum of 1,200 points and are ranked against four main criteria:

²⁰⁹ Government of Canada Website, Immigration and Citizenship; <http://www.cic.gc.ca/english/immigrate/cec/apply-who.asp>

²¹⁰ Minimum language level of Canadian Language Benchmark (CLB) 7 for NOC 0 or A jobs OR Canadian Language Benchmark (CLB) 5 for NOC B jobs.

²¹¹ Government of Canada Website, Employment and Social Development Canada; http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/restrict.shtml

²¹² Applications are not permitted in the Accommodation, Food Services and Retail Trade sectors. Furthermore, applications for positions with little or no education or training required will not be processed in economic regions that have an unemployment rate of 6% or higher.

²¹³ CIC. Phone interview, 20 November 2015.

²¹⁴ Government of Canada Website, Immigration and Citizenship; <http://www.cic.gc.ca/english/work/employers/apply-who.asp>

- Core / human capital factors (maximum of 500 points, or 460 points if applying with spouse or common-law partner)
- Spouse or common-law partner factors (maximum 40 points)
- Skills transferability factors: education and/or foreign work experience (maximum 100 points)
- Additional points, for either provincial nomination or arranged offer of employment (i.e. LMIA-supported job offer) (maximum 600 points)

Those who score the most highly will receive an Invitation to Apply (ITA) for permanent residence. According to the CIC, "a goal of Express Entry is to ensure strong links between economic immigration and the Canadian labour market. For that reason, qualified candidates who also have a job offer will get enough points to ensure they are ranked high enough to get an invitation to apply... Similarly, a nomination by a province or territory, will give a candidate additional points to rank high enough to be invited to apply at the next eligible round of invitations"²¹⁵. The full sub-criteria are listed below²¹⁶.

A. Core / human capital factors		
Factors	Points per factor - With a spouse or common-law partner	Points per factor - Without a spouse or common-law partner
Age	100	110
Level of education	140	150
Official languages proficiency	150	160
Canadian work experience	70	80
B. Spouse or common-law partner factors		
Factors	Points per factor (Maximum 40 points)	
Level of education	10	
Official language proficiency	20	
Canadian Work Experience	10	

A. Core/human capital + B. Spouse or common-law partner factors = Maximum 500 points (with OR without a spouse or common-law partner)

C. Skill Transferability factors (Maximum 100 points)	
Education	Points per factor (Maximum 50 points)
With good/strong official languages proficiency and a post-secondary degree	50
With Canadian work experience and a post-secondary degree	50
Foreign work experience	Points per factor (Maximum

²¹⁵ Government of Canada Website; <http://www.cic.gc.ca/english/express-entry/criteria-crs.asp>

²¹⁶ Lifted directly from the CIC website: <http://www.cic.gc.ca/english/express-entry/grid-crs.asp>

	50 points)
With good/strong official languages proficiency (Canadian Language Benchmark [CLB] level 7 or higher) and foreign work experience	50
With Canadian work experience and foreign work experience	50
Certificate of qualification (for people in trade occupations)	Points per factor (Maximum 50 points)
With good/strong official languages proficiency and a certificate of qualification	50

A. Core/human capital + B. Spouse or common-law partner + C. Transferability factors = Maximum 600 points

D. Additional points (Maximum 600 points)

Factor	Points per factor
Arranged employment (positive Labour Market Impact Assessment required)	600
PN nomination	600

A. Core/human capital + B. Spouse or common-law partner factors + C. Transferability factors + D. Additional points = Grand total – Maximum 1,200 points

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- 'ICTC interview': Sandra Saric, VP for Talent Initiatives, Information and Communications Technology Council (ICTC). Phone interview. 3 December 2015
- Pro-link Global Website (2014), <https://pro-linkglobal.com/canada-significant-changes-throughout-canadian-temporary-foreign-worker-programs/>
- Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (December 2012), 41st Parliament, First Session, 'Labour and Skills Shortages in Canada: Addressing Current and Future Challenges'

National schemes for attracting highly qualified workers

Country Fiche: Australia

Key Points to note:

- The Skilled Stream (vis-à-vis the Family and Humanitarian Stream) of migration accounts for about two-thirds of the migration visas issued (in 2014-15, 128,550 places were allocated to the permanent skilled migration stream, including all accompanying family members). It includes a variety of visas.
- Visas are both temporary and permanent. The main temporary visa is ‘the temporary skilled visa’ (457), which is temporary and sponsor-based. Permanent visas are either sponsor-based, whereby the sponsor can be an employer (employer nomination scheme - 186), or can be the regional Australia (regional sponsor scheme – 187), or sponsor-free. This is the case of the Skilled-Independent Visa (189), which requires an expression of interest system and a points-based assessment.
- The most comparable visa with the EU Blue Card is the Skilled Temporary Visa (457): it is valid up to 4 years, but migrants have the possibility to move after two years on a permanent visa.
- Australia makes an extensive use of Skilled Occupation List to select skilled both temporary and permanent migrants and employs bridging visas from one category to another.
- Traditionally, migration visas have been permanent. Since the mid-90s, however, a considerable number of temporary skilled visas started to be issued.
- Permanent migration is usually capped by the government and a processing priority is indicated.
- Permanent migrants are more commonly selected onshore and the importance of sponsor-free immigration has decreased over time. In fact, the majority of skilled category applicants now enter Australia as temporary long-stay workers (457) - 130,000 primary applicants in 2014-15.
- Labour migration policy in Australia is under constant monitoring and informed by well-developed skilled migration research.

1. Overview of the scheme

The Australian **permanent immigration program**²¹⁸ is divided into two distinct streams: the “Migration Programme for Skilled and Family Migrants” and the “Humanitarian Programme for Refugees”. Within the Migration Programme for Skilled and Family Migrants, the skill stream is linked to the needs of the national labour market, while the family stream facilitates the entry of family members wishing to join their relatives in Australia. Combined, both programmes also address the national goal of sustained population growth, in a context where by 2011 26% of Australia’s population were first generation immigrants, substantially exceeding national rates for the other major immigrant-receiving countries.

²¹⁷ This country fiche has been co-written by Prof. Leslyanne Hawthorne, on 12 December 2015.

²¹⁸ For more information, see Parliament of Australia 2012, Background Note, “Skilled migration: temporary and permanent flows to Australia”, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/SkilledMigration

Australia's labour migration policy consists of a plurality of schemes, responding to specific needs and contemporary labour market demands. All schemes, however, albeit to a different degree, feature a detailed labour market analysis, selection of specific skills, and informed by geographical considerations (through the state/territory regional sub-category which has grown rapidly in recent years). It is important to note, that not only highly qualified migrants are covered, but also medium and low skilled workers deemed to be necessary for the Australian labour market. However, around two-thirds of primary applicants selected are professionals and managers.

The Minister for Immigration and Border Protection has the power to cap the number of permanent visas which can be granted each year in a particular visa subclass. When a cap is reached, no further visas will be granted in that visa class in the programme year. Although a visa can no longer be granted until the start of the new programme year, processing of applications may continue and applicants who meet the requirements can wait in a queue for the following year (cap and queue). The option 'cap and cease' is also available in exceptional circumstances, and means that when a cap has been reached for a particular visa class, work on all applications which have not been processed to decision stops, the files are closed and application fees are refunded. These applications are treated as if they have not been submitted.

The Minister can also give written directions on the order of priority for processing visa requests. For skilled migration, the highest priority is afforded to those seeking migration to a regional area, followed by applicants who are sponsored by an employer. The next priority is afforded to people who have been nominated by a state or territory government agency. Lower priority is afforded to applications from people who have not been sponsored by an employer or nominated by a state or territory government. By 2011 the government had introduced a more demand-driven approach, favouring the admission of skilled migrants whose employment had been arranged prior to their arrival. The empirical basis for this decision was compelling as 92% of employer-sponsored applicants were employed full-time within 6 months of arrival from 2009-11, compared to 76% of points-tested 'Independent' migrants selected offshore.

Beyond the permanent skilled migration programme, however, it is essential to recognise that the majority of skilled category applicants now enter Australia as **temporary long-stay workers** – a category with no annual quota, and one which wholly reflects the priorities of sponsoring employers. with minimal requirement for labour market testing²¹⁹. The temporary skilled visa (457, see below for description) 'visa is of interest to Australian employers in multiple fields – allowing them direct choice over migrants' selection, personal attributes, speed of entry, and access to work in under-supplied sectors and sites for up to 4 years (with scope for extension). From the migrant's perspective, the 457 visa has similar benefits – facilitating priority processing, immediate access to work, opportunity to change employers, and scope to 'category-switch' in Australia by applying for permanent skilled migration. The 457 visa plays a vital role in assuring workforce supply in select fields, including medicine and nursing.

²¹⁹ Khoo, S-E, McDonald, P & Hugo, G (2005), Temporary Skilled Migrants in Australia: Employment Circumstances and Migration Outcomes, Department of Immigration Multicultural and Indigenous Affairs, Canberra.

1.1 Design of the Scheme

The **Skills Stream Migration Programme** is divided into several categories. Some categories require a points-based assessment (2), whereas other categories do not (1)²²⁰. The work visas can be permanent or temporary, and sponsored-based or not sponsored-based.

- The categories that do not require a points-based assessment are the following:
 - The **Temporary Skilled Visa** (subclass 457) The requirement is that the migrants will work in one of the occupations included on the regularly updated Skilled Occupations List, have a sponsored employer, show evidence of recent relevant skills and experience, and have a level of English proficiency matched to their occupational requirements (for example to secure vocational registration)²²¹. A high proportion of applicants category-switching to stay are former international students qualified in Australia, who first secure employment through the 457 visa²²².
 - The **Employer Nomination Scheme** (subclass 186) is a *permanent* scheme for applicants sponsored by an employer. It requires a skill assessment carried out by the relevant authority and three years of working experience, unless exempt. The profession should be listed in the Consolidated Sponsored Occupations List and the worker should be paid at least the same as an Australian in the same occupation in the same location (market salary rate defined as the salary of an Australian in the same occupation in the same location also considering competitor companies in the same sector). Applicants must be younger than 50, unless exempt. The scheme consists of two steps: a nomination by an approved Australian employer and an application under the scheme. There are three streams: the transition scheme from the temporary skilled visa (457), a direct stream for people outside Australia or in Australia on a permit different from 457, and an agreement stream, for people sponsored by an employer through a labour migration agreement.
 - The **Regional Sponsored Migration Scheme** (subclass 187) is a *permanent* scheme that requires the applicant to be sponsored by a regional employer. 'Regional Australia' for the purpose of this category is defined as the non-metropolitan areas of the nation that lie beyond most of the major capital cities and their immediate surrounding suburbs. However selected capital cities, which seek a higher proportion of skilled migrants than they attract, have secured permission to be categorised as 'regions' under the scheme²²³.

²²⁰ For more information, see the website of the Australian Government, Department of Immigration and Border Protection, viewed on 14th October 2015, <http://www.border.gov.au/Trav/Work/Empl/Visa-options-comparison-charts>

²²¹ Most Australian professional and trade regulatory bodies have mandated specific English language levels as a condition of securing registration to practice, most ranging from International English Language Testing System Band 6 to Band 8 (for example IELTS Band 6 for professional engineers, Band 7 for all medical and allied health practitioners, and higher levels for lawyers)

²²² Hawthorne, L & To, A (2014), 'Employer Response to the Study-Migration Pathway: The Australian Evidence 2007-2011', Highly Skilled Migration: Policies, Processes and Politics, Special Issue, *International Migration* (Geneva), 52(3): 99-115, August

²²³ The state capital cities of Adelaide (South Australia) and Hobart (Tasmania) have sought 'regional' categorization in the past decade, to boost their scope to recruit skilled migrants.

The applicant should hold a qualification at the 1, 2 or 3 level of the ANZCO classification. The ANZCO includes 5 occupational levels, and 1 and 2 are considered skilled, while level 3, 4 and 5 are considered semi, low or unskilled respectively²²⁴. The salary is required to be equivalent to the salary of an Australian in the same occupation and location. Moreover, the applicants should be younger than 50 years and be competent in English.

- **The categories that do require a points-based assessment are the following:**
 - The **Skilled-Independent Visa** (subclass 189) is a *permanent* permit that requires the applicant to express her interest, before applying through SkillSelect. A sponsor is not necessary; however the applicant must nominate an occupation in the relevant Skilled Occupations List²²⁵ and her skills are assessed by a relevant authority. Moreover, the applicants must be under 50 and be competent in English. Those who cannot demonstrate the specified English standard for their field, and/ or those whose qualifications are unlikely to be recognised are excluded from eligibility to proceed. Points are granted for the number years worked in skilled employment, level of qualifications, qualifications obtained in Australia, working experience in Australia and partner's skills.
 - The **Skilled-Nominated Visa** (subclass 190) is a *permanent* permit that requires the applicant to express her interest, before applying. A sponsor is necessary and the applicant must be nominated by a state/territory government. The applicant must nominate an occupation in the relevant Consolidated Sponsored Occupations List²²⁶ and her skills are assessed by a relevant authority. Moreover, the applicant must be under 50 and be competent in English (as above). Points are granted for years worked in skilled employment, qualifications, qualifications obtained in Australia, working experience in Australia and partner's skills.

The **Skilled-Regional (Provisional) Visa** (subclass 489) is a *temporary* entry channel that grants residence for up to 4 years and for which the applicant must express interest before being invited to apply. The applicant can be sponsored by either an eligible relative or by a state/territory government and the occupation must be respectively either in the Skilled Occupations List or in the Consolidated Sponsored Occupation List. Moreover, the applicants must be under 50 and competent in English.

It is important to note that the Skilled Occupations List includes a variety of professions, both highly qualified, like nuclear engineers and surgeons, and medium-skilled, like plumbers and joiners. Likewise, the Consolidated Occupations List includes both highly qualified professions and medium/low-skilled professions, like flower growers and pig farmers.

1.2 Application procedure

²²⁴ <http://www.immigration.govt.nz/migrant/general/generalinformation/anzsco>, viewed on 10th December 2015.

²²⁵ The Skilled Occupation List can be consulted on the website of the Australian Government, Department of Immigration and Border Protection, viewed on the 15th October 2015 <http://www.border.gov.au/Trav/Work/Work/Skills-assessment-and-assessing-authorities/skilled-occupations-lists/SOL>

²²⁶ The Consolidated Skilled Occupation List can be consulted on the website of the Australian Government, Department of Immigration and Border Protection, viewed on the 15th October 2015 <http://www.border.gov.au/Trav/Work/Work/Skills-assessment-and-assessing-authorities/skilled-occupations-lists/CSOL>

The dividing line between ‘permanent’ and ‘temporary’ migrants has become increasingly unclear over time, with temporary migration dominating. In a typical year up to 130,000 ‘457’ visa primary applicants become residents – far exceeding the number of primary applicants in the 128,550 permanent skilled migration quota (where stated numbers include all accompanying family members). Reflecting this trend, in July 2012 a new model to select skilled migrants – the Skilled Migrant Selection Model (SkillSelect) – was introduced in Australia, following an internal review of the points-based system²²⁷. The model is an electronic system whereby prospective applicants must first submit an expression of interest (EoI) for an initial review of their skills from the Department of Immigration and citizenship before being invited to make a visa application²²⁸. Four key points should be noted in relation to this:

- This application process can be used for both temporary and permanent primary applicants.
- Lodged applications can be screened online, by both prospective employer and state/ territory government sponsors.
- Applicants may be immediately offered a permanent skilled migration place, or (alternatively) a temporary sponsored position in the first instance, with sponsored applicants then fast-tracked.
- Applications remain in the ‘pool’ for a defined period of time. If not selected within that period, migrants must lodge a new application to ensure all information is current, and to prevent the development of processing backlogs.

1.3 Rights granted under the scheme

The Temporary Skilled Visa (subclass 457) allows skilled people to work for their approved sponsor for up to four years. After a period of employment of two years in the same position, an employer may be able to sponsor a subclass 457 visa holder through the Temporary Residence Transition stream, allowing ‘category-switching’ to permanent resident status. Since 2012 degree-qualified international students have been guaranteed the right to stay and seek employment in Australia for 2-4 years on course completion (with 4 years allocated to those qualified by doctoral qualifications). This is uniquely generous in global terms, in a context where very substantial numbers of international students elect to study in Australia (for example 78% of recent medical graduates).

- The Employer Nomination Scheme (subclass 186) is a permanent scheme for applicants sponsored by an employer.
- The Regional Sponsored Migration Scheme (subclass 187) is a permanent scheme that requires the applicant to be sponsored by a regional employer. The salary is required to be equivalent to the salary of an Australian in the same occupation and location.

²²⁷ Department of Immigration and Citizenship, 2010 “Introduction of a New Points Test”, DIAC,, <http://www.immi.gov.au/skilled/general-skilled-migration/pdf/points-fact.pdf>, accessed 27 December 2010.

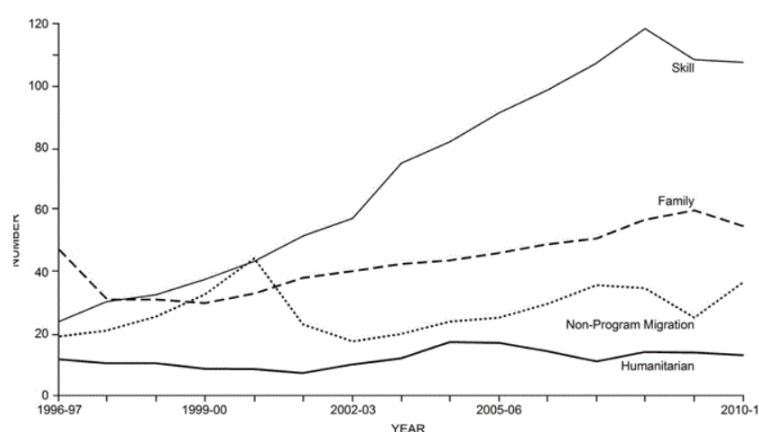
²²⁸ Expression of interest, otherwise called express entry or SkillSelect is a stage which precedes the application itself, and serves the purpose of pre-filtering migrants. It is an efficiency-oriented instrument that is particularly relevant when the number of applicants exceed the capped number. For more information on cap, <https://www.border.gov.au/about/corporate/information/fact-sheets/21managing> viewed on 10th December 2015. It further provides scope for employers and states/ territories to assess pre-screened applicants for sponsorship purposes.

- The Skilled-Independent Visa (subclass 189) is a permanent permit.
- The Skilled-Nominated Visa (subclass 190) is a permanent permit.
- The Skilled-Regional (Provisional) Visa (subclass 489) is a temporary entry channel that grants residence for up to 4 years.

1.4 Statistical overview

In 1997, people migrating under the Skilled Stream overtook the arrivals under the family stream (see Figure 1). In 1996-97, skilled migration represented 47% of the Migration Programme, but by 2011-2012, this share had risen to 68%.

Table 1: Permanent migrants by eligibility category in Australia 1996–97 to 2010–11²²⁹



The recent statistics show that temporary migration, for work or study purposes, is increasingly becoming the first step towards permanent settlement in Australia. In 2011-2012, around 40% of applicants for permanent visas were already residing in Australia, and half of these had a temporary skilled permit²³⁰. By 2015 this had risen to around 50%. Immigration policy in Australia distinguishes among on- and off-shore applications, and provides bridging visas between the two. The number of permanent / provisional visas in 2012-13 to 30 June 2013 where the previous visa was held by a migrant on a temporary skilled visa was 38,470²³¹. For the past decade former international students have been the dominant group participating in what is termed ‘two-step migration’, far exceeding the number of ‘457’ temporary workers category-switching to stay.

As demonstrated by Table 2, by June 2014, the number of temporary ‘457’ visa professionals far exceeded the scale of points-tested permanent skilled migrant arrivals in key fields such as IT, engineering and medicine. Around 50% of permanent skilled migrants by this time were also selected onshore – the majority as former international students who had qualified in Australia (for example in accounting and nursing), but also as former temporary foreign workers²³².

²²⁹ G Hugo, Australia’s changing population and the future, presentation to the Migration Institute of Australia Migration 2010 conference, Sydney, 8 October 2010. Data sources: ABS 2007, Australian Social Trends; DIAC 2009 and 2011.

²³⁰ Parliamentary Library, Temporary skilled migration, 2014, viewed on 14th October 2015, http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/TempSkilledMigration

²³¹ Australian Government, Department of immigration and Borders Protection, Subclass 457 State/Territory summary report, 2013. Viewed on 14th October 2015, <http://www.border.gov.au/ReportsandPublications/Documents/statistics/457-stats-state-territory-june13.pdf>

Table 2: Australian Employer Demand for Skilled Migrants, Temporary Compared to Permanent Points-Tested Categories, by Major Field and Selection Location (30 June 2008 to 30 June 2014)²³³

Skilled Migration Category	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	% Selected Onshore 2013-14
Temporary Stock Resident (457 Visa)							% New 2013-14 Approvals Only
Computing/ IT	7,150	7,360	9,010	10,490	11,050	10,880	22.2%
Engineering	6,670	5,620	6,210	8,280	8,070	6,160	39.8%
Accounting	2,580	2,470	2,710	3,330	3,840	4,010	48.9%
Nursing	4,560	3,850	3,300	4,070	4,770	3,810	61.6%
Medicine	5,060	4,600	4,990	5,030	4,590	4,160	34.7%
Education	1,220	1,130	1,420	2,190	2,830	2,910	50.8%
Total (all fields)	77,300	68,400	72,030	91,050	107,970	108,870	50.9%
Permanent Arrivals (GSM Visa)							% + No. Total 2008-14 Approvals
Computing/ IT	4,774	5,205	4,468	8,538	8,389	7,975	37.2 (39,349)
Engineering	4,319	5,907	4,112	4,891	3,898	4,160	35.2 (27,287)
Accounting	6,642	6,783	14,949	7,303	6,022	6,880	70.1 (48,579)
Nursing	1,357	1,700	1,374	1,174	1,404	2,761	57.5 (9,770)
Medicine	446	1,070	508	1,037	1,289	1,134	28.8% (5,484)
Education	883	754	467	730	912	961	37.5 (4,707)
Total (all fields)	33,604	28,042	34,913	36,893	39,147	38,130	50.0 (210,729)

Source: Hawthorne, L (2015), 'The Impact of Skilled Migration on Foreign Qualification Recognition Reform in Australia', *Canadian Public Policy Journal*, August, <http://www.utpjournals.press/toc/cpp/41/Supplement+1>, based on analysis of unpublished Department of Immigration and Border Control immigration arrivals data for permanent compared to temporary skilled migration categories, provided August 2014.

In 2012, 48,995 new migrants arrived under the temporary work skilled programme, whereas 40,607 were the new arrivals under the skill scheme who were granted permanent residency. That year the main source countries for permanent migration to Australia as Subclass '457' were the India, China and the UK; whereas the top origin countries for temporary migration were the India, United Kingdom, Ireland, Philippines, US, China and South Africa.

In the year to June 2014, 38,130 primary applicants were selected in Australia's permanent skilled migration programme (at a time when the quota including family members was 128,550). Of these 77% were professionals, 20% technicians or trade workers, and 2% managers. The great majority of primary applicants at this time were selected onshore (for example 24,709 professionals compared to 14,139 selected outside Australia). The primary professional fields at this time were computing (21%), accounting (18%), health (12%) and engineering (11%). It is important to note that source countries also varied markedly by field. For professional engineers, for instance, India (21%), China (12%), Iran (10%), Malaysia (9%) and the UK (5%) were the top 5 source countries, while in medicine the main source countries were the UK (19%), Malaysia (17%), India (16%), Canada (4%) and Sri Lanka.²³⁴

By June 2014 108,870 primary applicant 'stock' were resident, derived from multiple occupations. 49% percent of arrivals that year were professionals, 25% technicians/ trade

²³³ Although official immigration statistics include also the family members, the figures provided in this table and the tables below on primary applicants for the 457 visa compared to the points-tested permanent primary applicants refer to primary applicants and are based on unpublished data provided to Leslyanne Hawthorne directly by DIBP.

²³⁴ Hawthorne, L (2015), 'The Impact of Skilled Migration on Foreign Qualification Recognition Reform in Australia', *Canadian Public Policy Journal*, August, <http://www.utpjournals.press/toc/cpp/41/Supplement+1>

workers, and 20% managers. Half were selected onshore (many as former international students), with the main professions that year computing (16%), health (5%), engineering (4%) and accounting (4%). In relation to policy and employment outcomes, it is important to note the impact of employer choice on skilled migrants' selection. Within the professions, Australian employers demonstrate a marked preference to select migrants with advanced English language ability, training in OECD countries, and/or local qualifications. As demonstrated by Table 2, showing the top ten source countries for employer-sponsored temporary applicants compared to permanent skilled migrants in the year to 30 June 2014, 54% of the 457 visa engineers had qualified in OECD countries, and 50% were native English speakers from the UK, Ireland, the USA and Canada. The comparable figure for permanent points-tested migrants (selected by government) was 7%.

Table 3: Top 10 Source Countries for Skilled Category Temporary Compared to Permanent Migrant Engineer Primary Applicants (30 June 2009-2014)

Temporary '457' Visa Stock Resident Year to 30 June 2014 (All Sources = 6,160)	Permanent Skilled Category Total Selected Year to 30 June 2014 (All Sources = 4,160)
UK (24%)	India (18%)
Ireland (13%)	China (15%)
USA (9%)	Iran (9%)
India (6%)	Pakistan (7%)
Philippines (5%)	Malaysia (6%)
Canada (4%)	UK (5%)
China (4%)	Sri Lanka (3%)
France (4%)	Philippines (3%)
Malaysia (2%)	South Africa (2%)
South Africa (2%)	Bangladesh (3%)

L (2015), 'The Impact of Skilled Migration on Foreign Qualification Recognition Reform in Australia', *Canadian Public Policy Journal*, August, <http://www.utpjournals.press/toc/cpp/41/Supplement+1>

As shown by multiple Australian studies in recent decades, English ability is the key determinant of registration for migrants in regulated fields, and of migrants' early employment outcomes (including their likelihood of utilising qualifications in work). Those with low English language ability face years of occupational displacement.

1.5 Comparative overview between the national scheme and EU Blue Card

In global terms, Australia achieves excellent outcomes from its permanent skilled migration programme, with employer sponsored and offshore independent applicants securing the highest full-time employment rates (92% and 76% employed at 6 months respectively, with employer-sponsored migrants most likely to use their qualifications in work (see Table 1).

The Australian system for HQW is complex and layered, but when comparing the Blue Card, the visa 457 Temporary Skilled Visa is the best comparative candidate because it is a temporary and sponsor-based scheme. Quarterly statistics on visa 457 are available online²³⁵. It has to be noted that, in general, the statistics on the number of permits issued include family members.

²³⁵ Australian Government, Department of immigration and Borders Protection (2014), Subclass 457 quarterly report; <http://www.border.gov.au/ReportsandPublications/Documents/statistics/457-quarterly-report-2014-12-31.pdf>

In the 2014-15 programme year, in the three months (quarterly publication) up to 31st December 2014, 27,660 subclass 457 primary visa applications were lodged. The acceptance rate was very high - 92% - and 25,530 visas were granted, seemingly pointing out that the system is efficient. In 2014-15, there were 130,000 primary applicants.

In the EU, the number of Blue Cards issued in 2014 were 13,724, although 88% (12,108) were issued in Germany. If family members are included in the figures (6,380), the total number in 2014 reached 20,104. Data on the number of the applications for the Blue Card are not available at the EU level, so no acceptance rate can be calculated.

By comparing the number of the Blue Cards and the 457 visas, it emerges that Australia grants in three months almost twice as much as the EU grants in one year. And geographically, the vast majority of Blue Cards have been issued in Germany so far. Australia suffers from an uneven geographical distribution of migrants, whereby migrants tend to gather around the top four metropolitan cities. For tackling this uneven distribution, Australia has devised specific permits for regional Australia.

On 30th September 2015, 103,860 subclass 457 primary visa holders resided in Australia. As for the origin of the applications, approximately half of the applications were launched onshore and half offshore. In 2012-13, 40,450 457 visa holders were granted permanent residence.

The first element of success of the Australian system is that it is diversified and offers several pathways to migrate to Australia for work purposes. It is also designed to facilitate 'two-step migration', allowing temporary foreign workers and international students to transition to permanent resident status. The system is tailored to the needs of the labour market, and offers a variety of options to migrants at different skill levels.

Moreover, the percentage of migrants who obtain immediate permanent entry is very high compared to the EU, despite the growing dominance of temporary migration. Temporary skilled migrants can also apply for a permanent permit after 2 years, if they are sponsored by their employer through a bridging visa.

In general, Australian schemes foresee less strict requirements than the Blue Card: there is no salary requirement, except the market conformity, and a formal qualification is required only if the job itself requires a qualification. Employers play an increasingly important role and, while sponsoring the migrant undertake to ascertain on behalf of the government that the migrant is qualified for the job.

Further, Australia does not implement a selection for highly qualified migrants according to an *ex ante* definition; rather it tailors its definition of (highly) skilled migrants to the labour market needs, through occupational lists and through the flexibility the points-based assessment grants. There is no defined quota for medium and low skilled workers, if they are needed by the Australian labour market. To this end, the labour market assessment the government carries out along with social partners is essential.

Family members apply with the main applicant, and when a points-based assessment is carried out, their skills can be taken into account to score more points.

Compared to the Blue Card, the Australian schemes emphasise the importance of age (often people over 50 cannot not apply), of language competence (independent English language assessment is always required, matched to the vocational requirements of specific occupational fields) and to address worker maldistribution, select schemes require migrants to work for a defined period in regional Australia. Moreover, employers play a more important

role in sponsoring migrants than they do in Europe, not only when migrants are on their first permit, but also when they change permit, and transfer to a permanent one²³⁶.

Finally, to inform effective policy development, the Australian government has made a sustained commitment to skilled migration research, including longitudinal and continuous surveys of different temporary and permanent sub-categories.

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National schemes for attracting highly qualified workers

Country Fiche: China

Key Points to note: China

- China introduced a new visa category – the R Visa, or ‘talented person visa’ - in 2012, under the Exit and Entry Administration Law. This new visa category created a specific entry route for individuals who are classified as ‘high-level personnel’ or ‘much-needed talent’.
- The R visa has been adopted recently, and take-up has been relatively low so far (in comparison to similar schemes in other countries);
- There are also generous financial incentives on offer – the scheme offers a resettlement subsidy of 500,000 Yuan (70,000EUR), which is often complemented by additional subsidies and research grants from local governments that in some cases have been worth an additional 1-3 million Yuan;
- However, the application process is unclear and likely acts as a disincentive to third-country nationals (TCNs);
- The associated schemes for attracting highly skilled workers (HSWs) have brought in the number of HSWs that they intend to, but as yet it is not clear whether this will have the desired impact upon national technological output.

1 Overview of the scheme

China introduced a new visa category – the R Visa, or ‘talented person visa’ - in 2012, under the Exit and Entry Administration Law²³⁷. This new visa category created a specific entry route for individuals who are classified as ‘high-level personnel’ or ‘much-needed talent’, with recognition as meeting the requirements for one of these two categories dependent on being given a statement of eligibility from the government departments responsible for applying the scheme (usually the Ministry of Human Resources and Social Security or the State Administration of Foreign Experts). Eligibility is ultimately at the discretion of these government bodies, as neither a list of the fields and sectors in which applicants should be experienced nor the criteria they will be assessed against are publicly available.

This new visa category is complemented by a national scheme called the Thousand Talents Plan (TTP), an incentive scheme launched in 2008 with the aim of attracting 2,000 highly-talented individuals to China within its first 5-10 years. Participants move to China as either a ‘researcher’ or an ‘entrepreneur’ and are awarded generous financial incentives – the scheme offers a resettlement subsidy of 500,000 Yuan (70,000EUR), which is often complemented by additional subsidies and research grants from local governments that in some cases have been worth an additional 1-3 million Yuan. Like the R Visa there are no published guidelines spelling out which specific fields or roles applicants are sought in, but applicants are supposed to work in the fields of innovation, science and research. As well as the national TTP there are also various regional-level schemes of a similar nature. Award recipients are given an R visa to China²³⁸.

1.1 Design of the scheme

Qualification for an R visa – as opposed to a regular working Z visa – is dependent on receiving recognition from a relevant government department as being eligible. However, no government departments publish information on how they assess applicants and no specifications are written down in the law. Using TTP requirements as a proxy for the R visa, applicants are generally expected to possess a doctorate and be professors in renowned research institutes/universities (if they are researchers) or possess an undergraduate degree and have spent at least 3 years as a middle or senior manager at a major company. As with the legislation, there are no specific definitions of what constitutes ‘renowned’ or ‘major’.

Other than this, requirements for the R visa are the same as requirements for the regular working visa. A binding job offer is required, usually with no salary threshold²³⁹, and there are no requirements for a labour market test to be carried out. Applicants for TTP have to be under 55 years of age, 5 years lower than the usual limit of 60 years for a regular working visa²⁴⁰.

1.2 Application Procedure

The application process is the same as for other visas. Documentation proving eligibility for an R visa must be submitted to a visa centre outside of China, with successful applicants receiving a visa within 4 days. For long-term arrivals in China (those coming for more than

²³⁷ English version at: <http://cs.mfa.gov.cn/wgrlh/lhqz/lhqzjjs/t1120988.shtml>.

²³⁸ SCMP, 2014. “*qianren jihua*”, *na lingren chuixiande yaoyue beihou (the Thousand Talents Program, behind the coveted invitation)*, <http://www.nanzao.com/sc/national/14c3169f9022412/qian-ren-ji-hua-na-ling-ren-chui-xian-di-yao-yue-bei-hou>

²³⁹ Local jurisdictions can apply their own restrictions on top of the national requirements. Nowhere appears to set a salary threshold for R visas at present.

²⁴⁰ All eligibility requirements in English on the TTP website: <http://www.1000plan.org/en/>

180 days), the visa holder has 30 days after arrival in China to apply to have the visa converted into a residence permit, this residence permit then covering the duration of their time in China²⁴¹. Conversion to a residence permit officially takes 15 working days, although in practice the process can take up to 20-25 days²⁴².

R visa holders can apply for a residence permit of up to 5 years’ validity, which differs from the one-year residence permits available to people who hold regular working visas. Other than this, the residence permit is the same as the residence permit available to other foreigners working in China: it gives the holder access to healthcare, state pensions, education (for children) and other social security, as well as the right to buy one residential property. Recipients can also bring their spouse, parents, spouse’s parents and any children under the age of 18 with them on the same visa.

One difference to note is that if a Chinese national returns to China under the TTP scheme, they are exempted from the usual household registration restrictions and can access state-subsidized social security in whichever city they choose to live in²⁴³.

R visa holders appear to follow the same employment law as regular working visa holders. They may change employers so long as their old employer gives them a letter of release and they have a formal job offer from their new organisation. If they do not receive a letter of termination then they have to leave the country within 30 days and get a new visa if they wish to return to China, as do those whose employment is terminated without them finding new employment.

The law does not appear to place restrictions on the kind of work that a HSW can switch to, although if they cease to work in an area deemed to be in need of high-skilled talent then they would almost certainly only be able to apply for a one-year residence permit when the time came for their permit to be renewed, as they would no longer be eligible for the R visa.

1.3 Statistical overview

It is difficult to build a comprehensive picture of the TCN highly-skilled workforce in China. The R visa is still new and detailed statistics on government operations are not routinely published. However, using data relating to participation in the TTP (which appears to be the primary way in which R visa applicants arrive in China) and for all TCNs residing in China on regular working visas it is still possible to arrive at an approximation of the volume and demographics of R visa recipients.

Table 1: TCN demographics²⁴⁴ (2010)

	All TCN residing in China
Total TCNs resident in China	593,832

²⁴¹ Chinese Visa Application Service Center, <https://www.visaforchina.org/>.
²⁴² Travel China Guide. *Chinese Temporary Residence Permit*. <http://www.travelchinaguide.com/embassy/visa/information.htm>.

²⁴³ The Chinese household registration system (*hukou*) requires all citizens to be registered to a particular prefecture, and they then only have full rights to state welfare such as healthcare and education in that prefecture. If they move elsewhere, then can only get state-funded welfare in their new location if they meet the eligibility requirements set for non-locals by the local government, or if they are able to transfer their registration to their new location.

²⁴⁴ Residing in China on any visa (a demographic breakdown of each visa category is not available).

Gender	Male: 57% Female: 43%
Nationality (top 5)	South Korea: 20% USA: 12% Japan: 11% Myanmar: 7% Vietnam: 6%
Young working age (20-34 years old)	47%

Census data 2010 (National Bureau of Statistics)

At the time of the 2010 census there were 598,832 TCNs residing in China, 134,889 of whom were on a working visa. The working population of China as a whole was 802 million at this point.

Publicly available data does not give any information on uptake of the R visa or any detailed information on exactly who has received R visas so far. However, given the unclear procedures and requirements involved in being declared eligible for the R visa, it is likely that a significant proportion of recipients are people brought to China via the TTP scheme (which brings participants to China on an R visa). We can therefore use the number of TTP participants as a proxy for R visa recipients in order to get a rough idea of how many TCN HSWs are moving to China under the R visa.

Table 2: The workforce in China²⁴⁵

Total workforce	Total number/share
Highly skilled workforce	31.2 million
Unemployment rate highly-educated persons	16%
TCN HSW in the workforce	
HSW admitted, total ²⁴⁶ (2008-2014)	4,180
HSW admitted, annual (average)	597
TTP participants / regular working visa holders	0.5% ²⁴⁷
TTP participants/ domestic highly-skilled workforce	<1%
TTP participants / high-skilled labour shortages	<1%

Source: China Daily, 2012 (domestic HSW); McKinsey, 2013 (unemployment and labour shortages); Chinese census data, 2010 (working visas); TTP website (HSW admitted figures).

China's high-skilled workforce contained 31.2 million people in 2011²⁴⁸ and growing demand for high-skilled workers means the country is likely to face a shortage of 8 million graduates by 2020²⁴⁹. Relative to the size of China's native workforce, the number of TNCs working in China (on either R or regular working visas) is very low, making up less than 1% of the labour supply. This is particularly evident for HSW - even using generous estimates, foreign HSW only make up 0.01% of the country's high-skilled workforce.

²⁴⁵ All figures excluding Hong Kong, Macau and Taiwan.

²⁴⁶ Number of total TTP participants, 2008-2014

²⁴⁷ 0.5% is the 597 annual TTP figure as a percentage of total working foreigners in China.

²⁴⁸ China Daily, 2012. *China's workforce goes more skilful.*

²⁴⁹ McKinsey, 2013. *The \$250 billion question: Can China close the skills gap?*

Table 3: TCNs relocating to China

Acquisition	Per year (average)
Citizenship	248
Permanent residence	556

Source: Chinese Census statistics 2010 (citizenship); China Daily, 2015 (permanent residence).

The number of foreign nationals becomes permanent residents or citizens of China is low, amounting to less than 1% of TCNs of China in total. Official statistics do not identify the routes via which TCNs have acquired citizenship or permanent residence, so an examination of exactly how many TCNs in China on working visas become permanent residents or citizens is not possible. Figures on TCNs changing jobs, moving between visa categories and/or leaving the country are also not publicly available.

2 Success of the scheme

As no data on participation in the R visa scheme is currently available, other information needs to be used to assess the take up and success of the scheme. The best way to do this is by using data on participation in TTP. TCNs recruited by the TTP program are awarded R visas for China, and given the difficulty of applying for an R visa directly it is likely that TTP participants make up the majority of TCNs awarded R visas into China.

Using TTP data as a measure, the effects of the R visa and its associated schemes have been limited in comparison to the EU Blue Card. Overall numbers of TCN HSW moving to and settling in China as a result of the introduction of the scheme are significantly lower than the number of TCN HSW taking up work in the EU as a result of the EU Blue Card scheme, both in absolute terms and as a proportion of the HSW workforce. Up until now the schemes have not operated on such a scale as to have a significant impact upon labour shortages in the country.

Looking at TTP specifically, the scheme has exceeded its target for take up, bringing 4,180 HSW to China in its first 6 years against an initial target of 2,000 over its first 5-10 years. Figures show that 1,306 of TTP participants became permanent residents of China during the first five years of the program, roughly one third of the 4,130 participants. Using the average figure for successful permanent residence applications over this same period, 47% of all TCNs who became permanent residents between 2008-2013 did so after moving to China as part of the TTP.

The generous packages offered by the program appear to have been initially successful at persuading TCNs to move to China on a long-term basis, but whether or not this has contributed to technological breakthroughs or the enhancement of China's high-tech and emerging disciplines (the stated purpose of the TTP) is yet to be ascertained, as the impact of the program has not been assessed.

2.1 Advantages and disadvantages of the R visa

Some of the requirements for an R visa are less strict than those for an EU Blue Card:

- The R Visa has no minimum salary threshold, and there is no apparent labour market test carried out before a TCN may be offered a visa.

- The application process for both the visa and residence permit are also faster than for the EU Blue Card as outlined in the EU Blue Card Directive.
- The maximum length of the residence permit available to R visa holders is one year longer than the EU Blue Card's maximum of four years.

There is, however, a crucial disadvantage to the R visa, which is the lack of clear guidelines available about how to successfully apply for one. How to apply to the 'relevant government departments', what criteria the applicant will be assessed against, or even exactly which departments to apply to are not spelled out anywhere in official government documentation. This means that there is a large degree of uncertainty surrounding eligibility, and this coupled with the necessity to either be able to speak Chinese or to get help from a Chinese contact during the process of establishing eligibility is likely to act as a significant deterrent to many who would otherwise be interested.

The residence permit offered by the R visa also offers a little less residence security than the EU Blue Card. If a TCN becomes unemployed and has no new job offer, the law states that their residence permit is to be terminated with immediate effect (in contrast to the three months permitted by the EU Blue Card). While in practice employment terminations are often not reported properly and TCNs will be able to remain in China even though unemployed, this is illegal and prevents the TCN from being able to find new legal employment without first leaving mainland China and then re-entering with a new visa upon securing a new formal job offer. Changing employers can be done if a release letter is received from the TCN's previous employer, but this can be hard to obtain if the TCN's employment ends on bad terms. This means that HSW's flexibility in terms of changing employers is significantly lower than HSWs with an EU Blue Card.

The TTP (not the R visa) has also been relatively costly to run, with the standard package of incentives offered to HSWs exceeding 150,000EUR and complementary schemes offering even more. For a scheme designed to attract larger numbers of HSW, this would most likely be far too costly to be sustainable.

ANNEX 9

INTRA-EU MOBILITY OF THIRD COUNTRY NATIONALS

1. INTRODUCTION

National policies aimed at attracting highly-qualified workers do not grant third-country nationals the right to reside and work in other Member States. EU-wide mobility rights are one of the main benefits which EU legislation can provide, and which national legislation cannot. Employers may have a legitimate interest in being able to move their staff around the single market without undue constraints. For migrant workers, the prospect of being able to build a career anywhere in the EU, for example by changing employer or branch within the same employer including in a different Member State, is one of the most attractive features of EU level legislation on migration. Consequently, the more the intra-EU mobility possibilities of a particular category of third-country nationals are facilitated and made easy, the higher the attractiveness of the scheme.

When asked to identify the main advantages of a unified EU-wide scheme for admitting highly-qualified workers, more than half of the respondents chose easier mobility between Member States.²⁵⁰ This call for enhanced intra-EU mobility rights has been echoed by various stakeholders, including business representatives and trade unions.²⁵¹ The European Trade Union Confederation's Action Plan on Migration specifically calls for EU legislation to "*remove obstacles to the intra-EU mobility of third country nationals regularly residing in a Member State, but without a long-term resident status*".²⁵² BusinessEurope has consistently argued the benefits of intra-EU mobility of specific categories of third-country national workers.²⁵³

The Europe 2020 Strategy for growth recognised the role of intra-EU mobility of workers — including EU nationals moving to other Member States — within the EU single market in improving the matching of labour supply and demand.²⁵⁴ The European Commission Communication 'An open and secure Europe: making it happen' within the 'Strategic Guidelines for the area of Freedom, Security and Justice (2014–2019)' aims to facilitate intra-EU mobility of third country nationals, including through mutual recognition of national permits.²⁵⁵ The European Agenda on Migration specifically proposed to look at how to improve possibilities for intra-EU mobility for EU Blue Card holders.²⁵⁶

²⁵⁰ Public consultation on the EU Blue Card and the EU's labour migration policies, European Commission DG Home Affairs and Migration

²⁵¹ European Trade Union Confederation, "*A new Narrative for the Migration Phenomenon in Europe*". https://www.etuc.org/documents/etuc-position-new-european-commissions-five-year-programme-migration-ec-communication-%E2%80%9C#_VnPP8v7lv2x

²⁵² European Trade Union Confederation, *Action plan on migration*, 5-6 March 2013. <https://www.etuc.org/documents/action-plan-migration>

²⁵³ BusinessEurope note on *Labour Market Mobility*, 28 June 2013. <https://www.buinessurope.eu/sites/buseur/files/media/imported/2015-00109-E.pdf>

²⁵⁴ European Commission's Communication COM(2010) 2020 final, *Europe 2020: A strategy for smart, sustainable and inclusive growth*, 3 March 2010. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>

²⁵⁵ European Commission's Communication COM(2014) 154 final, *An open and secure Europe: making it happen*, 11 March 2014. http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/an_open_and_secure_europe_-_making_it_happen_en.pdf

²⁵⁶ European Commission's Communication COM(2015) 240 final, *A European Agenda on Migration*, 13 May 2015. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

2. INTRA-EU MOBILITY IN THE BLUE CARD DIRECTIVE

Based on the Schengen acquis, Blue Card holders and other highly-qualified labour migrants can travel up to 90 days in any 180 period within the Schengen area if their Blue Card or national residence permit is issued by a Schengen state. This is not specific to these categories but applies to all TCNs with a residence title issued by a Schengen State (i.e. a country fully implementing the Schengen acquis). As a general rule, they are not, however, allowed to work or reside in another Member State, with some exceptions (e.g. short business meetings are usually allowed, subject to national rules, and third-country nationals can be posted under Directive 96/71/EC²⁵⁷ – see below).

Blue Card holders who have been admitted as highly-qualified workers in one Member State and have been legally residing and working there for 18 months are allowed to move to a second Member State and apply for a new EU Blue Card. All regular admission conditions applicable in the second Member State have to be met (Art 18.2), which makes the advantages over a regular new application very limited. Both a labour market test (Art 18.4 referring back to Art 8.2) and numerical limits (Art 18.7) can be applied. The advantages lie in the fact that some Member States allow the Blue Card holder to work pending the decision (Art 18.2), that the period of residence in the first Member State will count towards the 5-year requirement for obtaining a long-term residence permit under Directive 2003/109/EC²⁵⁸, and that family members may join immediately when the family was already constituted in the first Member State (Art. 19.1).

The EU Blue Card Directive contains some safeguards for the benefit of the second Member State in case the mobile EU Blue Card holder is not granted an EU Blue Card in the second Member State and is no longer allowed to stay on its territory. In such cases, the first Member State shall readmit without formalities the EU Blue Card holder with possible family members, even if the permit has already expired. Furthermore, the costs for doing so may be recovered from the applicant or the employer.

The EU Blue Card Directive has facilitated access to **EU long-term resident status** for (former) Blue Card holders. It has also increased the rights associated with permanent residency and created the special category of "EU long-term resident – former EU Blue Card holder". In particular, stays as an EU Blue Card holder in different EU Member States can be aggregated to count towards the 5-year required for obtaining long-term resident status.

Research by the OECD shows that there is a positive causal effect of long-term residence on the mobility of third-country nationals in the EU. However, it also showed that the mobility of third-country nationals is still hampered by legal and practical constraints.²⁵⁹

At least one Member State, Germany, provides fast access to the national permanent residence status — 33 months for EU Blue Card holders, reduced to 21 months if basic German language skills are demonstrated (level B1). The EU long-term residents Directive, which imposes a mandatory five-year residency, did not allow Germany to

²⁵⁷ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 018 , 21/01/1997 P. 0001 - 0006

²⁵⁸ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53

²⁵⁹ DELSA/ELSA/MI(2015)5, Mobility of Third-Country Nationals in the EU: the Role of Long-Term Residence and Naturalisation. Jonathan Chaloff and Friedrich Poeschel.

provide similar speedy access to EU long-term resident status. At the end of October 2015, 1 935 EU Blue Card holders had obtained a national permanent residence title after 33 months of residence, 4 601 after 21 months and 883 without time specification²⁶⁰. Former EU Blue Card holders who change status to a national permanent residence lose their rights under the EU Blue Card, including the mobility provisions, and the facilitated access to EU long-term residence.

The conditions for intra-EU mobility in the current EU Blue Card Directive are in general considered not substantial and not attractive for potential migrants. This emerged from the impact assessment study²⁶¹ as well as the public consultation on the EU Blue Card and the EU's labour migration policies.

3. INTRA-EU MOBILITY IN OTHER LEGAL MIGRATION DIRECTIVES

Article 79(2)(b) TFEU specifically endows the EU to adopt measures covering the right to mobility and of residence of third-country nationals in other Member States. Several existing Directives include provisions on intra-EU mobility for permit holders.

Third-country nationals holding **long-term residency status** according to Directive 2003/109/EC in one Member State – acquired after five years of legal residence in a Member State – have the right to reside for more than three months in a second Member State to exercise an economic activity, to pursue studies or for any other purpose, subject to certain conditions. Stable resources and proof of accommodation as well as sickness insurance may be required. An employment-based permit in the second Member State requires a work contract there, and can be subject to a labour market test. A visa may also be required. The procedure to apply for a permit in the second Member State takes up to 4 months, during which the third-country national may not be allowed to work.

The **Directive on Intra-Corporate Transferees**²⁶² introduces schemes for short term mobility (up to 90 days in any second Member State, so multiple periods of mobility in different Member States are possible) and long term mobility (more than 90 days in any second Member State) for third-country nationals employed by a group of undertakings based in a third country and posted to a host entity/subsidiary based in an EU Member State. The mobility provisions regulate subsequent stays in Member States other than the one where they are posted first. No visa can be required or labour market test applied. The short-term rules are flexible and based on a notification. The long-term rules allow Member States to issue permits for that purpose, in which case the procedure resembles an initial admission, with more limited conditions being checked. However, the transferee is allowed to stay and work in the second Member State pending a decision.

The recast **Directive on Students, Researchers and other categories** (to be formally adopted early 2016) facilitates movement between Member States for up to six months to carry out research or for study purposes. It shares several elements with the mobility rules applicable to Intra-Corporate Transferees. Applying for a new permit in such cases is not required. For students the situation is more complex than for researchers as they benefit from real intra EU-mobility rights only if covered by programmes (EU, multilateral or agreements between higher education institutions). For "individual"

²⁶⁰ Data directly obtained from the BAMF.

²⁶¹ Reference to ICF study, A3.4.1.

²⁶² Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p. 1–22.

students, being mobile in the EU implies to submit to the second MS an application equal to the one which is necessary for first entry in the EU.

Third-country nationals can also be **posted under Directive 96/71/EC** by undertakings based in an EU Member State active in the transnational provision of services. Whilst no specific provisions for posted third-country nationals are included in the Directive, relevant case-law makes clear that the host Member State may not impose administrative formalities or additional conditions on posted workers who are third-country nationals when they are lawfully employed by a service provider established in another Member State (e.g. *judgments of 9.8.1994, Vander Elst, case C-43/93, of 21.10.2004, Commission v Luxembourg, case C-445/03, and of 19.1.2006, Commission v Germany, case C-224/04. Idem judgment of 21.9.2006, Commission v Austria, case C-168/04*).²⁶³ However, the Posted Workers Directive does not regulate the admission conditions – including whether a visa is required or not – of third-country nationals in EU Member States, but it focuses on rights of workers during the posting and practical cooperation between Member States.

There are three specific groups of situations envisaged in Directive 96/71/EC: (a) provision of services under a contract concluded between the employer organisation and another party in another Member State, (b) transfer of an employee to an undertaking or establishment owned by the employer group in another Member State and (c) hiring out of employees from a temporary employment agency to a client company in another Member State. Therefore, EU Blue Card holders can in some cases fall under the scope of application of Directive 96/71/EC; especially the intra-corporate transfer within the EU can be a relevant option for both highly qualified workers and their employers. However, some situations of professional mobility are clearly excluded, such as e.g. purely sales-oriented participation in events, or fact-finding missions to explore business opportunities in a new Member State.

In Article 3(2)(j) of the current Blue Card Directive there is an exclusion stating that persons who are covered by Directive 96/71/EC do not fall within the scope of the Blue Card Directive as long as they are posted on the territory of the Member State concerned. This means that a posted worker cannot apply for an EU Blue Card and become a beneficiary of that scheme during the posting. Contrarily, there is nothing to suggest that EU Blue Card holders could not be posted under Directive 96/71/EC, on which occasion their rights in the Member State of posting would also be determined by this instrument. The position of an EU Blue Card holder would naturally persist in the initial Member State having granted the permit for as long as it remains valid.

Moreover, it should be noted that family members of EU mobile workers, regardless of their nationality, i.e. including family members third country nationals, or whether they are dependent on the EU citizen, have the right to work in the host Member State.²⁶⁴ Mobile workers' children, whatever their nationality, have the right to education in the host Member State on the same terms as its nationals,²⁶⁵ as well as access to social advantages on an equal basis as family members of nationals.

²⁶³ *Intra-EU Mobility of third-country nationals*, European Migration Network Study, 2013.

²⁶⁴ Article 23 of Directive 2004/38/EC.

²⁶⁵ Article 10 of the Regulation 492/2011.

4. THE ROLE OF INTRA-EU MOBILITY FOR EU BLUE CARD HOLDERS

Employers may have a legitimate interest in being able to move their staff around the single market without undue constraints, particularly highly skilled workers and professionals. Workers will be attracted to the scheme if it gives the prospect of being able to build a career anywhere in the EU, for example by being able to change employer easily. Improved intra-EU mobility for third-country nationals could enable the creation of an EU-wide labour market that could effectively and promptly respond to existing and arising demands for highly qualified labour, and to offset skill shortages, by enhancing the inflows and circulation of third-country highly skilled workers between jobs and Member States and promoting their efficient allocation and re-allocation on the EU labour market.

The importance of intra-EU mobility to the attractiveness of the Blue Card is confirmed by the results of the public consultation, where it was found that more than half of all respondents indicated that mobility would be a major added value of a unified EU-wide scheme. A survey among EU Blue Card holders by the German BAMF showed that 87.4 % of respondents consider visa-free travel and the possibility of moving to another MS important. 66.6 % would consider an extension of the possibility for easy "short-term" mobility to 12 months useful, another 27 % simply do not know if this could prove useful, but very few oppose this.²⁶⁶

5. DATA ON INTRA-EU MOBILITY

Data on intra-EU mobility of third-country nationals is scarce, as in most Member States it is not collected systematically. It is therefore not possible to provide overall figures. A 2013 study by the European Migration Network²⁶⁷ revealed that between 1.2 % and 3.7 % of all mobile persons are third-country nationals, i.e. considerably less than the share of third-country nationals in the entire population (4 %). The study highlighted several barriers to intra-EU mobility which could explain the relatively low mobility rates witnessed among third-country nationals, but also stated that the overall mobility of third-country nationals appears to be growing.

Calculations by the OECD using EU Labour Force Survey data (Eurostat) put the number of TCN who are mobile within the EU at only tens of thousands, but rising faster than the total third-country national population.²⁶⁸

According to the EMN study, third-country nationals mainly move to neighbouring Member States. This pattern would be consistent with intra-EU movements of EU citizens, such as service providers. Where statistics are available, it appears a large share of mobile TCN is highly-qualified (France: 30 %) and/or moves for the purposes of highly-qualified work (The Netherlands: 44 %). Calculations by the OECD using EU Labour Force Survey data (Eurostat) confirm that intra-EU mobility of tertiary-educated

²⁶⁶ Hanganu, E. and Heß, B., 'Die Blaue Karte EU in Deutschland: Kontext und Ergebnisse der BAMF-Befragung', *Forschungsbericht 27*, Bundesamt für Migration und Flüchtlinge, Nürnberg, 2016, *forthcoming*.

²⁶⁷ *Intra-EU Mobility of third-country nationals*, European Migration Network Study, 2013.

²⁶⁸ DELSA/ELSA/MI(2015)5, *Mobility of Third-Country Nationals in the EU: the Role of Long-Term Residence and Naturalisation*. Jonathan Chaloff and Friedrich Poeschel.

third-country nationals is significantly higher (2.5 to 4 times over the period 2008-2012) than mobility of third-country nationals as a whole.²⁶⁹

6. DATA ON THE NEED OF INTRA-EU MOBILITY FOR BUSINESS

A. Large-scale international survey on intra-EU mobility

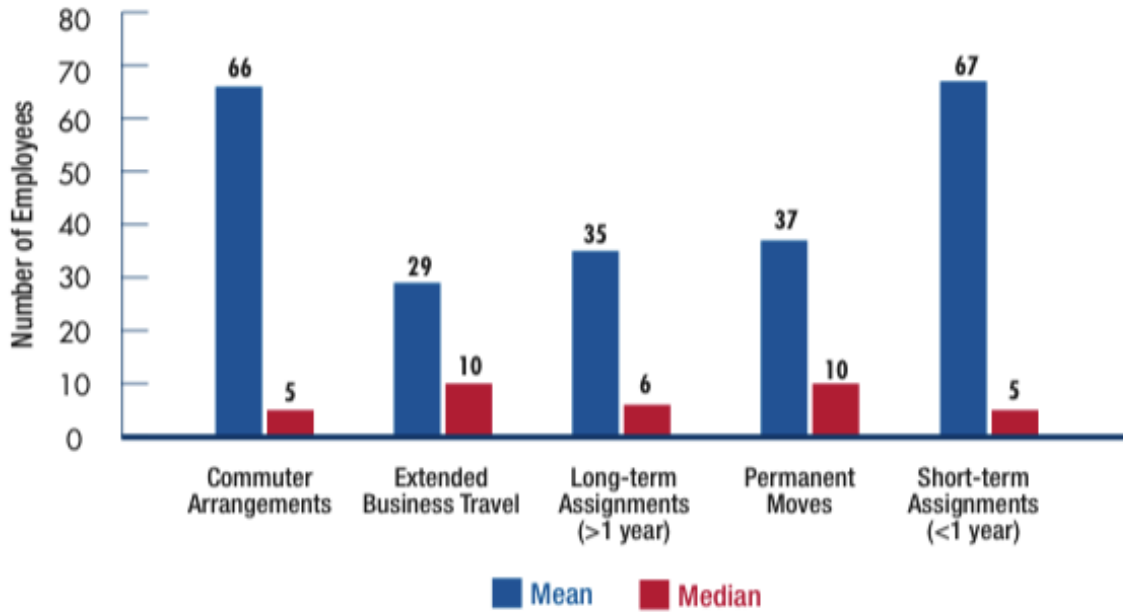
A 2015 survey on Intra-European Mobility of 85 multinational employers²⁷⁰ by Worldwide ERC²⁷¹ sought answers from them on their drivers, needs, challenges, strategies, volumes, and costs. While their responses do not exclusively cover TCN, the needs and challenges for TCN can be considered to be similar, if not greater, than for EU citizens when it comes to intra-EU mobility. The findings of the survey can therefore be informative. The respondents to the survey report a wide range of mobility volumes – ranging from one to 2 500 employees per year over different types for mobility.

²⁶⁹ DELSA/ELSA/MI(2015)5, *Mobility of Third-Country Nationals in the EU: the Role of Long-Term Residence and Naturalisation*. Figure 1 — Mobility rates of third-country nationals and EU citizens, 2008-2012. Jonathan Chaloff and Friedrich Poeschel.

²⁷⁰ Abbott Laboratories, Accenture, Albemarle Corporation, Allegion, Allnex, Avery Dennison Corporation, Avon Products, Inc., Bank of America, Bechtel Corporation, Biogen Idec, BorgWarner, Inc., Brambles, Bravura Solutions, Broadcom Corporation, CABI, Careerbuilder, Cargotec Holding, Inc., Cegelec, Cerberus European Capital Advisors, LLP, Cerner Corporation, CEVA Group PLC, CH2M HILL, Inc., Chatham Financial, Cimpres N.V., Covance, Inc., Cytec, Dana Holding Corporation, Deere & Company, Dell, Inc., Delphi, DHL Express A/S, Eli Lilly and Company, Enterprise Holdings, Inc., Flextronics International USA, Inc., Foot Locker, Inc., FrieslandCampina Nederland BV, Frontica Business Solutions, Granite Services International, Inc., Grant Thornton UK LLP, Herbalife, IHS, Inc., ING Group, Ingersoll-Rand Company, Intercontinental Hotels Group, Inteva Products, Kinross Gold Corporation, Lenovo, Lumos, LyondellBasell, Mayer Brown International LLP, McCain Foods Limited, MeadWestvaco Corporation, MediaCom, MFS Investment Management, Micron Technology, Inc., Natura, Naturedao Information Science & Technology Ltd., Nissan, Nomura, Novelis Incorporated, Omnicell, Owens-Illinois, Inc., Parker Hannifin Corporation, Pearson Education, PwC Poland, Rockwell Automation, Samsung, SanDisk Corporation, SAP, Shell Oil Company, SKF SA, SPX, The Body Shop International, The Manitowoc Company, The Walt Disney Company, TIBCO Software Inc., TNT Express France SNC, Tom West Company, Inc., TRUMPF, Inc., Tupperware Brands Corporation, Videology, Inc., W. W. Grainger, Inc., Warner Brothers, Wells Fargo & Company, Western Union Holdings, Inc.

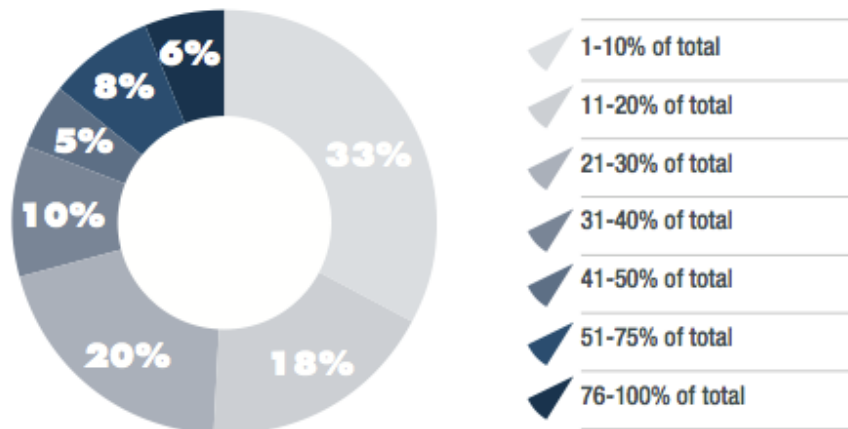
²⁷¹ A workforce mobility association for professionals who oversee, manage, or support U.S. domestic and international employee transfer. <http://www.worldwideerc.org/Pages/index.aspx>

Graph 1 – 2014 Intra-European Mobility



For 49% of the surveyed companies at least 20% of their cross-border activity takes place in the EU, for 19% even more than 50% takes place in the EU.

Graph 2 – Intra-European Mobility as a percentage of total cross-border mobility (percentage of organisations)

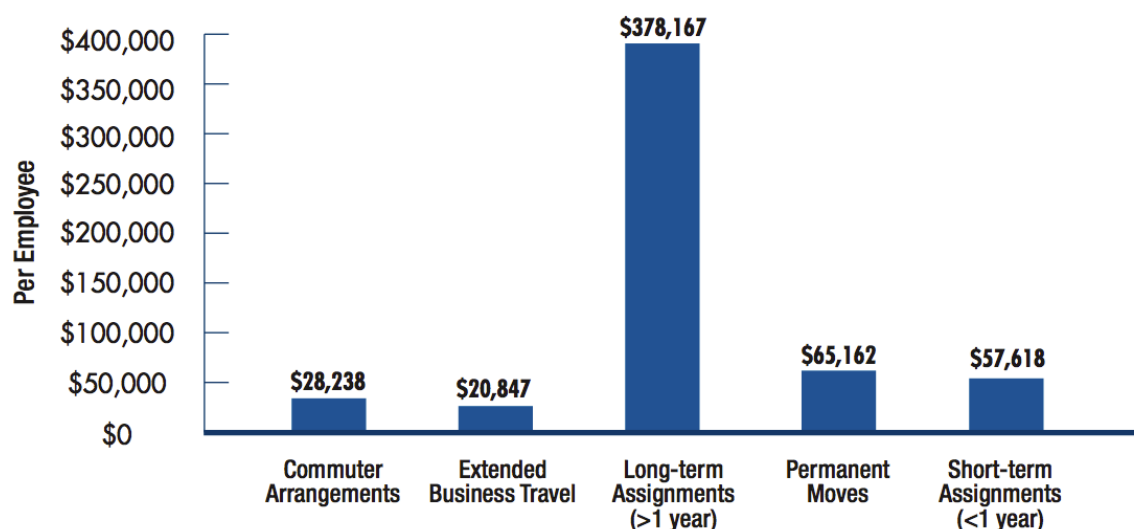


The survey asked the participating companies to estimate the average cost per mobile employee of five different types of cross-border mobility within Europe²⁷². By far, the most expensive assignment type is a traditional long-term assignment of more than one year, which represents an average cost per assignee of \$378,167. Intra-European permanent moves and short-term assignments cost less, with averages of \$65,162 and \$57,618, respectively. Commuter arrangements and extended business travel are the least

²⁷² These costs represent the averages experienced by the pool of respondents to this survey. Programs can vary in many ways causing higher or lower costs. The reported figures represent only general trends.

costly, with an average cost of \$28,238 for commuter arrangements and \$20,847 for extended business travellers.

Graph 3 – Average Cost of Intra-European Mobility



The respondents were also asked to identify the primary drivers for each of the various types of mobility.

Graph 4 – Primary Drivers of Intra-European Mobility (percentage of organisation)²⁷³

	Long-term Assignments	Short-term Assignments	Permanent Moves	Commuter Arrangements	Extended Business Travel
To fill a skills gap	59%	68%	76%	59%	39%
Knowledge transfer	56%	61%	27%	35%	50%
Employee development	66%	66%	33%	21%	22%
To communicate corporate culture	31%	30%	13%	29%	25%
Project/task completion	44%	82%	21%	56%	61%
Business need	75%	59%	71%	65%	72%
Succession plan	53%	21%	43%	6%	--

The survey also asked about the challenges of intra-EU mobility. For short-term and long-term assignments, top challenges tend to be related to housing and living costs and compliance issues. For the more transient mobility of short-term assignments, commuter arrangements and extended business travel, immigration compliance is identified as a top challenge along with employee tracking. For permanent moves, the most pressing challenges are less compliance-related, though still relatively high, and more tied to compensation, high housing costs and pensions. Recruiting and retaining skilled talent ranks as a high challenge for long-term assignments, and slightly lower for short-term assignments and permanent moves.

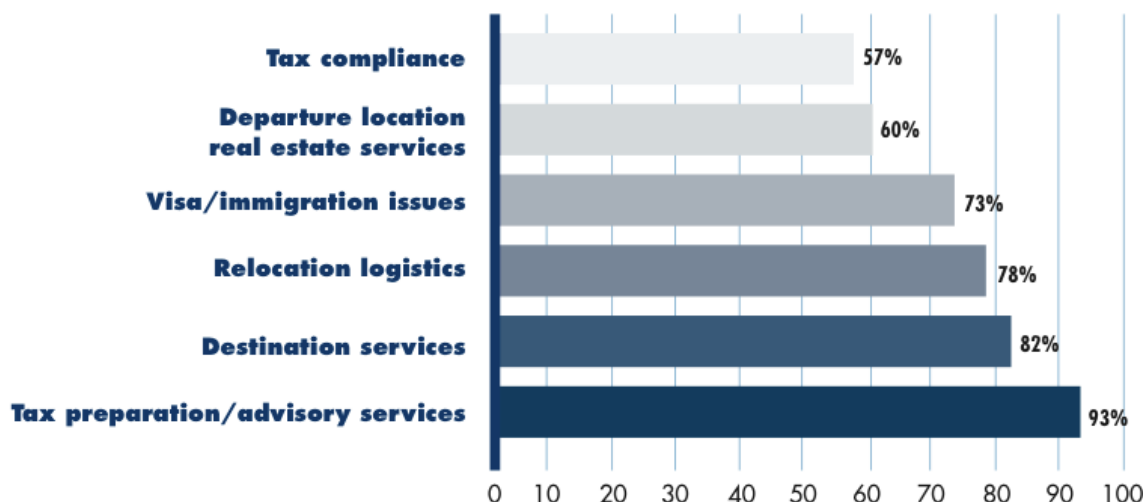
²⁷³ Percentages do not total 100% due to multiple responses.

Graph 5 – Challenges of Intra-European Mobility (Rankings ranged from 1 = least challenging to 5 = most challenging)

	Long-term Assignments	Short-term Assignments	Permanent Moves	Commuter Arrangements	Extended Business Travel
Career development of assignee	2.31	2.33	2.05	2.41	2.56
Compensation issues	2.84	2.36	3.50	2.38	2.24
Cost tracking	2.83	2.36	2.43	3.29	3.17
Cost-of-living allowance/differential	3.12	2.56	2.67	1.68	1.89
Culture of corruption	2.03	1.82	1.81	1.81	1.77
Education infrastructure in host location	2.85	1.92	2.72	1.64	1.58
Emergency preparation	2.06	1.97	1.97	1.83	1.86
Environmental issues in host location	1.89	1.88	1.84	1.54	1.65
High housing costs	3.64	3.05	3.41	2.23	2.54
Immigration compliance	2.80	3.00	2.43	3.35	3.32
Inadequate housing facilities in host location	2.47	2.27	2.44	1.59	1.84
Healthcare coverage	1.97	1.89	1.94	1.53	1.70
Pension/retirement coverage	2.72	1.94	3.03	1.55	1.65
Recruiting and retaining skilled talent	3.08	2.69	2.75	2.14	2.27
Security in host location	2.00	2.00	1.77	1.68	1.84
Taxation compliance	3.17	2.88	2.24	3.54	3.53
Tracking assignees	2.03	2.12	1.81	3.73	3.47

The survey also showed that just shy of three-quarters of companies fully outsource their visa and immigration issues.

Graph 6 – Fully Outsourcing Mobility Services²⁷⁴



The survey concludes:

With the increase in the number of employees living and working in European countries other than their own, companies will need to remain robust in the management of their mobile talent. The close proximity of European countries lends itself to more short-term assignments, commuter arrangements and business travel. These various forms of mobility have their own challenges and drivers that must be considered. Likewise, countries within Europe have their own government regulations, which if not followed, present many complications and associated costs. Clear and open communication, education about the issues for both the businesses and employees, effective partnering with service providers, and more precise tracking of assignees are all vital to achieving success in the complex arena of mobility within Europe.

B. Testimonials from business

The Commission also received a number of testimonials from companies on their specific needs for intra-EU mobility and its cost (some have been anonymised where requested).

Testimonial 1 - Oracle

Oracle has 555 third country nationals locally employed across the EU. Of these circa 100 would travel to other EU countries for various business reasons.

Testimonial 2 - Heitkamp & Thumann Group

The Heitkamp & Thumann Group is a family-owned group of 21 small and medium-sized enterprises located in 9 different countries and employing 2.045 people. 909 employees are located at our European locations (UK, ES, DE, CZ). At their European locations they only have about 15 third-country nationals that are locally hired (mostly at our UK subsidiaries) and that frequently travel to other EU Member States for business.

²⁷⁴ Percentages do not total 100% due to multiple responses.

These third-country nationals are high-qualified employees, many of them from India, working as R&D engineers or in IT.

Testimonial 3 - Large global company

In a large global company that has third-country nationals employed in the UK, Belgium and Switzerland, approximately 500 third-country nationals travel on an annual basis²⁷⁵. This is the number of people, not trips, which means that if on average a person takes 5 business trips a year, this would equal 2500 trips just out of those countries.

Testimonial 4 – Large multinational media and information services firm

(1) Evidence and examples of the administrative cost and burden of immigration procedures and rules to companies (with an EU focus)

A. Data or testimonials on average processing times

“Varies by location but typically several months end to end. We usually factor in approx 3-4 months as a starting point.”

B. Common issues with immigration procedures

*“Inconsistencies with documentation, especially at consulates abroad.
Challenges with address requirements, as it's difficult to obtain for new employees or those living abroad.
Slow processing times.
Dependents timing out.”*

C. Financial and HR cost for employers on immigration processes / d. average number of employer hours for immigration processes

*“The aggregate number of business hours needed to maintain immigration support and compliance is quite high.
HR time - For EU matters, I typically budget 4-8 hours per foreign national but can be as high as 40 or more for complex cases and additional dispersed time is not included for ongoing program management
Employee time - We don't collect this information specifically, but anecdotally, I would guess that most employees spend a minimum of 1-2 full weeks when securing a visa for EU.
Manager time - We attempt to minimize this time as much as possible, but probably at minimum 4 hours of time on average*

D. How often legal support services are used (and their cost)

*“We always rely on immigration support for sponsored employees to provide guidance on legal matters, to provide practical assistance and guidance to our employees, to mitigate risk, and to provide key insights to the shifting immigration landscape
Cost varies by location and service.”*

(2) Data and evidence on the need for mobility for highly skilled workers from and

²⁷⁵ Hired locally in the EU and travelling to other EU Member States

employers perspective, specifically intra-EU mobility of TCNs residing in a Member State to other Member States

A. Average number of business trips/foreign assignments per highly skilled employee

"For Sales/News&Media/Product employees specifically - they have short term travel for several days every week

For All other areas - travel tends to be far less frequent, typically short term and no more than monthly

We only rarely have employees assigned for longer periods, but may do this in specific instances i.e. Job swaps and maternity cover"

B. Number of employees with regional responsibilities requiring regular travel to other offices.

"Depends on business area, but we have hundreds if not thousands when you factor in key business areas with frequent travel requirements...a streamlined business traveler method would be welcome, particularly with security crack downs."

Testimonial 5 - Large multinational IT service firm

(1) Evidence and examples of the administrative cost and burden of immigration procedures and rules to companies (with an EU focus)

"In general our biggest challenge is the limitation that the different European national legalisation impose to the need of global companies to mobilize talented and high skilled individuals between company facilities within Europe. This mobility need is mostly driven by the customers' demands (bearing in mind that most of the customers are also cross-country established and therefore they expect that a project that has been performed in country X could be also delivered in country Y with the same resources."

A. Data or testimonials on average processing times

The average processing timelines per country differs depending of the level of bureaucracy that national legislation imposes. In average one can say that the end to end process takes approximately 8-10 weeks. However there are extreme differences between member states: Some countries like the Netherlands have a fast track system for recognized companies bringing high skilled migrants. In this case the process takes only 3 weeks. Whereas in Slovakia the process takes 8-9 months and 5-6 months for Czech Republic.

Specifically refereeing to the blue card, our experience with processing times is little as we have only been starting to file Blue Cards recently in Germany. In Germany, it is expected to take approx. 10 business days upon visa submission with the German embassy / consulate abroad. In other European countries we have no experience on Blue Card filing, but according to a research we had been doing last year, it seems that the processing times are between 2 – 4 months.

B. Common issues with immigration procedures

"The lack of harmonized processes and set of docs recognized all over the EU MS, as well as the lack of mutual recognition of documentation, increases the administrative burden for companies. Real problems are:

1.) recognition of university degree: the process to have university degrees been recognized strong differ from country and country and can be very time consuming. In Germany, there is a data base available (anabin) to assess if a degree is recognized.

2.) legalization of degree certificate: not mandatory in all countries, but can be a very lengthy process (2 – 3 months) .

3) Disconnect between the local labour authorities and their diplomatic representatives overseas. In some instances the local consulate or embassy does not communicate with the labour office which result in delays.

4) Aside of the above, some countries apply specific processes for high skilled employees which facilitate the process and even fast tracked the applications. Whereas other countries do not make a difference between economic migrant with specific skills and any other type of migrant."

C. Financial and HR cost for employers on immigration processes

"It is very difficult to generalise varies per country. Aside of immigration other mobility matters have to be considered: some countries demand extra allowance support for accommodation or living expenses and travel. This increases the cost up to 30% in some locations. The cost of HR, Finance and Tax to ensure that the resource and the company fulfill the obligations from these aspects need to be included as well in the total expenditure per resource."

D. Average number of employer hours for immigration processes

"Expenditure of time for employer 20 – 25 hour per application; for employee: 8 – 10 hours"

E. How often legal support services are used (and their cost)

"In average the cost of the full immigration process (visa, work permit, residence permit, registration formalities) per associate could vary from 2000 – 5500 EUR per country depending of the law firm used. In our experience, Luxembourg, Belgium and the Nordics are the most expensive. In some instances where online filling is possible and French, English or German are accepted as official languages the process could be in housed and no legal support is required."

(2) Data and evidence on the need for mobility for highly skilled workers from and employers perspective, specifically intra-EU mobility of TCNs residing in a Member State to other Member States

"In the IT sector – due to the nature of the services (consulting, programming etc.) the activities should be performed mainly at the client location and on project basis. This means that the length of stay of a resource would be directly attached to that specific project. After implementation, some maintenance activities might be required and therefore – there will be a need for the resources to travel for short term to the client site to fulfil these activities."

A. Average number of business trips/foreign assignments per highly skilled employee.

"One have to take into account that IT companies deal with customers established cross-country. Therefore the customer drives the requirement of having a resource for either one specific country or multiple countries at the same time using the same resources.

This creates an extra burden since the same resource would require a work permit for each country where he needs to deliver his services, even though the role, project and activities would be identical in the multiple countries. It is difficult to calculate but an average of 25-30% of the population might require to travel for short term BV.

In very general lines in the IT sector 70% of the resources are working on project basis and 30 % would be allocated to other corporate roles. Hence the need of mechanisms enabling the mobility intra EU is very high."

B. Number of employees with regional responsibilities requiring regular travel to other offices.

"Very difficult to define. However the burden for this specific group is extreme. The mobility within EU is inherent to their function however they require a work permit for each country where they need to operate. We have several cases in which the same person at leadership level required 6 work permit at the same time to be able to exercise his function in Europe."

ANNEX 10

THIRD-COUNTRY NATIONAL ENTREPRENEURS

1. INTRODUCTION

The attraction of third country nationals (TCN) or migrant entrepreneurs²⁷⁶, particularly innovative ones, has been high on the political agenda of national governments of both sides of the Atlantic for the past years. This is explained by the expectancy that this category of migrants will bring significant rewards for host countries, both thanks to migrants' propensity to start new businesses, thus creating jobs, and their more recently recognized capacity to expand beyond the ethnic markets into more innovative and high-value sectors. At the same time, migrant entrepreneurship is also seen as a potential way to counteract both demographic and economic decline and to contribute to social inclusion as an alternative way to access the labour market, also increasing the attractiveness of the areas and countries where it is fostered, and to capitalize on the expansion of innovative trends of the economy²⁷⁷. This has led governments to recently adopt policies targeting migrant entrepreneurs, both those already residing in the country (through mainstream or targeted business support programs), and those willing to immigrate (through specific admission policy that regulate the entry and stay in the country). These very recent developments led to reflections at EU level and political announcements to maintain the EU "as an attractive destination for migrants"²⁷⁸.

2. THE NEED FOR TCN INNOVATIVE ENTREPRENEURS

A higher entrepreneurial spirit

Literature repeatedly reports that migrants may have a somewhat higher entrepreneurial spirit than natives do. The reasons usually put forward to account for such a propensity are first the selective dimension of migration processes and the immigrants' tendency to take greater risks. Business creation among migrants is also sometimes depicted as a means to support labour market integration and employment. Focusing on this trend, the OECD concluded for the period 2007-2008 that 12.6 % of migrants of working age were involved in non-agricultural entrepreneurship activities, compared with 12.0 % among native.²⁷⁹ The share of entrepreneurs in total employment can be 1.5 to 2.9 percentage points higher for migrants compared to natives (United Kingdom, France, Sweden, Norway).

The contribution of migrant entrepreneurs to employment, innovation and economic growth

Against this background, various economic sources have analysed the contribution of migrant entrepreneurship to employment, innovation and economic growth.

²⁷⁶ For the current exercise, the definition of entrepreneurs is that adopted by the OECD and covering "those foreign-born business owners who seek to generate value through the creation or expansion of economic activity, by identifying new products, processes and markets" (OECD, 2008a).

²⁷⁷ In particular, the digital economy, the green economy and the social economy.

²⁷⁸ A European Agenda on Migration, COM(2015) 240 final, 13 May 2015, p. 14.

²⁷⁹ Migrant entrepreneurship in OECD countries, International Migration Outlook (IMO), OECD 2011, p.142.

In terms of total employment, the OECD concluded for instance that this contribution was on average 2.4 % of the total employment during the period 1998-2008²⁸⁰ and has steadily increased over this period. In 2011, in relative terms, this contribution to employment was equivalent to between 1.5-3 % of the total employed labour force in most OECD countries. Between 25 % to 50 % of migrant entrepreneurs employ other individuals in addition to themselves²⁸¹. The number of individuals employed by migrant entrepreneurs represented in both 2007 and 2008 more than 750 000 individuals in Germany, around half a million in the UK and Spain, almost 400 000 in France and around 300 000 in Italy²⁸². Furthermore, the average number of additional jobs that each single migrant entrepreneur creates is set on average between 1.4 and 2.1²⁸³. A more particular focus on the United States has shown for instance that between 2006 and 2012, the 458 immigrant-founded companies sampled collectively created a total of 9 682 jobs. They employed an average of 21.37 workers.²⁸⁴ Overall, the proportion of migrant entrepreneurs in the active population is much higher than for natives. In particular, in Belgium and in Spain, in 2007-2008, the proportion of migrants that became self-employed was almost the double the proportion of natives in most OECD countries.

The added-value of innovative entrepreneurship

Migrant entrepreneurs' contribution to their host country is not limited to job creation. Their potential on innovation²⁸⁵ has also been analysed by economic literature both regarding certain sectors of economy and regarding the overall capacity of a given country to innovate. Economic literature has found that immigrant entrepreneurship had a significant impact on innovative sectors. For instance, 25 % of all engineering and technological companies founded in the US in the last ten years were founded by migrants²⁸⁶. Similarly, the link between skilled migration and innovation and entrepreneurship was analysed from a European perspective. Through two indicators of innovation (patenting and published articles), it has been shown that immigrants outperformed skilled natives on all these measures and that efforts aiming at attracting skilled migrants to Europe and employing them in skilled professions such as those put forward in the 2020 Strategy, will indeed foster EU competitiveness in innovation²⁸⁷. This link was also

²⁸⁰ Open for Business, Migrant Entrepreneurship in OECD Countries, p.15, OECD, 2010

²⁸¹ IMO, 2011, p.156.

²⁸² IMO, 2011, p.157.

²⁸³ IMO, 2011, p.158

²⁸⁴ "Then and Now: America's new immigrant entrepreneurs", Part VII, V. Wadhwa, A. Saxenian, F. D. Siciliano, October 2012

²⁸⁵ Innovation is defined in the Innovation Union as "Change that speeds up and improves the way we conceive, develop, produce and access new products, industrial processes and services. Changes that create more jobs, improve people's lives and build greener and better societies." (http://europa.eu/rapid/press-release_MEMO-10-473_en.htm?locale=en)

²⁸⁶ "Then and Now: America's new immigrant entrepreneurs", Part VII, V. Wadhwa, A. Saxenian, F. D. Siciliano, October 2012

²⁸⁷ More precisely, empirical findings show that a larger pool of migrants in the skilled professions is associated with higher levels of knowledge creation. Skilled migrants contribute both to the creation of "private" knowledge measures by the number of patent applications, and to more "public" basic research, measured by the number of citations to published articles. Foreign skilled labour exerts a positive effect on the innovative capacity of the recipient countries both for industrially applicable innovations and for more general abstract knowledge. Source: "Migration of skilled workers and innovation: A European perspective", V; Bosetti, C. Cattaneo, E. Verdolini, Journal of International Economics 96 (2015) 311-322.

analysed for the United States where evidence shows that skilled migration to the United States is likely to have raised total factor productivity considerably²⁸⁸.

This potential on innovation and job creation boosts productivity growth and finally economic growth, which can be measured both in quantitative and qualitative terms. They contribute to the economic and social regeneration of disadvantaged rural and urban areas and contribute to the revival of crafts, trades and business activities. Through their connections with their home country, they also help expand countries' foreign trade²⁸⁹.

3. THE PARTICULARITIES OF TCN ENTREPRENEURS

Vulnerability of migrant enterprises

While the specific ability of migrants for business creation has been steadily recognized, it is worth mentioning that the success rate of this entrepreneurship is in general lower than that of native-born. In 2011, the OECD has concluded that the year-to-year self-employment persistence rate over the period 1998-2008 was 94.3 % for native-born and 91.3 for foreign-born²⁹⁰. Data has shown for instance in 2010 in France that while the five-year survival rate for firms stand at 54 %, it falls to around 49 % when the entrepreneur is from an EU-15-member state and to only 40.5 % for non-EU nationals; this led to conclude that “[r]egardless of the entrepreneurial environment, whether or not the project was set up with financial resources, alone or with a third party, whether or not it received financial support, the firms set up by third country nationals have a markedly lower chance of surviving the first five years than those set up by French or EU entrepreneurs”²⁹¹. Importantly, even if businesses fail, there is however still direct economic benefit to the country as “for as long as a company is active, it may create employment, bring tax benefits to the State and enable the sharing of knowledge”²⁹². In addition, the employability of the former entrepreneur has been enhanced by the entrepreneurial experience.

Mainstream and specific obstacles faced by migrant entrepreneurs

This vulnerability is accounted for by several factors that hamper the capacity of immigrant entrepreneurship to unleash its full potential in contributing to the socioeconomic welfare and competitiveness of host countries. While migrant entrepreneurs are faced with the same obstacles that natives are when deciding to set up a business — albeit more severely — they are also faced with specific hurdles due to their migrant background²⁹³.

²⁸⁸ The important boost in innovation provided by skilled immigration in the USA in 1940-2000 period was analyzed in “*How much does immigration boost innovation*”, J. Hunt and M. Gauhtier-Loiselle, American Economic Journal: Macroeconomics 2 (April 2010), 31-56.

²⁸⁹ See in this sense « The contribution of migrants in enhancing foreign trade » A. Hatzigeorgiou, Ministry for Foreign Affairs, Sweden, in *Migrant Entrepreneurship in OECD countries*.

²⁹⁰ IMO, 2011, p. 146.

²⁹¹ IMO, 2010, p.283, “*Entreprises created in 2002 by non-EU nationals in France: finding it harder to survive*” Y. Breem.

²⁹² “*The Start-up visa : key to job growth and economic prosperity in America*”, T. Watson, L. Turnbull, V. Wadhwa, 2015.

²⁹³ This might explain that almost two thirds of migrant entrepreneurs of OECD countries have been in the host country more than ten years compared with just above 50% for migrant wage earners, IMO 2011, p.147.

The access to funding is repeatedly reported as a major obstacle²⁹⁴, because of the mainstream credit institutions' lack of familiarity with immigrant entrepreneurs and sometimes because of the characteristics of their enterprises. All this expose the credit institutions to a higher default risks hence explaining their reluctance and the possible concentration of immigrant enterprises in limited value-added activities, which do not require an important initial financial support. The lack of familiarity with the host country language, the country-specific human capital and networks, administrative, business and legal environments are also reported as major hurdles²⁹⁵.

Response by governments: mainstream business support programs and targeted support programs

Against this background, governments have developed both mainstream and targeted business programs aiming at facilitating and supporting the sustainability of these businesses.

Mainstream business support services include for instance entrepreneurship training, help with fulfilment of administrative procedures, counselling, legal advice, mentoring and access to relevant networks, help in raising start-up or expansion capital. They are addressed to all entrepreneurs-to-be of a country including migrants. In addition to these, countries have also sometimes developed targeted business support programs for immigrant entrepreneurs, which help them to overcome the specific challenges that they may face as entrepreneurs. When in place, they are part of comprehensive integration plans. They can stem from public initiative or private actors (civil society associations, private foundations, banks and big companies). They include measures such as “knowledge-based” services to help develop country-specific human capital and business skills, mentoring and networking to foster the acquisition of country-specific business skills, tailored counselling and assistance in obtaining professional permits or registering businesses, measures to facilitate access to finance.

While these two sets of programs are to be seen as complementary, it should also be stressed that the decision to immigrate in a certain country to open up a business is reportedly linked with the pro-business environment of this country. This relates to the structural economic policies that governments put in place and which can consist in simplifying and accelerating administrative procedures required to set up businesses, registration, creating favourable tax regimes for businesses and investment, creating flexibility in the labour market to facilitate recruitment etc. As a consequence, these programs, as any other kind of action aiming at attracting migrant entrepreneurs, including specific admission policies, should be embedded in a broader policy strategy to create an entrepreneurship-friendly environment. Structural policy interventions in the areas of business law, general administration, taxation, labour market and regulation are key to such a strategy. Consequently, any action taken at EU level to foster the attraction of skilled or innovative entrepreneurs should be tightly linked with broader policy measures aiming at ensuring the fairest conditions for them.

Recently, some countries have put in place migration policy measures dedicated to attract migrants willing to create or operate their own business. These policies aim to select and sometimes support immigrant entrepreneurs showing potential to contribute actively to the

²⁹⁴ See in this sense IMO, 2011, p.162-164.

²⁹⁵ For a more comprehensive description of obstacles faced by migrant entrepreneurs, see for instance "*The Missing Entrepreneurs 2014*", Policies for inclusive entrepreneurship in Europe, OECD/EC, 2014.

domestic economic growth. The emergence of these policies is only recent²⁹⁶ – and to date, 7 Member States are concerned and 6 countries outside the EU²⁹⁷. The attraction of this category of migrants is ensured through several measures which do not always imply the creation of a specific category of visa for entrepreneurs, accounting for the diversity of possibilities as described in the section below.

4. OVERVIEW OF EXISTING POLICIES AIMING AT ATTRACTING INNOVATIVE ENTREPRENEURS

4.1. Denmark - "Start-Up Denmark"

In February 2015, Denmark introduced the "Start-up Denmark"²⁹⁸ initiative to help talented entrepreneurs relocate and grow high-impact start-ups in Denmark. Led by the Danish Ministry of Business and Growth and the Ministry of Employment, the program is meant as a gateway for talented foreign entrepreneurs to Denmark's vast start-up opportunities, such as accelerators, co-working spaces, investment funds, research centres, as well as grassroots initiatives.

Conditions:

The targeted businesses are those that are “scalable and, ideally tech-driven start-ups”²⁹⁹ mainly in the fields of life science, ICT, design and clean-tech & sustainable energy. Businesses such as restaurants, retail shops, consultancy firms, import or export enterprises or similar are not eligible for the permit. Applicants must be approved by a panel of experts. The program is for early-stage businesses and can accept up to two founders. No prior investment is required to qualify to the program but proof of subsistence is required.

Participants must participate actively in the day-to-day operation of the company, and presence and involvement must be vital to the establishment of the business³⁰⁰.

Procedure

Entry is reviewed within 6 weeks by a panel of experts appointed by the Danish Business Authority. There must be particular Danish professional or labour market interests in the

²⁹⁶ This is explained by the fact that, while in the 1960's western economies did not have a selective immigration system as they needed workers to fill positions, this radically changed after the oil crisis of the 1970's and the subsequent slow-down of national economies. "Immigration systems started then to become more restrictive and governments increased the scrutiny of migrants. Countries have recognized the issue of their overly selective general work visa systems, hence the current trend of policies dedicated to entrepreneurs", "Worldwide Start-Up Visa Policies Compared", J. Goube, Migreat, Open to entrepreneurs: Startup Visas Policies Report - May 2015.

²⁹⁷ Countries where entrepreneurial culture is traditionally widespread have been the first to put in place policies to attract migrant entrepreneurs (Canada, Australia, the United States and New Zealand). This is also strongly linked to the fact that these countries are also traditionally receiving countries.

²⁹⁸ See <http://www.startupdenmark.info/> and https://www.nyidanmark.dk/en-us/coming_to_dk/work/Start-up-denmark/

²⁹⁹ <http://www.startupdenmark.info/faq/>

³⁰⁰ Shareholders are excluded.

establishment of the company in Denmark³⁰¹. Once the evaluation is positive, application for the entrepreneur residence permit under the Start-up Denmark scheme is allowed³⁰². The procedure length as a whole is 10 weeks. A maximum of 50 residence and work permits are granted under the Start-up Denmark scheme per year, that is, from 1 January to 31 December.

Duration

Residence and work permanent for up to 2 years, with the possibility of extending for an additional 3 years.

Rights

Some members of the family can also come to the country.

The success of the scheme is yet to be evaluated.

4.2. France - "French tech Ticket"

The French Tech Ticket is a program designed for non-French entrepreneurs from all over the world who want to create their start-up in Paris. It is targeted at innovative and scalable start-ups to contribute to a fast development of innovation and start-up ecosystems in the country. This 6-month program, started in January 2016, offers end-to-end support on the journey from early stage start-up to successful business – from financial support and training to first customer acquisition. Selected entrepreneurs work closely with one of nine leading French Incubators providing among others mentoring, fundraising strategy, expert advice and pitch practice. At the end of the six months, entrepreneurs have the option to renew this ticket for another six months to further fast track their growth.

Conditions:

In order to be eligible for the Paris French Tech Ticket, applicants must be an early stage start-up or have a project of start-up and plan to develop their business in France. Teams can be formed of 3 persons maximum (with maximum one French citizen in the team). The programme has a quota of 50 entrepreneurs for six months up to one year.

Applicants must be based in Paris during at least 6-month starting January 2016, have a valid visa to enter France, be fully dedicated to their project, which means commit to the program on a full time basis (no other side professional activity). They must open a bank account in France.

Review of applications is made by an independent panel which assesses the following: team members and entrepreneurial skills, feasibility of the product, market potential, marketing strategy, impact of the business being in Paris and financial growth. The duration of the review process is 4 months.

³⁰¹ Consequently, residence and work permit in order to establish a restaurant, retail shop, small business, import or export enterprise or similar are excluded.

³⁰² A positive evaluation from our panel of experts does not guarantee the approval for the entrepreneur residence permit itself.

Entrepreneurs who are selected to the Paris French Tech Ticket and who require a Visa must apply for and be granted a VLS-TS Visa³⁰³. Teams who are not granted a Visa cannot take part in the program until all the visa paperwork has been submitted and approved.

Benefits:

The main benefit of being selected to the program is an award of €12,500. It will be possible to get a second prize of 12 500€ at the end of the 6 months (for a total of 25 000€ for 12 months). While the visa is not a specific visa but a "long stay" visa (duration of one year), it is obtained through a fast-track procedure.

Free space in a partner incubator and dedicated workspace is made available. The program also includes access to events and training sessions provided by the incubator network., access to a senior mentor to support the start-up's growth, tailored programme of events, a Help Desk to provide assistance with red tape, a Paris Landing Pack to help foreign entrepreneurs relocating to Paris, lower prices on Air France flights, a Gold loyalty card and advertising for the start-up via Air France.

In the period of June – September 2015, 722 start-up projects were submitted, for a total of 1,372 applicants and 5,677 expressions of interest from over 100 countries³⁰⁴.

4.3. Ireland -"STEP" Program

A Start-up entrepreneur Program called STEP was introduced in April 2012 to stimulate productive investment in Ireland and to attract high potential start-ups in the field of information and communication technology (ICT). The program was reviewed in March 2014 to refine its target applicants and in May 2015. This resulted in the introduction of a pre-track of STEP which is a 12-month visa for start-ups that attend incubators or innovation boot camps in order to prepare a STEP application. The STEP facilitates residence in Ireland for foreign national entrepreneurs who have a viable proposal for a High Potential Start-up (HPSU) Company.

Conditions:

STEP applies the definition of a HPSU as used by Enterprise Ireland, which classifies a HPSU as a start-up venture that is:

- Introducing a new or innovative product or service to international markets
- Involved in manufacturing or internationally traded services.
- Capable of creating 10 jobs in Ireland and realising €1 million in sales within three to four years of starting up.
- Led by an experienced management team
- Headquartered and controlled in Ireland.

³⁰³ "Visa de long séjour valant titre de séjour", Art. L-211-2 and L-211-2-1 Code de l'entrée et du séjour des étrangers.

³⁰⁴ Study for an impact assessment on a proposal for a revision of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card Directive").

- Less than six years old.

The required minimum investment is €50,000. Where more than one principal is involved in establishing the business the minimum investment for second and subsequent entrepreneur will be €30,000 per principal.

The applications are evaluated by an application committee chaired by the Department of Justice and Equality in Ireland. Documents required by the application committee include the most recent audited accounts (if the business is relocating to Ireland), a comprehensive business plan for the innovation start-up proposal (a template is provided), and evidence of funding through either own resources, business loan, Business Angel/Venture Capital funding or a grant from an Irish State Agency.

Duration:

The visa grants residency for two years and renewable for three more years.

In addition, a 12-month immigration permission has been made available for entrepreneurs attending incubators or innovation boot camps in Ireland and non-EEA students who graduate with advanced STEM (Science, Technology, Engineering, and Mathematics) degrees. It allows entrepreneurs to prepare an application to the Start-up Entrepreneur programme.

Since its introduction April 2012 and until 1 January 2015, 52 applications for STEP have been introduced and 30 were approved³⁰⁵.

4.4. UK - Graduate and Entrepreneur Visas

UK Entrepreneur visas were introduced in 2008 replacing the tier 1 general category for highly skilled migrants and the highly skilled program that allowed highly skilled migrant to come to the UK for two years without the need for a job offer.

The two main schemes are: Tier 1 Entrepreneur and Tier 1 Graduate Entrepreneur. Migrants under the Tier 1 Entrepreneur route are defined as applicants wanting to invest in the UK by setting up or taking over, and being actively involved in the running of, one or more businesses in the UK. Migrants under the Tier 1 Graduate Entrepreneur route are defined as having strong business skills and/or ideas, and are endorsed by a UK Higher Education Institution (HEI) or UK Trade and Investment (UKTI).

Eligibility criteria for Tier 1 Entrepreneur visas includes a minimum investment of £200,000, or, £50,000 if applicants have access to funds in a registered venture capital firm, a UK government body, or, from approved seed funding under UKTI competitions. Applicants are subject to a genuine entrepreneur test, consisting of a written application with evidence of funds and a business plan, and an interview if required. With regard to Tier 1 Graduate Entrepreneurs, there

³⁰⁵ Study for an impact assessment on a proposal for a revision of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card Directive").

are no investment requirements, and applicants have to meet the eligibility criteria set out by the endorsing organisation.

The Entrepreneur visa maximum duration is 3 years and 4 months and can be extended for 2 years if the applicant is already in this category and 3 years the person is switching to it from another category. The duration of the Graduate Entrepreneur Visa is one year.

Family members ('dependants') can also enter and reside in the country under both permits.

In 2014, there were 5,488 Tier 1 Entrepreneur visas granted, with the majority being in-country visas. The number of Tier 1 Graduate Entrepreneur visas was 564, with the majority being in-country visa switches from the Tier 4 General Student Visa³⁰⁶.

4.5. Italy - "Start-up Visa Italia"

The "Start-up Visa Italia" was launched in June 2014 and it aims at attracting innovative entrepreneurs to Italy's regional start-up hubs. The Start-up policy is designed to promote technological development, employment, and entrepreneurial culture in Italy by granting residency permits to non-EU talents determined to establish innovative start-ups in Italy. It enables innovative entrepreneurs to apply for a residence permit from outside Italy. Applications from within the country are also possible under "Start-up Hub". The scheme is one element of a wider policy package aimed at boosting the Italian economy.

Conditions and procedure:

The target companies are start-ups with an innovative element, defined either by the spending on research and development, or by the qualifications of the personnel, or by the patents. In terms of eligibility, the minimum capital has been set to €50,000 and the applicant must introduce an innovative business idea, which is evaluated by a specific Committee.

In terms of procedure, there are two routes to apply for the Italian visa:

1. Direct start-up visa application; the applicant submits a request to the above mentioned Committee which evaluates the innovative business plan and verify other requirements. After this procedure the Committee may or may not issue a Certificate of No Impediment
2. Application through a licensed business incubator: if a certified incubator is willing to host the non-EU national on its premises to establish an innovative start-up, and has signed an invitation letter, it is sufficient for the Committee to issue its Certificate of No Impediment without further evaluation.

When the Committee has issued the Certificate of No Impediment, it informs the local police headquarter (*questura*). When the police has accepted the visa request, the Committee notifies the applicant and informs the consulate or embassy in the country of origin, along with the Italia Start-up Visa contact points within the Ministry of Foreign Affairs, the Ministry of Interior and the Ministry of Labour. Once received the No Impediment Certificate, the applicant can apply for

³⁰⁶ Ibid.

a Start-up Visa to the consulate, which will then inform the Committee once the visa has been issued.

As for any foreign worker, the start-up entrepreneur has to apply for a residence permit within 8 days after his/her arrival to Italy. The applicant has to show up at the local post office to present the application along with the fees. The entrepreneur may then apply for a work permit.

The decision process takes 30 days maximum. The maximum duration of the residence permit is two years.

The Start-up residence permit is valid for 1 year, and can be renewed under the condition that the third-country national has successfully set up an innovative start-up. The success of the start-up is proven by the company's registration in the innovative start-up register to the local police headquarter, and the registration certification, along with the self-assessment tax return, have to be presented for renewal.

The attractive feature of the Start-up visa programme for third-country nationals, as well as Italian start-up entrepreneurs, consists in a range of financial and work-related incentives. These include, inter alia, exemption from registration fees due to the Chamber of Commerce and stamp duties; flexible corporate governance, especially for Ltd (in Italian, Srl), for which the creation of categories of shares with specific rights, the possibility of carrying out operations on one's shares, the possibility of issuing participative financial instruments, offer to the public of capital shares become possible; exemption from the regulations on companies reporting systematic losses; exemption from the duty to affix the compliance visa for compensation of VAT credit; tax credit for the employment of highly qualified staff; tax incentives for corporate and private investments in start-ups; fast-track, simplified and free-of-charge access for innovative start-ups and certified incubators to the *Fondo Centrale di Garanzia*, a Government Fund that supports access to credit through guarantees on bank loans;

In the period 24th June 2014 - 31st December 2015 (18 months), the total number of applications received for the Start-up Visa was 61. From these, 40 received a positive response and the success rate was 66%. Five applications were received and approved for conversion into Start-up Visa, and the success rate was 100%³⁰⁷.

4.6. The Netherlands - "Start-up Visa"

There are two admission schemes for entrepreneurs in the Netherlands: a general self-employment scheme (points-based system) which entered into force in 2008 and a special scheme for start-up entrepreneurs which entered into force on 1 January 2015. The two schemes are closely interlinked since after one year on the residence permit for start-up entrepreneurs, the entrepreneur may have the duration of their residence permit extended on the basis of the self-employment scheme.

Visa and requirements:

³⁰⁷ Ibid.

The Dutch policy makes it possible for ambitious entrepreneurs to apply for a temporary residence permit in the Netherlands.

No financial requirement exists, except the proof to have sufficient financial resources for living and housing expenses. Other conditions include: working together with a reliable expert facilitator; an innovative product or service; both start-up entrepreneurs and the facilitator are registered in the Commercial Register of the Chamber of Commerce.

When the visa application is approved, the applicant is referred to Start-up Delta, a collaboration organisation between government, accelerators, investment groups and start-ups, to provide them with guidance on starting a business in the Netherlands.

Start-up visa applicants are exempt from the entry clearance visa requirement. This means that they can apply and await the decision on their application in the Netherlands without having to travel back to their country of origin. Family members can also reside in the Netherlands and are given the same employment status.

About 30 residence permits for self-employment are issued on average every year, which represents about 15% of the total applications. With regard to the residence permit for start-up entrepreneurs, in total 95 applications were submitted in 2015 from which 21 residence permits were granted, 26 are in progress, 28 were denied and 20 were retracted³⁰⁸.

4.7. Spain - Ley de Emprendedores

Launched in September 2013, the *Ley de Emprendedores* was created to attract foreign investment and entrepreneurs in order to improve the competitiveness and innovation in Spain.

Visa and requirements:

The start-up policy offers five visa categories from investors to entrepreneurs and highly skilled workers. The policy is designed to eliminate the obstacles for foreign entrepreneurship and to establish a regulatory framework that is conducive to this entrepreneurial activity. It introduces a flexible and fast application procedure with a single authority by Large Business and Strategic Groups Unit (UGE).

The visa criteria for entrepreneurs require them mainly to have a government-vetted business plan in Spanish that demonstrates the economic benefits for Spain and applicants are to be able to sustain themselves only. No minimum financial requirement is therefore required.

The procedure is streamlined and made faster as the process and decision are made within 10 working days and the residence permit provided within 20 working days. The permit duration is 1 year.

The visa comes with access to a government unsecured lending program, which has about €100 million, or \$125 million, to lend to innovative small and midsize companies each year. The loans, from €25,000 to €1.5 million, are available to all entrepreneurs, regardless of nationality, who

³⁰⁸ Ibid.

have a business based in Spain (except for those running real estate or financial ventures). The scheme allows the simultaneous application for a permit (for residence and work) by family members.

More than a year since the entry into force of the national scheme, the total number of visas and permits issued for entrepreneurs amounts to 82. The estimated value of entrepreneurial activities until the end of 2014, was considered to be approximately €234 million³⁰⁹. It is also estimated that a total of 2,624 jobs³¹⁰ will be created in the forthcoming years thanks to these entrepreneurial activities of special economic interest for Spain.

5. OVERVIEW OF EXISTING POLICIES AIMING AT ATTRACTING INNOVATIVE ENTREPRENEURS OUTSIDE THE EU

5.1. Australia - "Business Innovation and Investment Programme"

The Australian "*Business Innovation and Investment Programme*" was introduced in July 2012 to supersede the Business Skills Programme set up in 1992. The programme is designed to attract high quality investors and entrepreneurs to Australia. It grants a residence permit up to 4 years to migrants who expressed an interest, passed a points-based assessment and were subsequently nominated by the state or territory

Visas and requirements:

The programme offers three visas subclasses (two providing permanent visas and one temporary visas) and substreams within it with different requirements for each - bringing the number of "visa" options to a total of ten. The selection criteria are both general human capital criteria (age, education, languages, and experience) and business-related (turnover, assets and business shares). More precisely, the applicant and her/his family members (even if they are not migrating) must meet some health and character requirements, which consist in health examinations, health insurance and the police clearance certificate. Moreover, the foreigner must sign the Australian Values Statement and must have no debts towards the Australian government. With regard to the business-related requirements, the applicant must, for two out of four previous fiscal years before the application, show to have had an ownership interest in an established business(es) that had at least AUD 500,000 turnover per year. The applicant must also have a certain percentage of the nominated business, which equals to 51% if the business has a turnover of less than AUD 400,000 per year, to 30% if more than AUD 400,000 and 10% if the business is a publicly listed company. In general, the business career of the applicant must prove successful and his/her desire to continue running the business in Australia needs to be genuine

The Business Innovation visa is a temporary visa which has a validity of 4 years and 3 months and can be converted after a certain period of successful business in a permanent visa.

Family members apply for the same visas held by the main applicant, therefore having the same rights, also with regard to access to permanent visas.

³⁰⁹ Discussion paper for the experts meeting on A possible scheme at European Level to attract, retain and support the non-EU Highly Skilled entrepreneurial innovators 20 May 2015.

³¹⁰ Ibid.

In the period 2012-13, 429 applications were lodged and 46 were granted, whereas in the period 2013-14 (up to March 2014), 739 applications were lodged and 342 granted³¹¹.

5.2. Canada - "Start-up Visa Program"

In April 2013, the "Start-up Visa Program" replaced the old Entrepreneur visa that only required the foreigner to recruit one Canadian for one year. It is a pilot programme for five years granting permanent residence to immigrant entrepreneurs. It targets immigrant entrepreneurs with the necessary skills to build innovative businesses in Canada that can create new jobs and compete on a global level.

Visa and requirements:

Under this Programme, applicants must be admitted into a business incubator, secure at least CA\$75,000 in investments from an angel investor group, or secure at least CA\$200,000 in investments from a venture capital fund. The system therefore heavily relies on the support of one of several designated Canadian organizations (angel investor group, venture capital fund or business incubator). The investor organization has to provide a Commitment Certificate directly to Citizenship and Immigration Canada, summarizing the details of the commitment made with the applicant. A peer Review Process has been introduced so as to make sure that the deals made between the investment organizations and immigrant entrepreneurs are legitimate.

The program has set a quota of 2,750 visas per year.

Since the launch of the program, 16 applicants have been approved for permanent residency, helping launch eight companies³¹². In 2015, nearly 60 applications were at various stages of the process. These entrepreneurs are behind 34 business projects. An additional 25 projects have secured financial support from dedicated investment groups under the program.

5.3. Chile - "Start-up Chile"

The Chilean government launched a pilot program in 2010. The aim of Start-Up Chile is to attract early-stage, high-potential entrepreneurs worldwide. The ultimate objective of this scheme to position Chile as the innovation and entrepreneurship hub of Latin America.

The program runs like a competition for funding, with three competitions each year. Each competition results in the selection of 100 start-ups with on average two founders per start-up. The scheme selects promising young firms and gives their founders capital, space networking mentoring, and a year's visa to come and work on their ideas in Chile. Chile also has one of the fastest incorporation rates in the world, allowing a new start-up to incorporate almost in one day.

The scheme is divided in three programs based on the stage of the start-up.

³¹¹ Study for an impact assessment on a proposal for a revision of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card Directive").

³¹² <http://news.gc.ca/web/article-en.do?nid=981649>

- S Factory: Pre-acceleration program for start-ups in early stage focusing in female founders. Selected companies benefit a financial support of \$10 million CLP (€13.000) and three months acceleration.
- Seed: Acceleration program for start-ups with an efficient product. Selected companies receive 20 million CLP (around €26.000) equity free and six months acceleration.
- Scale: Subsequent fund for start-ups that are already incorporated in Chile and proved to be performant. Selected companies receive \$60 million CLP (around €78.000) equity free under the condition that they incorporate and operate in Chile.

Since its introduction, around 500 companies and almost 900 entrepreneurs from a total of 37 countries have benefited from it³¹³. Start-Up Chile has attracted a lot of global high-tech companies. In addition, the influx of start-ups is boosting local interest in entrepreneurship. The introduction of the Start-Up Chile has also change Chileans' attitudes and provided them with a global network of business contacts.

5.4. New Zealand - Entrepreneur Work Visa

A new "Entrepreneur Work visa" was introduced in March 2014 and replaced the old Entrepreneur visa routes called Long Term Business. The aim of the Entrepreneur Visa review was to better target businesses with high export and growth potential.

Visas and requirements:

Three visas for entrepreneurs exist, one temporary (Entrepreneur Work Visa) and two permanent (Entrepreneur Residence Category) providing residency in six or two years depending on how well the business has performed under the previous temporary visa.

The requirements for the Entrepreneur Work Visa include having a business plan, scoring 120 points on the entrepreneurs' points scale, showing an intermediate level of English, and acceptable health conditions and good character. The applicants are required to do a minimum investment of NZ\$ 100,000 (approx. €60,000); however, for innovative start-ups, this requirement can be waived.

The visa is valid for 3 years, but only if the entrepreneur shows that s/he has made steps to establish the business, the visa validity is confirmed after 12 months.

The introduction of the new visa marked a drop in the number of applications received and positive decisions made: from 1,057 applications (first-stage) and 562 positive decisions in 2013/14, to 491 applications and 171 positive decisions in 2014/15³¹⁴.

³¹³ Study for an impact assessment on a proposal for a revision of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card Directive").

³¹⁴ Ibid.

5.5. Singapore - Entrepass

Singapore Entrepass was created in 2004. It went through several updates in order to better target innovative entrepreneurs. The scheme is part of Singapore's general plan to become a regional business hub and attract the best entrepreneurial minds to the country. The scheme was lastly revised in 2013.

Visa and requirements:

The company must be less than 6 months old, own at least 50,000 in paid-up capital and the applicant must hold at least 30% of the shares in the company.

EntrePass' admission conditions were restricted in 2013. From 1 September 2013 only businesses with funding from a recognised venture capitalist firm or angel, businesses holding registered intellectual property or businesses supported by a Government agency, are eligible for an EntrePass. The business must satisfy the 'innovativeness' requirement which was introduced in September 2013. In selected cases for particularly promising businesses, the government will match investment from the private sector

The visa is granted for a year and renewal criteria are based on progressive targets for local job creation, revenues and spending

The EntrePass allows the applicant to bring family members (spouse and unmarried children under 21) to Singapore by applying for their Dependant's Passes. EntrePass holders are also eligible to apply for Singapore permanent residence.

There is no official quota of the number of EntrePass to be granted. In 2012, there were 1,300 EntrePass visa applications and 1,000 applications in 2013, 50% of which were accepted³¹⁵.

5.6. Taiwan - Entrepreneur Visa Promotion Plan

In July 2015, Taiwan has introduced an Entrepreneur Visa Promotion Plan to attract foreign entrepreneurs. The plan offers an initial visa for 1 year which can be renewed up to two years if evidence shows that the visa holder runs a bona fide business. Permanent residence can be granted after 5 consecutive years.

The focus is set on innovative businesses that have been created for less than 5 years, through the identification of 5 principles: funds received registration in an incubator, patent or intellectual property rights hold, participation in a government-accredited incubator, won major competitions.

5.7. USA - Start-up Visa

The US Start-up Visa is a proposed amendment to the U.S. immigration law to create a visa category for foreign entrepreneurs who have raised capital from qualified American investors. It aims at addressing the absence of a visa category for entrepreneurs raising outside funding³¹⁶.

³¹⁵ Ibid.

³¹⁶ Note that currently, in the United States there is no stand-alone, dedicated visa for innovative start-ups. However, there are a number of other types of visas that can be used for such purposes.

The Start-up Visa Act of 2013 has been introduced in the Senate on January 30, 2013 (and follows two previous versions) and is currently awaiting Committee review.

It was found that Temporary visas, including H-1B visas, were ill-suited for entrepreneurs and could be disallowed for use by a foreign national who controls a company. Start-ups have been shown to be responsible for much of the net increase in employment in some recent years and discussions in the U.S Congress concluded that "The Startup Act," could create 500,000 to 1.6 million jobs over the next 10 years if it becomes law³¹⁷.

The Start-up Visa would be a temporary immigrant visa, or conditional permanent resident visa (conditional green card) which converts to a permanent residency (green card) after two years if certain conditions are met.

Requirements:

The latest proposal Start-up Act 3.0 bill introduced in the U.S. Senate entailed a fixed pool of 75,000 foreign-born individuals who already hold H-1B visas or F-1 student visas and who start companies in the US.

In the first year of business, these entrepreneurs would be required to employ at least two full-time, non-family workers and to invest or raise an investment of \$100,000 or more. By meeting the first-year requirements, recipients would be granted a three-year visa extension. If, over that three-year period, the business owner has hired, on average, one additional employee each year, they may apply for permanent status.

6. ATTEMPT OF CATEGORIZATION AND CONCLUSIONS

The two previous sections show that the attraction of migrant entrepreneurs is ensured through several measures that do not necessarily imply the creation of a specific category of visa for entrepreneurs, accounting for the diversity of possibilities.

Attempt of categorization

The wide range of measures spans indeed from the creation of a visa specific to entrepreneurs with corresponding entry requirements and rights (which could be referred to as a real "Start-up Visa" or "Entrepreneur Visa"), to the establishment of incubating programs, where the enrolment is made usually on the basis of a regular work and residence permit, or even competitions where money can be directly granted to selected applicants. Some countries also chose an intermediary road, enabling the granting of a general work visa with some facilitation in the procedure dedicated to entrepreneurs (such as a fast track procedure).

While the overarching goal is the same, governments have therefore enacted very different policies to achieve these goals and terms such as "Entrepreneurs Visa" or "Start-up Visa" refer actually to a myriad of realities as all these options can be combined and are not mutually exclusive.

³¹⁷ National Foundation for American Policy, Policy Brief 2016 .

Three main measures emerge:

Specific permit regimes

The design of a permit regime dedicated to entrepreneurs is probably the most targeted measure in as much as it creates specific rules and requirements that are meant to correspond to the specificities of this category of migrants and grants them corresponding rights.

In the EU, this measure has been introduced in the UK, NL and ES. Outside the EU, it concerns Australia, Canada, New Zealand, Singapore and Taiwan.

While entry conditions and definition of success vary between countries, there are two key elements:

- Financial requirements to entry (initial investment).
- The timeframe and the number of jobs that must be created by the business or the amount of revenues that must be generated (this is the yardstick for success).

Worth noting is that criteria are often modulated as usually the system is made as flexible as possible to reflect the diversity of entrepreneurial profiles. Further analysis and data are required to have a clear overview. Regarding the renewal, it is usually based on the assessment of the success of the business, but the criteria used also differ (the number of jobs created or the amount of revenues generated) as well as the timeframe set to achieve this.

Facilitated procedure

Another measure adopted to attract innovative entrepreneurs consists in facilitating the acquisition of residence permits. This relates mainly to the creation of a fast-track procedure and is for instance in place in FR, ES, IT, NL.³¹⁸

The entry requirements vary within this category, some countries having chosen to set minimum financial requirements, others not. The selection process is also different according to countries as it is based on a review by an expert panel (the composition of which differs according to countries) on the impact of a project in terms of dedicated investment, jobs created and economic impact. No information is available at this stage on the criteria used to assess the projects.

Incubation programs

This option is the most integrated one. It creates an aggressive start-up policy through selective programs that target high-profile entrepreneurs. Quotas are strict (50 for France and Denmark per year, 300 for Chile, 2,750 for Canada) and a selective process is designed. Programs are aimed specifically at engineering innovation and entrepreneurship and can include significant funding.

³¹⁸ No data available for DK, UK, IE.

This model relies usually on the concept of small teams, building on the conclusion that team-based start-ups are more likely to grow than those of single entrepreneurs³¹⁹.

In the EU, this is in place in FR, NL, and DK. Outside the EU, it concerns Chile and Canada.

EU level perspective

The fragmentation of very recent existing policies aiming at attracting innovative entrepreneurs, the topicality of the issue, especially for what relates to innovative start-ups, and the opportunity to create a legal migration route for innovative entrepreneurs prompt reflection at EU level. This is all the more relevant as the contribution of entrepreneurship to employment, innovation and economic and inclusive growth must also be seen in the light of the EU's competitiveness as highlighted in the Entrepreneurship 2020 Action Plan³²⁰, anchored in the overarching Europe 2020 Strategy. While the potential of this specific category of persons is widely acknowledged, it is however also often decried that the EU lags behind the traditional immigration countries in terms of offering opportunities for highly-skilled migrants to start new businesses³²¹ and that this potential should be unleashed, which could contribute to boost the EU's competitiveness. While measures have been adopted recently, they exist in a very limited number of Member States, show a great deal of discrepancy and they cannot grant third-country nationals any intra-EU mobility rights. This hampers both migrants and the EU as whole to make full use of the growth potential from a 500 million inhabitant single market.

Gathering data on the efficiency of the policies in place so as to feed reflection at EU level, including on the added value of an action at EU level, is required and extending the scope of the EU Blue Card to entrepreneurs does not appear as the appropriate step at this stage. Legislative action aiming at attracting entrepreneurial innovators should answer the following issues..

Firstly, innovative entrepreneurs form a totally different category which cannot be encompassed by the conditions set up by the Directive. Extending the scope of the Blue Card Directive to entrepreneurs requires allowing self-employed activity within the Blue Card for which the existing entry conditions cannot be used as these are targeted at situations of employment. Similarly, the Blue Card targets high-skilled employment. It therefore enshrines yardsticks to measure this and relies on a university degree or a relevant professional experience. Such indicators would not be relevant for innovative entrepreneurs, and probably sometimes contradictory to the aim of fostering innovation where the focus should be set rather on the feasibility and soundness of the business plan considered as well as on its impact on economic growth and employment, thus also undermining the use of the salary threshold criteria. This is the

³¹⁹ See in this sense M. Shrivastavay and J. Tamvada, Entrepreneurial teams, Optimal team size and founder exits, 2011, available at http://www.iza.org/conference_files/EntreRes2011/tamvada_j3400.pdf

³²⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ENTREPRENEURSHIP 2020 ACTION PLAN Reigniting the entrepreneurial spirit in Europe COM/2012/0795 final.

³²¹ Ruby Gropas, 'Migration and Innovation: why is Europe failing to attract the best and brightest,' March 2013.

reason why when schemes already in place refer to identified skills or qualifications, the evaluation of the business plan is still a predominant criterion³²².

Secondly, we have seen the particularities of migrant entrepreneurship and the importance of supporting measures aiming at facilitating the sustainability of the businesses created by migrant entrepreneurs. Setting the right framework conditions can indeed both boost the attraction of foreign innovative entrepreneurs and give them the right conditions to expand their businesses in a sustainable way. These measures are not always legislative, are addressed at EU level and cannot be addressed in the present revision exercise. Forcing the current structure of the Blue Card in order to make it fit to attract entrepreneurs at this stage would not give the right signal, neither for potential entrepreneurs willing to settle in the EU, nor to the Member States. A holistic approach is required. Against this background, any action aiming at facilitating the entry and residence of innovative migrant entrepreneurs should be coordinated with the efforts already and currently put in place in the different policy areas (migration, research and innovation, industrial and digital policies) and with the scheme to be designed in the coming months through a study commissioned by DG RTD This would enable to present a comprehensive and single "entrepreneurship/start up package" aimed at fostering migrant innovative entrepreneurship.

Thirdly, additional data is also required to be able to present a comprehensive analysis. The analysis should focus on the need of action at EU level, especially in terms of EU-wide rights to be granted, such as intra-EU mobility. This data should also include the results of the admission policies put in place, which is scarcely available at the moment, both because of the recent nature of these policies and of the lack of literature on this emerging matter. In May 2015, J. Goube wrote "At present, the effectiveness of entrepreneurial visas in attracting the best and brightest has not been proven. Start-up visa policies have not caused a surge in the number of applications and companies for most countries – so far most programs in Europe approved fewer than 100 applications a year, except for the UK (though strong anecdotal evidence seems to indicate abuse and failure of the entrepreneurs under the first iteration of the visa). Additionally, strong anecdotal evidence are suggesting that flexible visa requirements form an essential foundation that supports the growth of an innovative and international business creation hub – but alone cannot make global entrepreneurs want to move to another country to settle".³²³ However, the schemes at Member States level are recent and 'going down their learning curve' and it might be too soon to draw any conclusions.

³²² See for instance Ireland, where the project must be "led by an experienced management team" and where the review process does not focus on such an element: <http://www.inis.gov.ie/en/INIS/Guidelines%20for%20Start-up%20Entrepreneur%20Programme.pdf/Files/Guidelines%20for%20Start-up%20Entrepreneur%20Programme.pdf>

The scheme explicitly excludes retail, personal services, catering or other businesses of this nature out of its scope.

Similarly, in Spain the report on the business and entrepreneurial activity is the most important element: http://extranjeros.empleo.gob.es/es/UnidadGrandesEmpresas/folletos/Folleto_ley_emprendedores_Emprendedores_EN.pdf

In the UK, even the "graduate entrepreneur visa" are a graduate who has been officially endorsed as having a genuine and credible business idea

³²³ "Worldwide start-up via policies compared", J. Goube, Migreat, May 2015.

In addition, before gathering the relevant data required to have a comprehensive analysis of the effectiveness of measures to attract innovative entrepreneurs, it could be useful to allow Blue Card holders to have a minor entrepreneurial activity on the side of the primary employment as Blue Card holders.

In the beginning of a new business venture, many entrepreneurs continue to work their "day job" to support their personal expenses while developing their entrepreneurial activity in their private time. Latest research³²⁴ shows indeed that a significant number of start-ups commence in the informal economy primarily to test the viability of the business, often started as a hobby. And, about 22% of men and 13% traded informally when starting their business, whereby 66% of men and 53% of women assert that the main reason was to test the viability of their business³²⁵. Research also suggests that the risk and uncertainty associated with entrepreneurial activity deters entry and contributes to the high rates of new business failure³²⁶. While nationals do not have specific constraints to start this venture as long as the applicable fiscal and corporate law rules are respected, the situation of third country nationals appears very different as in most cases (i) their work permit usually only grants the possibility of economic activities as an employee, specifically excluding any self-employed activities and (ii) their work permit is explicitly linked to a specific job, even to a specific employer. Consequently, any self-employed activity besides a main job as an employee takes place, at best, in a grey zone or is not allowed. Often there is no explicit prohibition in the law, but it is a logical implication of a system based on a job or employer specific work permit for employed activities. And, when the labour access status is not respected (and the dependant residence status), neither are the fiscal, social security and corporate law rules.

Under the current Blue Card Directive, this possibility is forbidden as the third country national must be an employee according to Article 2(b). This situation could be changed by explicitly allowing a secondary professional activity as a self-employed besides the main job on which the Blue Card is dependent providing that the following conditions are met:

- The self-employed is clearly defined as secondary (supplementary) to the employed job for which the Blue Card has been granted;
- All conditions of the Blue Card remain fulfilled at all the time;
- The self-employed venture respects all fiscal and corporate rules.

Whether the employer of the Blue Card holder allows this or not could be arranged in the private employment relationship between the Blue Card holder and the employer. However, the permit should not be the (legal) obstacle that prevents entrepreneurial activity.

This would provide added flexibility to high-skilled persons and in some cases favour a gradual transfer to entrepreneurship, without distorting the current legal framework. Benefits could be seen in economic terms as research shows that "hybrid entrepreneurs who subsequently enter full-time self-employment (ie. quit their day job) have much higher rates of survival relative to

³²⁴ William C and Martinez A. 'Is the informal economy an incubator for new enterprise creation? A gender perspective', International Journal of Entrepreneurial Behaviour and Research, Vol. 20, No 1, 2014, pp.4-19

³²⁵ Id.

³²⁶ "Should I quit my day job?: a hybrid path to entrepreneurship" J. Raffiee and J. Feng, Academy of Management Journal, 2014, Vol. 57, No 4, 936-963.

individuals who enter full-time self-employment directly from paid employment"³²⁷, thus addressing the specificity of the vulnerability of migrants enterprises. Such a route could therefore provide the certainty and security required for high-skilled migrants who wish to start their own business, improving their sustainability, add value to the Blue Card, and be part of a more flexible approach which could foster promising innovation and businesses.

³²⁷

Id.

ANNEX 11

INTERNATIONAL SERVICE PROVIDERS

1 CONTEXT

Services are increasingly important in the global economy and a central part of the economy of every EU country. The EU is the world's largest exporter of services with tens of millions of jobs throughout Europe in the services sector. It accounts for over 22 % of global trade in services — compared to 15 % for the US and 8 % for China — and has a positive services trade balance with the rest of the world of over 150 billion EUR per year.³²⁸ Opening up foreign markets for services means more growth and jobs in the EU, while the admission of well-trained, high skilled and qualified foreign professionals who move to the EU to provide services would contribute to enhancing EU competitiveness.

To maintain or increase its global lead, the EU concludes free trade agreements with international partners. It uses trade agreements to achieve mutual economic benefits, but also to promote established international governance structures (such as the WTO) and to encourage standards and best practices in partner countries.³²⁹ In doing so, it is in competition with other large trading nations, who may not share the aims or practices of the EU. It is therefore essential that the EU remains a reliable partner, and that it lives up to the commitments which it has taken in past agreements, so as to be able to continue to set the agenda worldwide.

Trade in services can take several forms and is therefore categorised, in accordance with the General Agreement on Trade in Services (GATS), in **four distinct "modes of supply"**³³⁰. "**Mode 4**" requires the presence of a natural person in the territory of the trading partner, and hence touches upon migration policy.

Within Mode 4, the EU usually negotiates a number of categories of professionals for whom temporary presence on the territory is essential and for whom adequate admission channels need to be in place: business visitors for establishment purposes (BVEPs) or business service sellers (SeSe); intra-corporate transferees (ICTs), including graduate trainees/trainee employees (GTs), contractual service suppliers (CSSs) and independent professionals (IPs). The relevant categories in the context of this Impact Assessment³³¹ are **contractual service suppliers (CSSs)** and **independent professionals (IPs)**, who - with very limited exceptions³³² - need to possess university-level qualifications as well as three to six years of professional experience. They are generally admitted for a cumulative period of not more than 6 months or for the duration of the contract, whichever is less.

The table below provides an overview of the different "Mode 4" categories.

³²⁸ European Commission, DG Trade, "*European Union trade in the World: Index*", published 6 November 2015. http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122532.pdf

³²⁹ See, for example, "*Trade for all — Towards a more responsible trade and investment policy*", Communication outlining the European Commission's new trade & investment strategy. http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

³³⁰ Cross-border supply (mode 1), Consumption abroad (mode 2), Commercial presence (mode 3) and Presence of a natural person (mode 4).

³³¹ Other categories such as business visitors or business service sellers only stay for a very limited time (up to 90 days); the status of Intra-corporate transferees (including Graduate trainees) is regulated under the Intra-Corporate Transferee Directive.

³³² Exceptionally, the EU granted entry and temporary stay to contractual services suppliers in fashion model services, chef de cuisine services, and entertainment services other than audio-visual services without the requirement of possessing of a university degree or a qualification demonstrating knowledge of an equivalent level under Economic Partnership Agreement (EPA) with Cariforum states.

"Mode 4" categories in the context of the General Agreement on Trade in Services (GATS)		
- Business visitors for establishment purposes (BVEPs)	Natural persons working in a senior position who: - are responsible for setting up an enterprise, - do not offer or provide services or engage in any other economic activity than required for establishment purposes. - do not receive remuneration from a source located within the host Party.	Up to 90 days in any twelve month period
- Intra-corporate transferees (ICTs)	Natural persons who: - have been employed by a juridical person or have been partners in it for at least one year - are temporarily transferred to an enterprise, the host entity, that may be a subsidiary, branch or head company of the juridical person in the territory of the other Party, - are either managers or specialists.	Up to 3 years
- Graduate trainees/trainee employees (GTs)	Natural persons who: - have been employed by a juridical person of one Party or its branch for at least one year, - possess a university degree - are temporarily transferred to a subsidiary, branch or representative office of the juridical person in the territory of the other Party, for career development purposes or to obtain training in business techniques or methods.	Up to 1 year
- Business sellers (BS) or Business Service Sellers (SeSe)	Natural persons who: - are representatives of a services or goods supplier of one Party, - seeking entry and temporary stay in the territory of the other Party for the purpose of negotiating the sale of services or goods, or entering into agreements to sell services or goods for that supplier - do not engage in making direct sales to the general public - do not receive remuneration from a source located within the host Party - are not they commission agents.	Up to 90 days in any twelve month period
- Contractual service suppliers (CSSs)	A person employed by a company based outside of the EU which has concluded a contract to supply services with a final consumer in the EU, requiring the presence on a temporary basis of its employees in the EU in order to fulfil the contract to provide services. They must have: - at least three years of relevant professional experience, - a university degree or an equivalent qualification, and, - if required for regulated professions, the professional qualifications required to exercise this activity in the Member State where the service is supplied.	Cumulative period of max. 6 months or the duration of contract, whichever is less
- Independent professionals (IPs)	Natural person established as self-employed outside of the EU. They must have: - at least six years of relevant professional experience, - a university degree or an equivalent qualification and, - if required for regulated professions, the professional qualifications required to exercise this activity in the Member State where the service is supplied.	Cumulative period of max. 6 months or the duration of contract, whichever is less

Due to the rising importance of services worldwide, as well as the EU's pre-eminent position and clear offensive interests in this field, all recent EU trade agreements dealing with trade in services include (or will include) provisions on Mode 4. Some past examples are the EU Free Trade Agreements (FTAs) with South Korea, Cariforum, and Canada, whilst similar provisions are likely to be included in future agreements such as with the USA, Japan, Australia, or the plurilateral Trade in Services Agreement (TiSA).

Since CSSs and IPs are rarely recognised as a distinct category in the EU Member State's migration legislation, statistics are incomplete. Some Member States can provide statistics on third-country nationals who receive posting permits. It cannot be assumed,

however, that these figures are indicative of the number of CSSs and IPs, as they can also relate to several other categories.

2 RELATION BETWEEN TRADE AGREEMENTS AND MIGRATION POLICIES

The GATS Annex on Movement on Natural Persons Supplying Services specifies that the agreement does not apply to measures affecting access to the employment market or to rules on citizenship, residence or employment on a permanent basis.

It is clear that trade agreements, and in particular those negotiated by the EU, aim to steer clear of migration policies, by adopting a different vocabulary (professionals vs. workers, mobility vs. migration) and by underlining the temporary nature and specific purpose of stays.

However, it is also clear that the liberalisation agreed in those trade agreements cannot have any effect as regards entry and temporary stay of natural persons for business purposes if no adequate admission policies are put in place in the host countries.

In spite of the EU's exclusive competence in the field of international trade,³³³ the rules on admitting Mode 4 service suppliers remain fragmented and incomplete. The ICTs and GTs have been incorporated in the EU *acquis* through the adoption of a specific Directive, the Directive on Intra-Corporate Transfers,³³⁴ adopted in 2014 and which is to be implemented in all 25 participating Member States by 29 November 2016. The rules on admitting CSSs and IPs remain national policy.

A 2015 study by the European Migration Network³³⁵ showed the large variance in national admission policies for CSSs and IPs. This information has been recently complemented by a survey among Member States (through a questionnaire sent to the Trade Policy Committee), specifically aimed at supporting this Impact Assessment.

The **main findings of the EMN study** and of the above-mentioned **survey** are explained below.

Most Member States **do not have dedicated programmes** in place for admitting CSSs or IPs. In many cases, where the period of stay is short (90 days under Schengen rules), the relevant professionals will enter those Member States by using the procedures laid down for tourists. For longer periods of stay, the standard procedures for admitting highly-qualified migrant workers or self-employed migrants are used instead. As service providers are linked to their EU clients by a service contract, rather than an employment contract, their admission can be hindered due to a lack of dedicated provisions.

CSSs and IPs are not defined separately in relevant legislation in the vast majority of Member States. As a result, existing definitions in national law do not always clearly distinguish between the various types of business persons and can overlap in several cases.

The **duration of stay** on the basis of the first permit varies significantly between Member States, as shown in the table below.³³⁶

³³³ Common Commercial Policy, Art 207 TFEU.

³³⁴ Directive 2014/66/EU of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

³³⁵ EMN Study, *Admitting third-country nationals for business purposes*, European Migration Network, 2015, Synthesis Report.

³³⁶ EMN Study 2015.

	IPs	CSSs
Up to 3 months	FI, HR, HU	FI, HR, HU
3-6 months	HU, LU, PT, SE, UK	BE, HU, LU, PT, UK
6-12 months	AT, FR, HU, LV, PL	BE, EL, HU, FR, PL
1-2 years	EL, ES, SK	ES, IE, SE, SK
Over 2 years	BE, HU	HU, LV, NL

The **length of procedures** varies significantly (between 3 days and 3 months), as does the **cost** (45-1000 EUR). Speed and cost are not correlated.

Most Member States allow the **family** of the service provider to join (PL, SI, SE, BG, DK, SK, HR, CZ, BE, ES, EE, DE) and to work (PL, SE, BG, DK, CZ, BE, ES, FR, EE, DE, and – subject to a labour market test – SI).

Service providers are excluded from the scope of the EU **Long-Term Residents'** Directive. Furthermore, periods spent as a temporary worker or service provider do not count towards the 5-year minimum stay to be eligible for EU Long-term resident status.³³⁷ Nevertheless, several Member States allow service providers to build up eligibility for long-term residency under national rules (SI, SE, DK, SK for CSSs, HR, CZ, BE, ES, EE, DE).

Currently, CSSs and IPs enjoy limited **professional mobility within the EU**. Their mobility is limited to Schengen rules (90 days within any 180 days period), if their residence permit was issued by a Schengen state. Any right to work, however little, is subject to national rules in the second Member State. Some Member States have introduced pragmatic rules which allow non-EU professionals who are staying legally in another Member State to engage in limited activities, e.g. attending business meetings. According to the information provided by the Trade Policy Committee, most Member States do not see the need to provide for (professional) intra-EU mobility for CSSs or IPs.

In conclusion, the current situation, in which CSS and IPs mode 4 categories are not recognised in EU law and only partially at national level, produces several adverse situations, such as **problems with proper implementation** of the EU commitments, or the risk that **international disputes** will increase as agreements with key partner (Canada, the US, Japan, and in the future possibly Australia) enter into force. A detailed report on the implementation of the EU-Cariforum agreement contains several allegations of legitimate service providers being denied appropriate access.³³⁸ The **EU's negotiating leverage** will decrease if current and future agreements cannot be implemented properly. As more commitments are taken on mode 4, fragmented and incomplete legislation will lead to high numbers of **unfounded applications** and

³³⁷ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Articles 3.2.e and 4.2.

³³⁸ http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152825.pdf (executive summary).

http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152824.pdf (full report, see pp 40-49).

increase the risk of abuse. The **economic potential** of the trade agreements will remain unfulfilled as regards mode 4.

Background information

1. Policy documents, consultations and studies

The **European Agenda for Migration** noted that the services sector is economically significant, and suggested to assess possible ways to provide legal certainty to these categories of people, also in order to strengthen the EU's position to demand reciprocities when negotiating Free Trade Agreements (FTAs).³³⁹

The **Communication on New EU Trade and Investment Strategy "Trade for All"**³⁴⁰ emphasises the importance of mobility of professionals as a key element to conduct business internationally. Benefits envisaged in numerous service sectors covered by trade agreements would be enhanced significantly if highly qualified service providers were able to move more seamlessly to provide their services across borders. The Communication announces that the Commission will use the review of the EU Blue Card directive to assess the possibility of including conditions of entry and residence of third-country nationals providing a service on a temporary basis in line with EU commitments in trade agreements.

DGs HOME and **TRADE**, as well as Member States trade and home affairs experts have collaborated closely to redefine the EU's strategy on Mode 4, in view of the clear commercial interests of the EU and its Member States set out in the "Trade for all" Communication.

The **Trade Policy Committee** (Services and Investments) was consulted to gather extensive information on how the Mode 4 commitments on CSSs and IPs are implemented, with a view to conducting this Impact Assessment.

In 2015, the **European Migration Network** conducted a study on "*Admitting third-country nationals for Business Purposes*", which includes a review of the admission of other third-country nationals who travel to the EU for business reasons under the EU Free Trade Agreements. It was based on the contributions of the 24 of the network's national contact points.³⁴¹

2. List of EU trade negotiations containing provisions on "Mode 4":

A. Concluded and in force

- | |
|--|
| 1. General Agreement on Trade in Services (GATS) ³⁴² |
| 2. EU - Korea ³⁴³ |
| 3. EU - CARIFORUM ³⁴⁴ |

³³⁹ COM(2015) 240 final, A European Agenda On Migration. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

³⁴⁰ Communication outlining the European Commission's new trade & investment strategy. http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

³⁴¹ Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom).

³⁴² http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm

³⁴³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:127:0006:1343:EN:PDF>

³⁴⁴ http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137971.pdf

4. EU - Central America ³⁴⁵
5. EU – Colombia And Peru ³⁴⁶
6. EU - Chile ³⁴⁷
7. EU - Mexico ³⁴⁸

B. Concluded but not in force

8. EU – Singapore ³⁴⁹
9. EU – Moldova (Deep and Comprehensive Free Trade Agreement)
10. EU – Armenia (Deep and Comprehensive Free Trade Agreement)
11. EU – Georgia (Deep and Comprehensive Free Trade Agreement)
12. EU – Ukraine (Deep and Comprehensive Free Trade Agreement)
13. EU – Canada (Comprehensive Economic and Trade Agreement)

C. Under negotiations

14. EU – India
15. EU – MERCOSUR
16. EU – Ecuador (integration in EU-COLOMBIA AND PERU)
17. EU – Japan
18. EU – Malaysia
19. EU – Thailand
20. EU – Vietnam
21. EU – Morocco
22. EU - Tunisia
23. EU – China investment agreement
24. European Partnership Agreements (EPAs) with Central Africa, SADC, West Africa, East Africa and the Pacific regions.
25. EU – United States of America (Transatlantic Trade and Investment Partnership (TTIP))
26. Plurilateral "Trade In Services Agreement" ³⁵⁰ (TiSA)

³⁴⁵ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689>

³⁴⁶ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=691>

³⁴⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:352:0003:1439:EN:PDF>

³⁴⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:276:0045:0061:EN:PDF>

³⁴⁹ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961>

³⁵⁰ Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey, the United States.

ANNEX 12 STATISTICS

1. DATA AVAILABILITY AND LIMITATIONS

The following analysis has been constrained partly by limitations in data availability and partly by significant lack of comparability in migration statistics. Despite the significant efforts made to collect sound and reliable figures to underpin all aspects discussed in this evaluation, a satisfactory quantitative analysis is still lacking for several of them. Recent studies and researches have also revealed little empirical evidence on several of the analysed issues. Therefore it has been difficult to estimate and quantify the scale of effects of certain proposals (particularly the economic and financial impacts) in a reliable manner. This is particularly relevant when it comes to statistics that could help quantifying the volume of the problems and the potential impacts of the policy options.

In general, figures on the **national schemes are not always directly comparable**. This is due, primarily, to variations in the definition of a highly skilled worker, to the particularities of the different national migration systems, some of which do not have distinct categories for highly skilled workers, and to the way in which the statistics may be collected.

One of the main issue in relation to **data availability concern the the numbers of permits** issued for highly qualified third country nationals under national schemes and the number of Blue Cards issued, which **are not readily comparable** due to several gaps or imprecisions in the data collected at national level.

Firstly, some Member States³⁵¹ **have national schemes which do not differentiate according to the skill level**. As a result, they do not register the skill or wage level of a permit holder. This complicates the identification of the numbers of third-country workers receiving national permits who might also be eligible for the Blue Card.

Secondly, even where data is available, further problems might arise due to differences in **the ways permits granted are recorded** in Member States and at the European level. While the numbers for one given year sometimes refer only to the numbers of first permits granted, others include status changes or renewals. This is a broader problem that concerns several type of residence permit.

Thirdly, problems arise as regards the **comparison between the yearly or monthly salary thresholds set by the Member States and 1.5 times the gross average wage as recorded by Eurostat**. As for the comparison, reference can be made to the Structure of Earnings Survey. However, not only does the most recent version of this Survey date back to 2010, but the Survey is also limited regarding the coverage of certain sectors and company sizes. Looking into alternative sources, the average gross earnings per employee can be calculated on the basis of the Eurostat National Accounts data, as it has been done, based on the total amount of wages and salaries among the main components of GDP divided by the number of employees according to the domestic concept, which captures the employment in resident production units. This, however, also includes those employed on a part-time basis and therefore does not produce an exact full time equivalent. Finally, information on the salary threshold set in 2014 is missing for PT, while in EL no salary threshold was set because the

³⁵¹ See Annex 6.

country decided to issue no Blue Card pursuant to its right to control the numbers of admission, as set out in Article 6 of the Directive³⁵². For HR no Eurostat data is available on the share of wages and salaries of total GDP³⁵³.

With regard to the issues of **costs and length of the procedure** and on the subject of **administrative burdens** for national authorities, even less reliable data is available. Applicable EU legislation does not require Member States to collect such data and many of them do not have them easily available.

Finally, a different problem concerns **comparability of data**, which often vary considerably or cannot be considered entirely representative for all Member States and all labour market sectors.

³⁵² According to Art. 6 on volumes of admission, "This Directive shall not affect the right of a Member State to determine the volume of admission of third-country nationals entering its territory for the purposes of highly qualified employment."

³⁵³ Eurostat: [nama_10_gdp]

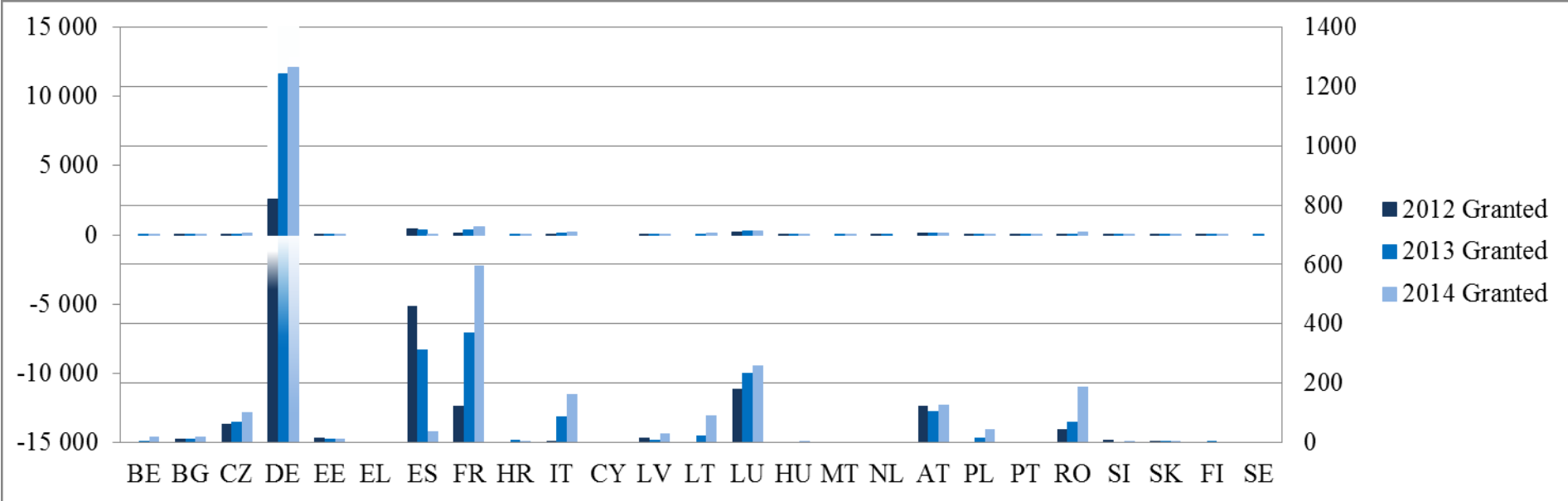
2. PERMITS OF BLUE CARD HOLDERS AND THEIR FAMILY MEMBERS, AND SALARY THRESHOLDS

Blue Cards granted, renewed and withdrawn by MS (EU25) – Table

	Granted						Renewed			Withdrawn		
	2012		2013		2014		2012	2013	2014	2012	2013	2014
BE	0	0,00%	5	0,04%	19	0,14%	n/a	0	7	n/a	0	0
BG	15	0,41%	14	0,11%	21	0,15%	0	12	25	n/a	n/a	0
CZ	62	1,69%	72	0,56%	104	0,75%	1	20	40	0	0	2
DE	2 584	70,52%	11 580	89,32%	12 108	87,41%	0	1	0	n/a	n/a	0
EE	16	0,44%	12	0,09%	15	0,11%	0	0	11	0	0	0
EL	0	0,00%	n/a	0,00%	n/a		0	n/a	n/a	0	n/a	n/a
ES	461	12,58%	313	2,41%	39	0,28%	91	310	283	n/a	n/a	0
FR	126	3,44%	371	2,86%	597	4,31%	49	182	243	0	0	0
HR	n/a	0,00%	10	0,08%	7	0,05%	n/a	0	3	n/a	0	4
IT	6	0,16%	87	0,67%	165	1,19%	n/a	0	0	n/a	0	0
CY	0	0,00%	0	0,00%	0	0,00%	0	0	0	0	0	0
LV	17	0,46%	10	0,08%	32	0,23%	0	70	29	0	0	1
LT	n/a	0,00%	26	0,20%	92	0,66%	n/a	1	58	1	0	0
LU	183	4,99%	236	1,82%	262	1,89%	0	18	219		1	7
HU	1	0,03%	4	0,03%	5	0,04%	0	0	2	0	0	0
MT	0	0,00%	4	0,03%	2	0,01%	0	18	4	0	7	8
NL	1	0,03%	3	0,02%	0	0,00%	0	0	0	0	0	0
AT	124	3,38%	108	0,83%	128	0,92%	5	9	8	n/a	n/a	n/a
PL	2	0,05%	16	0,12%	46	0,33%	0	0	0	0	0	0
PT	2	0,05%	4	0,03%	3	0,02%	n/a	0	0	0	0	0
RO	46	1,26%	71	0,55%	190	1,37%	0	1	41	n/a		0
SI	9	0,25%	3	0,02%	8	0,06%	0	0	2	0	0	0
SK	7	0,19%	8	0,06%	6	0,04%	0	0	0	0	0	0
FI	2	0,05%	5	0,04%	3	0,02%	0	0	1	0	0	0
SE	0	0,00%	2	0,02%	0	0,00%	0	0	0	0	6	9
EU25	3 664		12 964		13 852		146	642	968	1	14	31

Source: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr_resbc1]; Last updated on 12/02/2016 and extracted on 18/02/2016

Blue Cards granted, renewed and withdrawn by MS (EU25) – Graph



Source: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr_resbc1]; Last updated on 12/02/2016 and extracted on 18/02/2016

Blue Cards granted in DE in 2014 and the first half of 2015 by time of arrival and salary threshold applied

2014						January to September 2015					
Time of arrival			Salary threshold applied			Time of arrival			Salary threshold applied		
In 2014	4 673	39%	1,5 (regular)	5 954	45%	In 2015	2 372	32%	1.5 (regular)	3 301	45%
Before 2014	7 175	61%	1,2 (shortage occupations)	5 894	55%	Before 2015	4 991	68%	1.2 (shortage occupations)	4 062	55%
Total	11 848		Total	11 848		Total	7 363			7 363	
Increase above the last year (2013)				558	5%	Increase above the same period of the last year (first half 2014)				1 439	20%

Source: BAMF, "Wanderungsmonitor Erwerbsmigration nach Deutschland", Jahresbericht 2014 and 1. Halbjahr 2015(2014 and January to September 2015)

3. Permits for family members granted, renewed and withdrawn by MS (EU25)

	Granted						Renewed			Withdrawn		
	2012		2013		2014		2012	2013	2014	2012	2013	2014
BE	0	0,00%	4	0.10%	9	0.13%	0	0	9	0	0	0
BG	5	0,45%	4	0.10%	0	0.00%	0	4	10	n/a	n/a	0
CZ	35	3,16%	21	0.55%	64	0.96%	0	0	10	0	0	n/a
DE	270	24,39%	2 998	78.46%	5 099	76.31%	0	0	0	n/a	n/a	0
EE	18	1,63%	2	0.05%	14	0.21%	0	0	13	0	0	0
EL	0	0,00%	n/a		n/a		0	n/a	n/a	0	n/a	n/a
ES	385	34,78%	358	9.37%	60	0.90%	82	354	326	0	n/a	n/a
FR	n/a:		n/a		43	0.64%	n/a	n/a	9	n/a	n/a	0
HR	n/a		n/a		0	0.00%	n/a	n/a	2	n/a	n/a	0
IT	n/a		5	0.13%	1	0.01%	n/a	0	0	n/a	0	0
CY	0	0,00%	0	0.00%	0	0.00%	0	0	0	0	0	0
LV	8	0,72%	2	0,05%	23	0,34%	0	11	13	0	2	4
LT	n/a		0	0,00%	n/a		n/a	0	n/a	n/a	0	n/a
LU	223	20,14%	207	5,42%	245	3,67%	0	118	395	0	0	0
HU	0	0,00%	0	0,00%	n/a		0	0	n/a	0	0	n/a
MT	n/a		10	0,26%	4	0,06%	n/a	0	10	0	0	n/a
NL	0	0,00%	0	0,00%	8	0,12%	0	0	0	0	0	0
AT	155	14,00%	136	3,56%	174	2,60%	25	79	91	0	n/a	n/a
PL	0	0,00%	0	0,00%	778	11,64%	0	0	0	0	0	0
PT	0	0,00%	0	0,00%	3	0,04%	n/a	0	0	n/a	n/a	0
RO	0	0,00%	65	1,70%	135	2,02%	0	0	0	n/a	0	2
SI	3	0,27%	1	0,03%	12	0,18%	1	1	0	0	0	0
SK	5	0,45%	8	0,21%	10	0,15%	n/a	0	0	n/a	0	0
FI	n/a		:		n/a		0	4	:	0	n/a	n/a
SE	0	0,00%	0	0,00%	0	0,00%	n/a	0	0	n/a	0	0
EU25	1 107		3 821		6 682		108	571	888	0	2	6

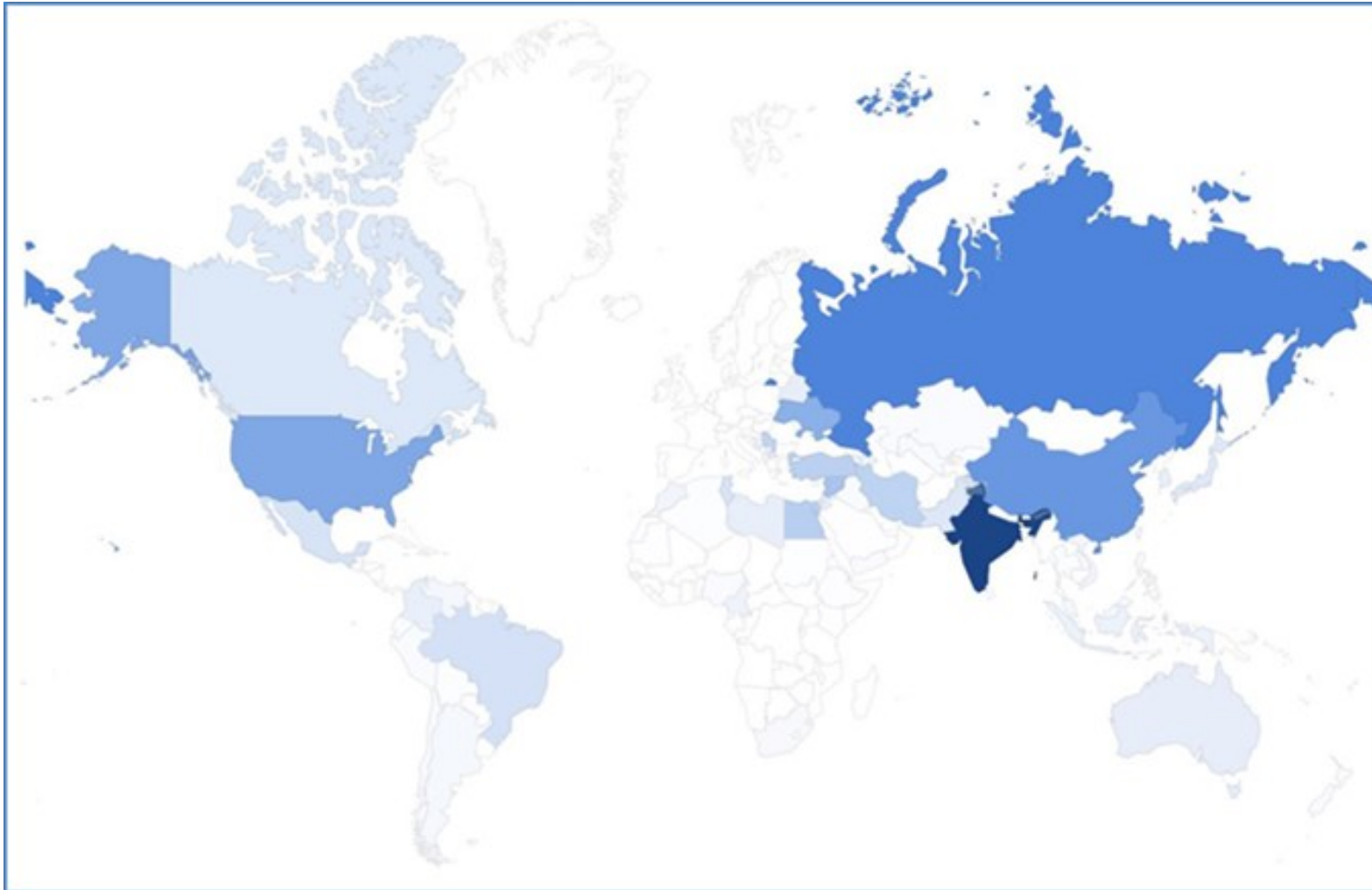
Source: Eurostat Admitted family members of EU Blue Cards holders by type of decision and citizenship [migr_resbc2], Last updated on 18/01/2016 and extracted on 25/02/16

4. Top-20 countries of origin of Blue Card holders – Table

	2012		2013		2014	
	Country	Permits	Country	Permits	Country	Permits
1	India	699	China	1 011	India	2 595
2	China	324	Russia	994	Russia	1 212
3	United States	313	United States	776	China	1 002
4	Russia	271	Syria	547	United States	845
5	Ukraine	149	Ukraine	536	Ukraine	781
6	Turkey	112	Egypt	450	Syria	554
7	Egypt	105	Serbia	412	Egypt	467
8	Mexico	105	Turkey	409	Turkey	447
9	Syria	104	Iran	394	Iran	426
10	Japan	93	Jordan	290	Serbia	410
11	Serbia	79	Brazil	265	Brazil	289
12	Brazil	78	Mexico	249	Mexico	269
13	Iran	75	Japan	246	Tunisia	260
14	Canada	67	Canada	206	Canada	225
15	Pakistan	60	Pakistan	189	Pakistan	219
16	South Korea	59	South Korea	180	Japan	204
17	Colombia	53	Libya	148	Jordan	176
18	Venezuela	50	Belarus	143	Macedonia	171
19	Jordan	47	Colombia	140	Australia	165
20	Croatia	46	Bosnia & Herz,	138	Belarus	163
Top-20		2 889		7 723		10 882
Total		3 664		12 964		13 852

Source: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr_resbc1], Last updated on 12/02/2016 and extracted on 25/02/2016,

5. Countries of origin of Blue Card holders – Map



Source: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr_resbc1]; Last updated on 08/10/2015 and extracted on 18/01/2016,

EU Blue Cards holders and family members by MS of previous residence

Data for 2014 has not yet been published by EUROSTAT and some of the existing data is incomplete

	2012				2013			
	EU Blue Card holder		Family and relatives		EU Blue Card holder		Family and relatives	
	Depar,	Destination	Depar,	Destination	Depar,	Destination	Depar,	Destination
BE	0		0		0		0	
BG	0		0		0		:	
CZ	1	LU	0		0		0	
DE	n/a		n/a		0		n/a	
EE	0		0		0		0	
EL	0		0		:		:	
ES	n/a		n/a		n/a		n/a	
FR	n/a		n/a		n/a		n/a	
HR	n/a		n/a		n/a		n/a	
IT	0		0		0		0	
CY	0		0		0		0	
LV	n/a		n/a		4	EE(1)/ES(3)	1	ES
LT	n/a		n/a		0		0	
LU	0		0		:		:	
HU	0		0		1	NL	0	
MT	0		0		0		0	
NL	0		0		0		0	
AT	0		3	n/a	0		1	
PL	0		0		0		0	
PT	n/a		n/a		n/a		n/a	
RO	0		0		0		0	
SI	0		0		0		0	
SK	0		0		0		0	
FI	n/a		n/a		n/a		n/a	
SE	0		0		0		0	
EU25	1		3		5		2	

Source: Eurostat EU Blue Cards holders and family members by Member State of previous residence [migr_resbc3], Last updated on 17/02/2016 and extracted on 25/02/16,

No data is available yet on the year 2014,

Salary thresholds set by Member States, comparison with Eurostat data

	2014			2015
	Salary threshold set by MS (€)	1,5 * average annual salary (Eurostat data, €)	Ratio threshold / salary (Eurostat data)	Salary threshold set by MS (€)
IT	24 789	38 958	0,95	n/a
CY	23 964	31 849	1,13	n/a
LV	12 888	16 213	1,19	13 776
MT	24 054	29 548	1,22	n/a
BG	* 7 519	8 959	1,26	* 8 007
LU	69 858	83 138	1,26	71 946
SI	27 516	31 727	1,30	27 648
SK	15 102	17 358	1,31	15 102
BE	50 974	58 213	1,31	51 466
ES	33 909	37 481	1,36	33 909
EE	17 088	18 731	1,37	18 096
HU	* 12 955	13 713	1,42	* 13 419
PL	* 15 140	15 629	1,45	* 15 692
DE	47 600	47 422	1,51	48 400
CZ	* 16 604	16 338	1,52	* 16 973
LT	15 078	14 767	1,53	11 580
SE	* 58 941	57 562	1,54	n/a
FI	57 708	56 180	1,54	59 112
FR	52 750	50 182	1,58	53 331
AT	55 976	52 983	1,58	57 405
NL	61 469	52 604	1,75	63 608
RO	24 576	10 113	3,65	25 828
HR	* 18 724	n/a	n/a	* 30 675
EL	n/a	24 782	n/a	19 171
PT	n/a	23 606	n/a	n/a

Sources: Eurostat the total amount of "wages and salaries" (D11 in GDP and main components (output, expenditure and income) [nama_10_gdp]); Last updated on 15/01/2016, extracted on 19/01/2016, Number of employees (SAL_NC in Population and employment [nama_10_pe]); Last updated on 15/01/2016, extracted on 19/01/2016, National thresholds as reported by Member States, The average annual salary used as a reference for the comparison with the salary threshold set by the Member States has been calculated as a ratio between the "Wages and salaries" and the "Number of employees", according to National accounts data, Using this data source ensures that the definitions are harmonised across EU Member States and that the data is up-to-date (2014) and covers the whole economy (compared for instance to the Structure of Earnings Survey for which the latest data still dates (as of February 2016) from 2010 and which does not cover all sectors or establishments), Nevertheless, using the National accounts implies a bias for Member States where a significant share of the employees work part-time as the ratio is calculated by dividing the number of employees in headcount and therefore is not adjusted for the volume of hours worked,

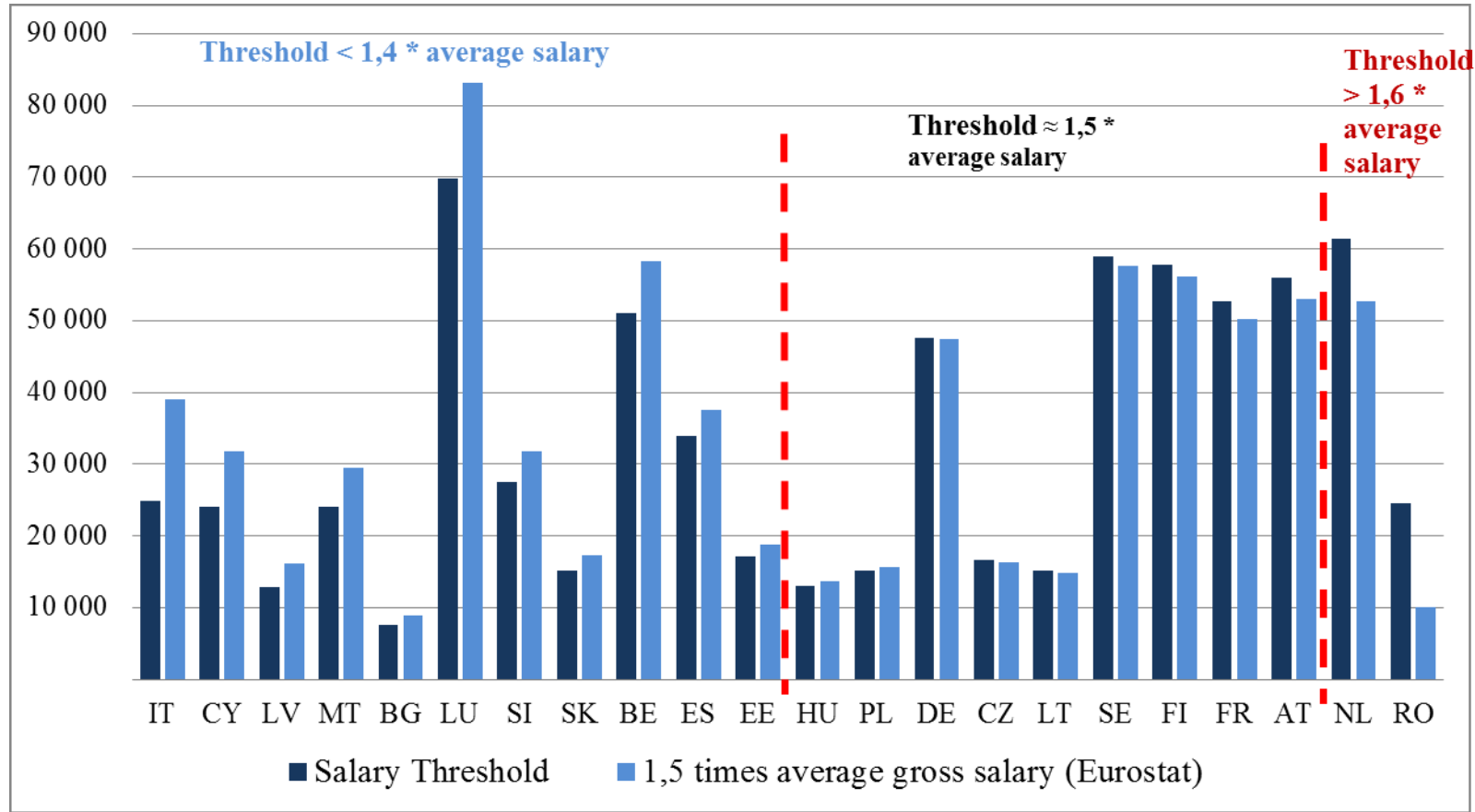
* Currency has been converted

Exchange rates based on the average rate from 19 January 2015 to 20 January 2016 (EZB)

BGN 1 = EUR 0,5113; CZK 1 = EUR 0,03671; HRK 1 = EUR 0,1314; HUF 1 = EUR 0,003228; PLN 1 = EUR 0,2389; SEK 1 = EUR 0,1070

Salary thresholds set by Member States and 1,5 times the average gross nationals salary according to Eurostat, for 2014

Note: Information is missing for HR, EL and PT



Sources: Eurostat the total amount of "wages and salaries" (D11 in GDP and main components (output, expenditure and income) [nama_10_gdp]), number of employees (SAL_NC in Population and employment [nama_10_pe]), Extracted on 03/12/2015
National thresholds as reported by Member States

Professions of Blue Card holders

Note: information is not available for DE in EUROSTAT

		2013		2014	
Total		12.964		13.852	
	Unknown	12.131	93,57%	12.437	89,78%
ISCO08	Known occupation	833	6,43%	1.415	10,22%
OC1	Managers	262	31,45%	434	30,67%
OC11	Chief executives, senior officials and legislators	22	2,64%	32	2,26%
OC12	Administrative and commercial managers	106	12,73%	163	11,52%
OC13	Production and specialised services managers	130	15,61%	232	16,40%
OC14	Hospitality, retail and other services managers	4	0,48%	7	0,49%
OC2	Professionals	571	68,55%	981	69,33%
OC21	Science and engineering professionals	367	44,06%	576	40,71%
OC22	Health professionals	18	2,16%	15	1,06%
OC23	Teaching professionals	4	0,48%	12	0,85%
OC24	Business and administration professionals	96	11,52%	162	11,45%
OC25	Information and communications technology professionals	66	7,92%	136	9,61%
OC26	Legal, social and cultural professionals	20	2,40%	80	5,65%

Source: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr_resbc1], Last updated on 12/02/2016 and extracted on 07/03/2016

In Germany, out of the about 25 800 TCN Blue Card holders living in Germany on 31 October 2015, nearly 13 100 applied for a Blue Card with the general salary threshold, while 12.700 applied with the lower threshold for shortage occupations. This seems to suggest that 51% of Blue Card holders works in a general occupation and 49% in a shortage occupation.

However, in Germany, when registering an application in the Central Register of Foreigners (AZR), the salary threshold (not the profession) is the detection criterion. Blue Card holders who earn at least the general salary threshold are accordingly registered under the general professions, regardless of their actual profession. Those Blue Card holders who have a contract meeting the lower salary threshold for shortage occupations, are registered as EU Blue Card holders under the shortage professions. This suggests that there might be a statistical bias.

A representative survey of Blue Card holders in Germany shows that in **fact many more Blue Card holders are employed in shortage occupations (88 %)** than those registered in the Central Register of Foreigners suggested because many of them have a salary that meets the general salary threshold. For this survey about 18 000 Blue Card holders were contacted and a total of 4 340 (approximately 27 %) responded. The majority of the respondents had an EU Blue Card, while about 15 % were former Blue Card holders who had already received a permanent residence card.

Professional groups of respondents in German survey of Blue Card holders

		Shortage occupations in Germany			
		Medical professions	MINT	Total	Other
		19,60%	68,50%	88,10%	9,40%
ISCO Major Group 1	6,70%				
ISCO 1: Chief executives, senior officials, other managers	3,70%				3,70%
ISCO 1-MINT: Chief executives, senior officials, other managers	3,00%		3,00%		
ISCO Major Group 2	90,50%				
ISCO2-MINT: Engineers	31,40%		31,40%		
ISCO2-Health professionals	19,60%	19,60%			
ISCO2-MINT: Computing professionals	18,90%		18,90%		
ISCO2-MINT: Engineering science professionals	6,70%		6,70%		
ISCO2: Business professionals	3,60%				3,60%
ISCO2-MINT: Life science professionals	2,50%		2,50%		
ISCO2-MINT: Other (mathematicians, architects, teachers, management consultants)	2,50%		2,50%		
ISCO2: Other (teachers, artists, lawyers, Humanities, Social Sciences, Other medical doctors)	2,40%				
ISCO2-MINT: physicist	1,80%		1,80%		
ISCO2-MINT: Chemist	1,10%		1,10%		
ISCO Major Group 3/4	2,70%				
ISCO3 / 4 Other	2,10%				2,10%
ISCO3 / 4-MINT	0,60%		0,60%		

MINT (mathematics, information sciences, natural sciences, and technology) is a term used more often in Germany, yet with a similar meaning than MINT (mathematics, information sciences, natural sciences, and technology) which is more used in English-speaking countries. Percentages may not add up to 100% due to statistical rounding.

Source: Hanganu, E. and Heß, B., 'Die Blaue Karte EU in Deutschland: Kontext und Ergebnisse der BAMF-Befragung', *Forschungsbericht 27*, Bundesamt für Migration und Flüchtlinge, Nürnberg, 2016, *forthcoming*.

3. NATIONAL SCHEMES FOR HIGHLY SKILLED EMPLOYMENT

EU Blue Cards and national schemes for highly qualified employment - Table

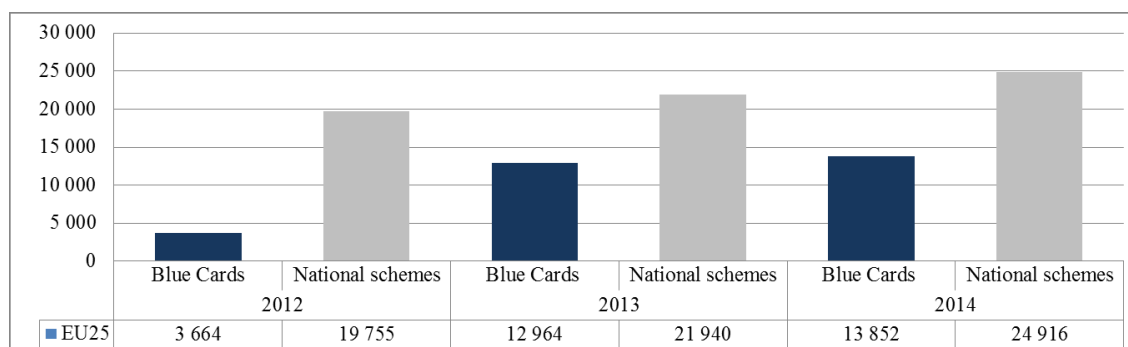
Disclaimer: When reading this table please bear in mind that the figures of the national schemes are not always directly comparable, This is due, primarily, to variations in the definition of a highly skilled workers, to the particularities of the different national migration systems, some of which do not have distinct categories for highly skilled workers, and established methods to collect statistics to this end,

	2012		2013		2014	
	Blue Cards	National schemes	Blue Cards	National schemes	Blue Cards	National schemes
BE	0	95	5	73	19	2 484
BG	15	0	14	0	21	0
CZ	62	69	72	69	104	46
DE	2 584	210	11 580	11	12 108	13
EE	16	0	12	0	15	0
EL	0	0	n/a	0	n/a	0
ES	461	1 231	313	1 480	39	2 137
FR	126	3 037	371	2 667	597	2 567
HR	in force: 2013	n/a	10	565	7	0
IT	6	1 695	87	1 543	165	1 066
CY	0	600	0	385	0	469
LV	17	106	10	82	32	122
LT	in force: 2013	0	26	0	92	0
LU	183	21	236	0	262	0
HU	1	0	4	0	5	0
MT	0	0	4	0	2	0
NL	1	5 514	3	7 046	0	7 123
AT	124	1 158	108	1 228	128	1 083
PL	2	206	16	387	46	691
PT	2	313	4	767	3	989
RO	46	0	71	0	190	0
SI	9	0	3	0	8	0
SK	7	0	8	0	6	0
FI	2	749	5	971	3	1 120
SE	in force: 2013	4 751	2	4 666	0	5 012
EU25	3 664	19 755	12 964	21 940	13 852	24 922
DK	not applicable	4 088	not applicable	5 730	not applicable	5 698
IE	not applicable	1 408	not applicable	1 707	not applicable	2 438
UK	not applicable	8 070	not applicable	3 081	not applicable	2 478
EU28		33 321		32 458		35 527

Sources: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr_resbc1]; Last updated on 12/02/2016 and extracted on 28/04/2016

Data national schemes: Eurostat, Remunerated activities reasons: Highly skilled workers, First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc], Last update on 27/04/2016, extracted on 28/04/2016,

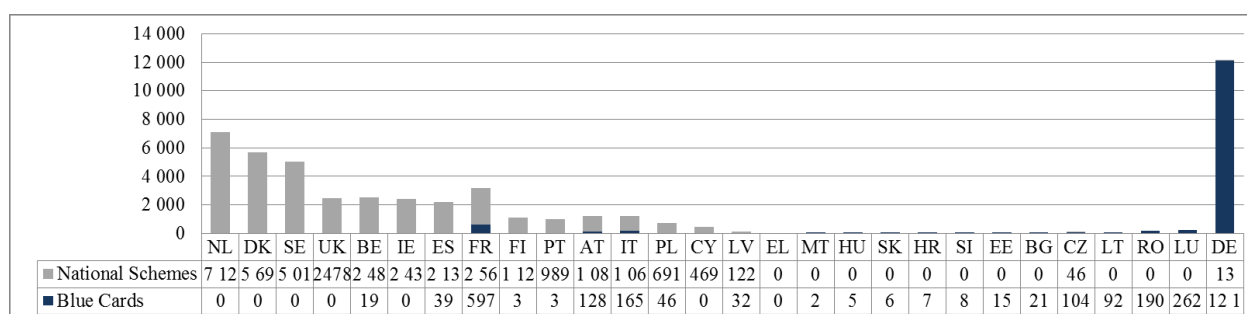
EU25 Blue Card and National Schemes for highly qualified employment – Graph



Sources: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr_resbc1]; Last updated on 12/02/2016 and extracted on 15/02/2016

Data national schemes: Eurostat, Remunerated activities reasons: Highly skilled workers, First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc], Last update on 30/11/15, extracted on 25/02/2016

EU Blue Cards and national schemes by Member State in 2015 – Graph



Sources: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr_resbc1]; Last updated on 12/02/2016 and extracted on 15/02/2016

Data national schemes: Eurostat, Remunerated activities reasons: Highly skilled workers, First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc], Last update on 30/11/15, extracted on 25/02/2016

First permits issued under national schemes by period of validity in 2014 – Table

	Period of Validity						
	Total	3-5months		6-11months		12 months or over	
BE	2 484	160	6.44%	288	11.59%	2 036	81.96%
BG	0	0		0		0	
CZ	46	4	8.70%	3	6.52%	39	84.78%
DE	13	0	0.00%	0	0.00%	13	100.00%
EE	0	0		0		0	

EL	0	0		0		0	
ES	2 137	201	9.41%	144	6.74%	1 792	83.86%
FR	2 567	13	0.51%	136	5.31%	2 412	94.18%
HR	0	0		0		0	
IT	1 066	17	1.59%	557	52.25%	492	46.15%
CY	469	9	1.92%	130	27.72%	330	70.36%
LV	122	0	0.00%	121	99.18%	1	0.82%
LT	0	0		0		0	
LU	0	0		0		0	
HU	0	0		0		0	
MT	0	0		0		0	
NL	7 123	5 48	7.69%	1 254	17.60%	5 321	74.70%
AT	1 083	6	0.55%	1 074	99.17%	3	0.28%
PL	691	254	36.76%	308	44.57%	129	18.67%
PT	989	5	0.51%	47	4.75%	937	94.74%
RO	0	0		0		0	
SI	0	0		0		0	
SK	0	0		0		0	
FI	1 120	103	9.20%	330	29.46%	687	61.34%
SE	5 012	674	13.45%	1 320	26.34%	3 018	60.22%
EU 25	24 922	1 994	8.00%	5 712	22.93%	17 210	69.07%
EU28	35 527	2 684	7.55%	7 420	20.89%	25 423	71.56%

Sources: Eurostat, First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc], Last update on 30/11/15, extracted on 18/01/2016.

Asylum Applications
First time asylum applicants by Member State – Table

	2011	2012	2013	2014	2015
BE	25355	18335	11965	14045	38990
BG	705	1230	6980	10805	20165
CZ	485	505	490	905	1235
DK	3945	6045	7170	14535	20825
DE	45680	64410	109375	172945	441800
EE	65	75	95	145	225
IE	1280	940	940	1440	3270
EL	9310	9575	7860	7585	11370
ES	2970	2350	4285	5460	14600
FR	52140	54265	60475	58845	70570
HR	:	:	1045	380	140
IT	40320	17170	25720	63655	83245
CY	1745	1590	1150	1480	2105
LV	335	190	185	365	330
LT	405	560	250	385	275
LU	1915	2000	990	1030	2360
HU	:	:	18565	41215	174435
MT	1865	2060	2205	1275	1695
NL	11560	9660	9815	21780	43035
AT	:	:	:	25675	85505
PL	4985	9175	13970	5610	10255
PT	275	290	500	440	830
RO	1695	2420	1405	1500	1225
SI	305	260	240	355	260
SK	320	550	290	230	270
FI	:	2905	2985	3490	32150
SE	29630	43835	54255	74980	156110
UK	25870	27885	29640	32120	38370
EU28	263160	278280	372855	562680	1255640

Source: Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr_asyappctza]; Last updated on 02/03/2016, extracted on 03/03/2016

First time asylum applicants by citizenship (Top 20, EU-28) – Table

	2010	2011	2012	2013	2014	2015
Syria	3775	6455	20805	46450	119000	362775
Afghanistan	16180	22270	21080	21030	37855	178230
Iraq	12550	12785	11360	8775	14845	121535
Kosovo (under UNSCR 1244/99)	11725	7550	7165	16905	34115	66885
Pakistan	5800	14805	17100	19125	20550	46400
Russia	12725	12650	17445	35120	14030	18385
Albania	1075	2860	6875	10555	16145	65935
Eritrea	4325	5575	6235	14235	36250	33095
Serbia	14615	10650	13635	15060	20095	19090
Somalia	12920	10600	12850	15525	14805	19575
Nigeria	5435	12225	6725	10220	18895	29915
Iran	8500	10285	11740	10885	9700	25360
Bangladesh	4495	7725	5035	7275	10005	17695
Stateless	1805	2135	3190	9275	15170	18940
Georgia	4370	6045	9785	7995	7445	6560
Former Yugoslav Republic of Macedonia, the	6120	4535	6705	7380	6730	10545
Unknown	2595	2480	2400	3560	8605	21345
Democratic Republic of the Congo	5000	5795	7475	7515	6790	5720
Ukraine	540	725	865	835	13550	20830
Mali	885	3980	2325	6435	12790	8315

Source: Eurostat, *Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr_asyappctza]*; Last updated on 02/03/2016, extracted on 03/03/2016. The countries of citizenship are sorted according to the average number of asylum seekers over 2010-2015.

ANNEX 13

ANALYTICAL DESCRIPTION OF POLICY OPTIONS

1. POLICY OPTION PACKAGES

1.1. Policy Option Package 1 (POP1)

POP1: EU legislative action to extend the scope of the EU Blue Card by making it accessible to a significantly wider group of workers, including (some) medium-skilled

This option would make the EU Blue Card available also to some medium-skilled workers, as salary and qualifications would be set as alternative instead of cumulative conditions. The level of rights would not be significantly enhanced from the current level. The package would entail the following elements:
--

- | |
|--|
| <ul style="list-style-type: none">a) For unregulated professions, the salary threshold and higher professional qualifications are no longer cumulative but instead alternative conditions, and the applicant has to fulfil one or the other according to their choice.<ul style="list-style-type: none">i. On the one hand, this opens the EU Blue Card scheme to all workers whose salary is high enough, regardless of the level of education or professional expertise.ii. On the other hand, if the required higher professional qualifications are met, there is no salary threshold to fulfil but the allowed occupations would be limited to ISCO major groups 1-2. The higher professional qualifications would be either higher education qualifications (at ISCED2011 level 6 and above) or work experience of at least five years at a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;b) The general salary threshold is made more adaptable by providing Member States with the possibility to set a national threshold within a fork of possible thresholds between 1.4 and 1.7 times the average gross annual salary in the Member State concerned.c) The lower salary threshold for workers in certain shortage occupations (limited to ISCO major groups 1-3, i.e. managers, professionals, and technicians and associate professionals) is revised to be a mandatory provision at factor 0.8 of the general salary threshold chosen by the Member State in question.d) For regulated professions, the mandatory requirements to be fulfilled for the exercise of the regulated profession in the Member State in question remain in place, but the salary threshold is not applied if the occupation in question falls under ISCO major groups 1-2.e) Mandatory safeguard mechanisms (to be determined at national level) are introduced to prevent social dumping and abuse. These can include collective agreements, prevailing wage databases and consultations with social partners. In addition, labour market tests continue to be generally allowed.f) Required length of work contract is shortened from 12 to 6 months, thus including also shorter working relationships within the scheme.g) Member States facilitate the transition from highly skilled employment to entrepreneurship by allowing highly skilled workers some secondary self-employed activity on the side of employment as an EU Blue Card holder.h) Any parallel national schemes are abolished and merged into the EU Blue Card: all applicants who qualify will be granted an EU Blue Card, while there can be national schemes for other categories of workers not falling under the scope of the Blue Card. |
|--|

a) *Introducing the salary threshold and formal qualifications as alternative conditions*

According to the Blue Card Directive the applicant for an EU Blue Card has to present the necessary qualifications for the profession specified in the work contract or job offer. If the profession in question is *regulated* in the Member State, the applicant has to present the documents showing that he or she fulfils the conditions for exercising that profession in the Member State. If the profession is *unregulated* (meaning that there are no specific criteria for the qualifications needed to exercise it), the applicant has to present higher professional qualifications, which means either a higher education diploma or corresponding professional experience of at least five years, if the Member State in question has transposed this option. In contrast to regulated professions, the purpose is not to assess the competence for the position in question, but to verify that the person is highly skilled in terms of the Directive.

In the current Blue Card Directive, applicants need to meet a salary threshold of at least 1.5 times (factor) the average gross annual salary (reference figure) in the Member State concerned. The salary threshold has two main functions: it protects TCN workers against wage dumping and distinguishes - to some extent - the highly skilled from other categories of workers. Some Member States apply a flexible interpretation of the salary threshold and set it lower than what is foreseen in the Directive, while others set it higher than the minimum, possibly to favour the national system. There are major differences in the distribution of wages across Member States, which complicates the harmonising effect of the salary threshold (see Charts 4 and 5 in Annex 7).

Under POP1, the two currently cumulative conditions of presenting the qualifications and meeting a salary threshold would be made alternative. In such case, the applicant could be admitted when fulfilling one or the other criterion according to his/her choice. This option would open up the EU Blue Card scheme to a wider audience and give up the idea that both qualifications and salary are required simultaneously as proxies for skills. Some of the issues related to the current scheme would be duly addressed: Applicants meeting the salary threshold would not need to go through the burdensome procedure of recognition of qualifications. Recent graduates could be admitted without attaining the salary of a more experienced expert, which would solve many problems currently faced by young professionals. There are examples in the national schemes of both options being used without the other one, although not as alternatives (see Annex 6).

Many national schemes for the highly skilled seem to operate without a salary threshold and instead, rely on minimum wages, collective agreements and the possible checking of market conformity of the salary³⁵⁴. On the other hand, salary threshold is a clear-cut condition for migrants to understand and authorities to apply, and it prevents certain types of abuse. If salary threshold was to be abandoned even partially, it would be necessary to require that the salary is checked for market conformity as an additional safeguard to prevent abuse and lower the risk of social dumping. This would imply controlling that the salary promised for the job corresponds to what is regularly paid to persons in similar positions.

Giving up the salary threshold and qualifications as cumulative conditions would open up the scheme to different skills levels. If the applicant fulfils the salary threshold (either the general one or the lower one for shortage occupations) there would be no requirement to have attained any specific level of education or professional expertise. However, in order to avoid opening up the scheme too radically, the salary threshold would be relatively high, the fork of possible

³⁵⁴ See Annex 6.

factors ranging from 1.4 to 1.7. This approach relies on the idea that a high enough salary indicates that the worker has skills valued by the employer. There would be a lower threshold in place for shortage occupations that would be 80 % of the regular threshold. However, as access would otherwise be too liberalised, possible occupations would be limited to ISCO major groups 1 to 3 (managers, professionals, technicians and associate professionals). Group 3 would be included to reach also more medium skilled workers necessary for filling shortages.

Correspondingly, if the applicant has the required qualifications (the level would be the same as in the current Directive) and intends to work in an ISCO 1-2 occupation (managers and professionals), there would be no salary threshold applicable. The salary would only have to meet the minimum requirements such as minimum salary or wage determined in collective agreements in each Member State and be conform to regular salaries in the market for that position. This option could be particularly attractive for highly skilled workers in lower-paying sectors.

b) Introducing an adaptable general salary threshold

As explained in point a), under POP1 Member States would be provided with a fork of possible salary thresholds, instead of only a minimum level as in the current Directive. A higher level of harmonisation would be attained without depriving Member States of the possibility to adapt the threshold to their national labour market circumstances and needs. Member States could set their threshold **between 1.4 and 1.7 times the national average salary**. A relatively high threshold would be necessary to limit the group of persons who could be admitted without presenting the qualifications. The aim would be to target mainly highly skilled persons and some of the medium skilled. For added transparency, Member States would be obliged to use EUROSTAT data (national accounts) as the reference figure. In practice, Member States could choose a lower threshold than what is allowed by the current Directive (which sets only a minimum factor of 1.5.), but they could also go higher than most Member States currently do, as most have set the threshold at the minimum level allowed, as indicated in Annex 5.

c) Introducing a lower salary threshold for workers in certain shortage occupations as a mandatory provision

According to the current Directive, Member States may choose to apply a lower threshold of 1.2 times the average gross annual salary in the Member State concerned for certain shortage occupations belonging to ISCO major groups 1 and 2.³⁵⁵ This option has been transposed by 9 Member States but not all of them effectively apply it. Germany, however, which issues almost 90% of all Blue Cards, applies the lower threshold extensively³⁵⁶.

Under POP1, the lower threshold would continue to apply to workers in occupations on shortage occupation lists, which are normally set by Member States on a yearly basis. Occupations would have to belong to ISCO major groups 1, 2 or 3. The provision would be mandatory which means that if Member States have shortage lists in place, they would be obliged to apply the lower threshold on occupations on the list. The lower threshold would be 0.8 times the general threshold applicable in the concerned Member State. This corresponds to

³⁵⁵ ISCO (International Standard Classification of Occupations) major groups 1 and 2 include managers and professionals respectively. <http://www.ilo.org/public/english/bureau/stat/isco/intro.htm>

³⁵⁶ There were 25.104 Blue Card holders residing in Germany as of 30 September 2015 of which 12.774 (50,9 %) fulfilled the normal threshold and 12.330 (49,1 %) were given Blue Cards according to the shortage list to which a lower threshold applies.

the current Directive where the lower minimum threshold amounts to 80 % of the general minimum threshold.

d) Admission of applicants in regulated professions

The model of alternative admission conditions would not be applicable to workers in regulated professions. If these persons were admitted on grounds of fulfilling the salary threshold alone, there would be no guarantees that they have the necessary qualifications to exercise the profession in the Member State concerned. This would go against the purpose of admitting these workers in the first place. Instead, under this option they could obtain an EU Blue Card without fulfilling the salary threshold if they have the necessary documents proving they are qualified to exercise the regulated profession in the Member State of destination. In addition, the occupation should fall under ISCO major groups 1 and 2. In a way, they would profit partially from the alternative admission conditions as they could be admitted without the salary threshold applying, but not without presenting the necessary qualifications attached to the regulated profession in the concerned Member State.

e) Introducing mandatory safeguard mechanisms against social dumping

As the admission conditions would be a lot more flexible than in the current EU Blue Card, there would be an emphasized need to guarantee that the potentially added supply of TCNs would not lead to the weakening of working conditions, especially salaries, in the Member States. The simplest way would be to require that prior to issuing an EU Blue Card, Member States would make sure that the salary as determined in the work contract or binding job offer meets relevant minimum requirements. The minimum wage applied in the Member State should naturally be complied with, but also requirements included in collective agreements and comparable instruments. Prevailing wages per region, sector or occupation could be applied, if available, and consultations with social partners could be envisaged.

The current possibility to carry out labour market tests before issuing an EU Blue Card would be maintained in the Directive. This means that Member States would retain the possibility to only admit highly skilled TCNs in case there is no locally available workforce to fill the vacancy in question.

f) Shortening the required length of work contract from 12 to 6 months

In a demand-driven system the condition of presenting a work contract or job offer is intended to guarantee a certain level of continuity of residence and employment. Currently, in order to be able to apply for an EU Blue Card, the highly skilled worker has to have a work contract or a binding job offer for at least one year. This provision categorically excludes persons wishing to carry out work for a shorter duration. There may be an interest for the employer to first sign a contract with a shorter duration to be able to ensure that the employee is suitable for the position in question. Naturally, many of the workers whose initial work contract is for duration between 6 and 12 months may end up getting an extension to their contract and residing in the EU continuously, even permanently, after a "trial period" has been successfully completed.

Under POP1 the required length of work contract would be shortened from 12 to 6 months, a change which would include a larger variety of work relationships within the scheme. As demonstrated in Chapter 2 of Annex 7, an important share of national residence permits for highly skilled workers are issued for a validity period of less than 12 months. Therefore, lowering the bar for the EU Blue Card seems to be a logical step in making the scheme more inclusive and relevant for different stakeholders. Reducing the required length to six months

seems coherent taking into account the more recent Single Permit Directive³⁵⁷, where the applicability of procedural safeguards as well as access to certain social security rights can be limited to workers whose (intended) employment in the Member State lasts at least six months.

g) Facilitating transition from highly skilled employment to entrepreneurship by allowing secondary self-employed activity on the side of employment as an EU Blue Card holder

In the current Directive, the access to labour market of EU Blue Card holders is only regulated in terms of employment, and there is no mention on how to address self-employed activity. Therefore, there is no harmonised approach on the issue across Member States and it can be perceived as something of a grey area. Under POP1, EU Blue Card holders would be allowed to start a subsidiary self-employed activity in parallel with employment, without losing their rights and status as highly skilled employed workers. This would facilitate the transition into entrepreneurship for highly skilled workers already residing in the EU. For details of this option, see Chapter 6 of Annex 10.

h) Abolishing parallel national schemes and merging them into the EU Blue Card

Under the current Directive Member States are explicitly allowed to continue to issue residence permits other than an EU Blue Card for any purpose of employment (Article 3(4) of Directive 2009/50/EC). This possibility to grant national permits to those highly skilled workers who at the same time enter into the scope of the EU Blue Card has led to a parallelism of applicable regimes to the same category of migrants.

The continued simultaneous existence of both the EU Blue Card scheme, transposed into the national legislation of 25 Member States in diverging ways, and separate national schemes targeting highly skilled workers in those same Member States, has led to a proliferation of applicable regimes between Member States but also within the same Member State.

On the one hand, the national schemes could arguably be complementary, better adapted to the specificities of the national labour markets, and introduce an element of positive competition between Member States. Member States need tailored systems to respond to their specific labour market needs. For instance, labour shortages and needs of companies recruiting TCNs vary across and even within Member States. Therefore, any EU level instrument that would replace national schemes and take into account such variations, would need a sufficient level of inclusiveness and substantial flexibility for Member States to adapt to their national situation. Currently, many Member States issue more national permits than EU Blue Cards (see Table 1 in Annex 6) while the share of Blue Cards in the overall numbers of permits for highly skilled workers has risen substantially. However, the comparison between the different schemes – and the numbers of residence permits issued under them – has to be done with some caveats in mind. An exact comparison is impossible as Member States have different definitions for highly skilled and some do not have a targeted scheme for this group at all (see Annex 6), and there are no national schemes that precisely correspond to the EU Blue Card either.

On the other hand, the competition effect also has a negative side as Member States may compete with only a national interest in mind, potentially luring highly skilled workers away from labour markets in greater need of them or where their application as an economic

³⁵⁷ 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, OJ L 343, 23.12.2011, p. 1–9.

resource would be more efficient, thus leading to an overall loss at EU level. In addition, the many national schemes and the parallelism with the EU Blue Card has resulted in a complex and confusing³⁵⁸ overall EU immigration system for highly skilled workers with different administrative procedures for the same category of migrants that both applicants and enterprises have to deal with. Moreover, a minimum level of harmonisation and coherence is required in order for the EU’s immigration system to be promotable to potential applicants and employers, and thus provide added value compared to purely national solutions. For an EU-wide scheme to be effective there is Member State input required both for the continued development and the promotion of the scheme. If many Member States continue to invest in their national schemes instead of the EU Blue Card, the branding value of the latter remains low. In order to reach a clear, coherent EU approach on attracting the highly skilled, and following the example of the Directive on Intra-Corporate Transferees and other legal migration Directives, this option proposes merging all parallel national schemes into the EU Blue Card. This requires a high level of inclusiveness, substantial flexibility for Member States to adapt to their national situation, and a high substitution potential for parallel national schemes. The purpose is to replicate and substitute the positive aspects of the national schemes, while addressing the negative dimension of the national scheme-Blue Card relationship, and maintaining and reinforcing the positive aspects of the EU Blue Card.

This would mean that all applicants qualifying for an EU Blue Card would be issued one, and there would be no competing national schemes targeting the same category of third-country nationals as those falling under the scope of the Blue Card. This means that there would still be room for *complementary* national permit categories addressing other groups of TCNs, including some highly skilled workers who do not enter into the scope of the EU Blue Card. For instance, national residence permits available for workers with lower skill levels not covered by the Blue Card Directive would continue to be allowed, as well as for very specific highly skilled workers or for self-employed skilled professionals.

1.2. Policy Option Package 2 (POP2)

POP2: EU legislative action to modify the admission conditions and rights within the EU Blue Card without extending the scope beyond highly skilled workers

This policy option package addresses modifications that could be envisaged within the current scope and basic framework of the Directive, but with substantial facilitation as regards conditions, procedures and rights, in order to better meet its goals. The option has been divided into **three sub-options** (a), (b) and c) depending on the target group (e.g. wider/more selective, but still within the current 'highly skilled' workers definition) of the amended Directive.

There are some **common elements to all sub-options of POP2** (and also, to a certain extent to POP1 and POP3) to improve the attractiveness of the scheme for migrants and employers, namely:

- a) Required length of work contract is shortened from 12 to 6 months, thus including also shorter working relationships within the scheme.

³⁵⁸ Potentially even conflicting, as it could be that elements of two separate schemes would be desirable at the same time, e.g. faster procedure and lower threshold of a national scheme yet intra-EU mobility of the Blue Card.

- b) Member States are encouraged to be more flexible when recognising professional qualifications for unregulated professions for the purposes of the EU Blue Card.
- c) The application process is speeded up: a target time limit of 30 days is introduced and the maximum processing time is shortened from 90 to 60 days.
- d) Member States grant permits to family members of workers simultaneously with the EU Blue Card to enable family members to follow the worker to the Member State without any waiting period.
- e) EU Blue Card holders are granted quicker access to long-term resident status under Directive 2003/109/EC by shortening the required period of residence from 5 to 3 years.
- f) EU Blue Card holders are given full access to highly skilled employment in the Member State concerned. Member States apply a simple system of notification of changes to enable competent authorities to check that the EU Blue Card conditions are continuously fulfilled.
- g) Member States are allowed to introduce a system of recognised or trusted employers. These employers, in exchange for committing to a scrupulous obedience of common rules, can benefit from a faster procedure and a waiver of some conditions for their workers, such as the qualification requirement for unregulated professions.
- h) Member States facilitate the transition from highly skilled employment to entrepreneurship by allowing highly skilled workers some secondary self-employed activity on the side of employment as an EU Blue Card holder.

a) Shortening the required length of work contract from 12 to 6 months

This option would be the same as under POP1.

b) Adding flexibility to recognising professional qualifications

Fulfilling the conditions set out under national law for the exercise of regulated professions is a necessarily strict criterion in the Directive, as otherwise the admitted TCN could not exercise the profession in the Member State concerned. While the problems related to this condition cannot be addressed within the Blue Card Directive, there may be scope for non-legislative measures such as facilitation of the recognition of equivalent qualifications or conversion and up-scaling of similar qualifications (see non-legislative options).

As regards unregulated professions, the concept of 'higher education qualifications' entails any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education programme with a duration of at least three years. This corresponds, by and large, with Bachelor level or equivalent and higher. It is not specified in the Directive how the qualifications are supposed to be verified or assessed for the purposes of acquiring an EU Blue Card, and there is no uniform practice in this regard across Member States.

Under this option, for unregulated professions, Member States would be encouraged not to apply the full recognition procedure for the purposes of the EU Blue Card, but to rely instead on simple translations of foreign certificates, where appropriate. It is also essential to develop the methodology of validating and recognising foreign certificates and other qualifications. Computerised systems such as the Anabin³⁵⁹ database in Germany are a good example of ways to simplify recognition.

³⁵⁹ In practice, if a particular foreign diploma is already inserted in the database, it is a matter of minutes to get the results on recognition. New diplomas are continuously added as assessments are carried out. <http://anabin.kmk.org/>

c) Speeding up the process: introducing a target time limit and shortening the maximum processing time

The current time limit for processing an EU Blue Card application is "as soon as possible and at the latest within 90 days of the application being lodged". This is an obligation directed at Member State authorities, and there shall be consequences determined in national law for not respecting this deadline. POP2 proposes providing a target processing time of 30 days and a maximum time of 60 days. This type of provision would clearly indicate what the EU legislator considers as a suitable typical processing time, while also the maximum tolerable time limit would still be determined.

d) Granting permits to family members simultaneously with the EU Blue Card

Under the current Blue Card Directive Member States are allowed the maximum of six months to process the applications of family members after the EU Blue Card holder has been granted the permit and the family members have lodged their subsequent applications. This may result in a significant practical waiting period for the workers' families to join them. In the Directive for intra-corporate transferees (ICT)³⁶⁰, the applications for both the ICT permit and the permits for family members can be lodged simultaneously, in which case also the permits are granted at the same time. Extending this facility to the EU Blue Card scheme would contribute to enhancing the attractiveness of the migration option for highly skilled workers with accompanying family. The conditions for family reunifications as such would not change and Directive 2003/86/EC on the right to family reunification³⁶¹ would continue to apply with the derogations already foreseen in the Blue Card Directive.

e) Providing quicker access to long-term resident status

Under Directive 2003/109/EC on long-term residents³⁶² TCNs may apply for a long-term resident status after five years of legal and continuous residence in the Member State concerned. The long-term resident status provides for security of continuous residence in the host country and some mobility rights within the EU. In Directive 2003/109/EC, there are provisions on periods of absence allowed without affecting the count towards five years and also on absences allowed once the status has been acquired.

In the current Blue Card Directive, EU Blue Card holders are granted more favourable treatment vis-à-vis the long-term resident scheme: they are allowed longer absences from the Member State territory and they can also cumulate periods of residence gathered in different Member States according to certain rules. However, the regular five years of continuous legal residence is required also from EU Blue Card holders. If further preferential treatment was granted and the required residence period was shortened from 5 to 3 years, there would be an additional incentive for highly skilled workers to choose the EU Blue Card instead of a national permit.³⁶³

f) Giving immediate full access to highly skilled employment in the MS concerned

³⁶⁰ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p. 1–22.

³⁶¹ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12–18

³⁶² Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53.

³⁶³ DE gives access to national permanent residence to Blue Card holders after 33 months or even after 21 months to persons with language skills at level B1. On 31/10/2015, 25 800 Blue Card holders were living in Germany while national permanent residence titles had already been granted to 1 935 former Blue Card holders after 33 months, to 4 601 after 21 months, and 883 without time specification.

Rights enjoyed by Blue Card holders are fairly extensive, especially regarding equal treatment with Member State nationals in numerous fields. However, access to the labour market in the host country is restricted and planned changes in employment may meet administrative obstacles. According to current provisions, access remains conditional upon fulfilling the requirements for an EU Blue Card during the first two years, and even after that Member States are not obliged to grant full access. Also, the provisions related to the administrative formalities are complicated.

POP2 would simplify and modernise the provisions on access to the labour market by granting EU Blue Card holders an immediate access to all highly skilled employment. This approach may seem far-reaching, but it is conditioned by the fact that EU Blue Card holders still have to fulfil the conditions for the permit throughout their residence. The underlying idea in this approach is that workers should notify relevant changes to competent authorities so that the fulfilment of EU Blue Card conditions could be checked, but the procedure would not have a suspending effect to the right to work as long as the EU Blue Card remains valid. Consequently, there would be clear and worker-friendly provisions for the change of circumstances, but people admitted as highly skilled could still not switch to a low-qualified job without losing their status as an EU Blue Card holder.

g) Giving Member States the possibility to introduce a system of recognised or trusted employers

To simplify and streamline the EU Blue Card process, one option would be to increase the role of the private sector in the admission of highly skilled workers. Some national systems foresee fast-track procedures for certified or trusted employers with the aim of easing the administrative burden linked to hiring TCNs (see Annex 6). This approach has already been introduced as an option in some of the more recent legal migration directives³⁶⁴; it is characterised by more flexible admission conditions for certified entities, combined with control mechanisms to avoid fraud and abuse. Such a system would be allowed as an optional and complementary route, whereas the regular admission scheme would remain principal. Member States having chosen to take up this option would grant to trusted employers (and TCNs recruited by them) certain facilitations: at least a fast-track application procedure and waiver of the requirement to present formal qualifications for unregulated professions. Specific safeguards would be put in place (e.g. criteria related to the transparency of the procedure and the proportionality of the costs) to ensure that also SMEs have the financial and practical means to become recognised.

h) Facilitating transition from highly skilled employment to entrepreneurship by allowing secondary self-employed activity on the side of employment as an EU Blue Card holder

This option would be the same as under POP1.

³⁶⁴ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of TCNs in the framework of an intra-corporate transfer; as well as the proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange scheme or educational project, training, voluntary service and au pairing (recast).

1.2.1. *Policy Option Package 2 - Sub-option (a)*

POP2(a): Making the EU Blue Card accessible to a wider group of highly skilled workers (wider and more inclusive Blue Card scheme)

This sub-option would extend the scope of highly skilled workers eligible for the EU Blue Card, facilitate admission and provide further residence and mobility rights. Member States would reserve some leeway for national adaptation of the scheme. The package would entail the following elements, in addition to the horizontal ones:

- a) The general salary threshold is lowered and made more adaptable by providing Member States with the possibility to set a national threshold within a fork of possible thresholds between 1.0 and 1.4 times the average gross annual salary in the Member State concerned.
- b) The lower salary threshold for workers in certain shortage occupations (limited to ISCO major groups 1-2, i.e. managers and professionals) is revised to be a mandatory provision at factor 0.8 of the general salary threshold chosen by the Member State in question.
- c) A lower threshold at factor 0.8 of the general salary threshold is introduced for recent graduates, enabling young professionals to be issued an EU Blue Card with a lower salary.
- d) Member States are allowed to apply a labour market test (i.e. making the issuance of an EU Blue Card conditional upon whether there is national or EU workforce available for the job) to EU Blue Card applicants only in exceptional circumstances occurring in their national labour market.
- e) The recognition of professional experience is promoted as equal alternative to an education certificate as the required qualification for unregulated professions.
- f) EU Blue Card holders get more extensive intra-EU mobility rights: the required period of residence in the first Member States is shortened from 18 to 12 months, several conditions for an EU Blue Card in the second Member State are waived (labour market test, qualifications for unregulated professions), the maximum processing time is shorter, and working in the second Member State can begin immediately after applying for an EU Blue Card in that Member State.
- g) Any parallel national schemes are abolished and merged into the EU Blue Card: all applicants who qualify will be granted an EU Blue Card, while there can be national schemes for other categories of workers not falling under the scope of the Blue Card.

The underlying idea in POP2(a) is to enhance and make the current Blue Card Directive more attractive and accessible to applicants (i.e. a wider group of workers while remaining within the category of highly skilled).

a) Introducing a lower and more adaptable general salary threshold

Overall, it appears that the current threshold is relatively high, and thus more restrictive, compared to the salary thresholds applied in the national schemes. It can be noted that not many national schemes have specific thresholds in place on top of safeguards related to minimum wages, prevailing wages or other criteria (see Annex 6).

A lower (minimum) salary threshold would be a relatively simple way to extend the number of potential beneficiaries of the EU Blue Card. It would be more inclusive still if it was no longer set as a minimum threshold but instead, as the only possible threshold (consisting of a

factor and a reference figure) to be applied. This would limit the leeway for Member States to favour their national scheme compared to the EU Blue Card, but at the same time, no adaptation to national circumstances would be possible. Currently, only the minimum threshold is regulated, which has led a few Member States to set their threshold using a higher multiplier than 1.5. At the same time, for reasons related to wage distribution, already the minimum threshold is restrictive in some Member States (see Charts 4 and 5 in Annex 7).

Similarly as under POP1, a fork of possible thresholds would be offered to Member States. The fork would be set at a lower level compared to both POP1 and the current Directive **with a minimum factor of 1.0 and a maximum of 1.4**. The purpose would be to include more highly skilled workers within the scheme, also those with less experience and those working in lower paid sectors or occupations. The qualifications requirement would however still guarantee that the scheme is reserved for the highly skilled. As in POP1, Member States would be obliged to use Eurostat data (national accounts) as the reference figure.

b) Introducing a lower salary threshold for workers in certain shortage occupations as a mandatory provision

This option would be similar as under POP1 with the difference that only occupations belonging to ISCO major groups 1 and 2 (and not 3) would be included.

c) Introducing a lower threshold for recent graduates

There is a specific group of highly skilled migrants who could be better reached with a lower salary threshold: information on wage distribution suggests that highly skilled young professionals risk failing to fulfil the general salary threshold (see Chart 6 in Annex 7). The lower threshold could amount to 0.8 times the regular threshold, similarly as for shortage occupations. International students graduated from EU educational institutions represent a great skills potential to be retained, and they are often already well advanced in their integration to the host society. Also recent graduates from (at least highly ranking) third-country universities could provide for an interesting target group. The scope of the more favourable scheme could be linked to age of the applicant or the moment of graduation or both.³⁶⁵

In the public consultation, facilitating the access to the labour market of recent graduates of higher education institutions and long-term trainees who finished their traineeship received strong backing from the respondents. Of the 80 % of respondents who identified any scope for improvement within the current Blue Card scheme almost 60 % suggested facilitations for international graduates. In addition, such facilitation would be a logical connection to recent amendments to EU legislation on students³⁶⁶, where graduates are allowed at least nine months to look for employment in the host Member State.

d) Allowing Member States to apply a labour market test only in exceptional circumstances

The current Directive allows Member States to refuse an application after examining the situation in their labour market; they may apply their national procedures on requirements for filling a vacancy and ensure that it could not be filled by existing available workforce before

³⁶⁵ E.g. The Dutch system foresees a lower threshold for both those under 30 and for a certain period after graduation.

³⁶⁶ The proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange scheme or educational project, training, voluntary service and au pairing (recast).

issuing an EU Blue Card. This option has been taken up by numerous Member States, some of which are favouring their national scheme at the expense of the EU Blue Card (see Annex 6). Furthermore, the concept and practices of labour market testing seem to vary across Member States, and in many cases it is not carried out European-wide as it in principle should.

Under POP2(a) Member States would be generally precluded from applying a labour market test to EU Blue Card applicants. The only leeway would be that labour market tests could be temporarily re-introduced in exceptional circumstances occurring in the national labour market. An example of such circumstances could be an exceptionally high level of unemployment. This option would reduce Member States' possibilities to control access to their labour market, even though they would retain the possibility to determine the volumes of admission of TCNs under Article 79(5) of the Treaty on the Functioning of the EU (TFEU). The aim of lifting the labour market test would be to make the procedure quicker and the outcome more predictable for the employer and TCN worker.

e) Promoting the recognition of professional experience as alternative to an education certificate

In the current Directive, recognising at least 5 years of professional experience is a possibility given to Member States as derogation from the "main" option of requiring education certificates. Professional experience to be taken into account refers to the actual and lawful pursuit of the profession concerned. While around half of the Member States have transposed the possibility for this derogation into national law, it appears that this option has been underused to date (see Annex 5). Member States have expressed difficulties in validating experience, especially if it has been obtained in a third country. Making professional experience a mandatory, equal alternative to education certificates in this respect could make experience a more workable criterion in establishing the status of highly skilled. Shortened period of required experience could be envisaged and linked to shortage occupations, if deemed necessary. Practical challenges in recognising experience would have to be addressed also at EU level by exchanging best practices among Member State experts, and possibly by developing common guidelines.

f) Facilitating intra-EU mobility

The current mobility provisions in the Directive allow the EU Blue Card holder to apply for a new Blue Card in the territory of a second Member State, but without any of the conditions being waived or procedure otherwise facilitated. Also, the Directive does not affect the right of the second Member State to determine the volumes of admission of highly skilled workers. The mobility provisions in the various EU instruments have been assessed in detail in Annex 9.

This option would entail a system where the second Member State would still issue a national EU Blue Card, but with a considerably shorter and simplified procedure (taking inspiration from the provision on long term mobility included in the Intra-Corporate Transferee Directive): labour market test or pre-determined volumes of admission would not be applied, processing time would be shorter than for the initial EU Blue Card and higher professional qualifications for unregulated professions would not be re-checked. Meeting the salary threshold, however, would always be required in the second Member State. The required period of residence in the first Member State before mobility rights can be invoked would be shortened from 18 to 12 months. Work in the second Member State could begin immediately after lodging the application for an EU Blue Card in that Member State.

g) Abolishing parallel national schemes and merging them into the EU Blue Card
 This option would be the same as under POP1.

1.2.2. Policy Option Package 2 – Sub-option (b)

POP2(b): Making the EU Blue Card a tool to attract a selected group of the most highly skilled

This sub-option would make the EU Blue Card a selective instrument for the very highly skilled. Eligible workers would benefit from fast and easy admission and from extensive rights. Details of the package would include the following, in addition to the horizontal elements:

- a) The salary threshold is maintained as exclusive by providing Member States with the possibility to set a national threshold within a fork of possible thresholds between 1.5 and 1.7 times the average gross annual salary in the Member State in question.
- b) The lower salary threshold for shortage occupations is eliminated and the general threshold is applied to all applicants.
- c) The current level of required qualifications is maintained.
- d) Member States are not allowed to apply a labour market test (i.e. making the issuance of an EU Blue Card conditional upon whether there is national or EU workforce available for the job) to EU Blue Card applicants in any situation.
- e) The EU Blue Card is issued for a standard validity of three years regardless of the length of the work contract, and after three years it will be directly possible to apply for a long-term resident status.
- f) EU Blue Card holders get very extensive intra-EU mobility rights: the required period of residence in the first Member States is shortened from 18 to 12 months, the maximum processing time is shorter, working in the second Member State can begin immediately after applying for an EU Blue Card in that Member State, and the second Member State issuing an EU Blue Card can only check that the salary corresponds to the regular level in that labour market.
- g) Member States are allowed to have national schemes for TCN workers as in status quo.

a) Introducing an exclusive but adaptable salary threshold

Under this option there would also be a fork of possible factors provided for Member States, but it would be higher than in option POP2(a), namely from 1.5 to 1.7 times the national average salary. The threshold would be calculated similarly as in option POP2(a), i.e. the reference salary would be the gross average salary according to EUROSTAT data. The resulting salary threshold could be either more inclusive or exclusive than the current one applied in each individual Member State, as the current Directive only sets a minimum factor of 1.5 but no maximum. The purpose of the higher threshold would be to select migrants in a way to include only the most highly skilled, who could then be granted extensive rights. However, Member States would still be limited in how high they can set the threshold, as unlike in the current system, a maximum would be determined. Therefore, the level of harmonisation would increase.

b) Eliminating the lower threshold for shortage occupations

As this option would focus only on attracting the very highly skilled, there would be no reason to set a lower salary threshold for shortage occupations and this existing option would be deleted from the Directive. Instead, there would be only one threshold applicable in each Member State.

c) Maintaining the current level of required qualifications

As the idea would be to address only the very highly skilled workers, the current approach to the assessment of qualifications would be justified. Member States would continue to require a higher education diploma or if they wish, alternatively accept five years of professional experience.

d) Preventing Member States from applying a labour market test to EU Blue Card applicants

This option would be the same as under POP2(a), but without the possibility of re-introducing labour market tests for any reason. The control measure left for Member States would be to determine the volumes of admission under Article 79(5) TFEU.

e) Introducing a standard 3-year validity for the initial EU Blue Card

According to the current Directive, Member States have to determine a standard validity for the EU Blue Card which has to be between 1 and 4 years. However, if the work contract or job offer covers a shorter period than this standard validity, the EU Blue Card shall be issued for the validity of the contract plus three months. Therefore, the standard validity has only limited impact and there is great variety across Member States as to how many times a person has to renew the EU Blue Card before being eligible for long-term or permanent residence under EU or national law. This could be addressed by harmonising the standard validity of the EU Blue Card across the EU to match the residence period required for long-term residence (which would be shortened from 5 to 3 years under POP2), without paying attention to the validity of the work contract.

For Member States there is interest in having migrant workers renew their permits at regular intervals in order to provide occasions for competent authorities to check that the conditions for the permit are still fulfilled. The justification for the more liberal approach under POP2(b) is that the very highly skilled are unlikely to end up in a situation (apart from very short-term unemployment between jobs) where the conditions for the EU Blue Card would no longer be fulfilled, and therefore the need for Member States to have regular checks would be less pronounced.

f) Providing extensive intra-EU mobility

One of the most pronounced characteristics of the scheme for the very highly skilled under POP2(b) would be the extensive right to intra-EU mobility. Also in this scenario, the required period of residence in the first Member State would be shortened from 18 to 12 months – similarly to sub-option POP2(a). The difference would be that the second Member State could not re-check any of the specific conditions of the EU Blue Card, but only the general conditions for a residence permit, such as having a valid travel document and not being a threat to public policy, public security, and public health. Furthermore, the market conformity of the salary would be examined, which aims at avoiding social dumping by guaranteeing that the mobile TCN is being paid a corresponding amount to what a person in a similar position is regularly paid. However, the national salary threshold for the EU Blue Card would not be applied in the second Member State.

g) Allowing parallel national schemes as in status quo

As POP2(b) would only address the very highly skilled workers, there would be a lot of room left for national schemes to address workers at different skills levels. It is a more selective, elite scheme that is more pan-EU and would limit the number of HSW, especially in shortage occupations, and be less adaptable to the national labour markets. The rationale would be to make the EU Blue Card attractive enough to be competitive in the eyes of employers and workers and to become the primary scheme in the EU to address very top talent on an EU wide basis. Therefore, Member States would retain the liberty to have subsidiary national schemes in place according to their choice and complement the EU wide scheme.

1.2.3. *Policy Option Package 2 – Sub-option (c)*

POP2(c): Creating a two-tiered EU Blue Card for different categories of highly skilled
This sub-option would be a combination of sub-options POP2(a) and (b) by creating an EU Blue Card with two levels to address different categories of highly skilled workers (most of the horizontal elements of POP2 would apply to both):
<ul style="list-style-type: none"> a) POP2(a) represents the <u>first level</u> of EU Blue Card accessible to a wide group of highly skilled workers, including recent graduates, with facilitated access to shortage occupations. In contrast to POP2(a), accelerated access to long-term residence is not granted to level 1 Blue Card holders. b) POP2(b) is a more <u>advanced level</u> which some applicants could reach right away and others over time in transition from the first stage. The salary threshold is higher and the rights more advanced than in level 1. c) Intra-EU mobility is more facilitated for level 2 (only check that the salary meets relevant minimum requirements, such as collective agreements, prevailing wage etc.) than for level 1 (waiving some conditions in the second Member State, e.g. qualifications, labour market test, but maintaining the other conditions, e.g. salary threshold). Both levels benefit from the shorter period in the first Member State, shorter maximum processing time, and the right to start working immediately after applying for an EU Blue Card in that Member State. d) Any parallel national schemes are abolished and merged into the EU Blue Card: all applicants who qualify will be granted an EU Blue Card, while there can be national schemes for other categories of workers not falling under the scope of the Blue Card

The rationale behind this option would be to create a tiered scheme combining the different approaches foreseen under POP2(a) and POP2(b) respectively. There would no longer be one single EU Blue Card but instead, two levels with different admission conditions and different rights. It can be noted that already the lower level would be more advantageous than the current scheme. In terms of admission conditions, the main difference between the levels would be the salary requirement: for the first level the general threshold would be lower and there would be a specific, even lower threshold for recent graduates and workers in shortage occupations.

a) First level of EU Blue Card accessible to a wide group of highly skilled workers

The first level of EU Blue Card would address the group of "regular" highly skilled workers as specified under option POP2(a), including facilitated admission for workers in shortage occupations and for recent graduates. In derogation from the list of common elements listed

for POP2, the first level EU Blue Card holders would not get quicker access to long-term residence but instead, the regular five-year residence period would be required from them.

b) Second, more selective level of EU Blue Card

The second level of EU Blue Card would be reserved for very highly skilled workers as defined in option POP2(b). The idea would be that the second level could also be attained over time after being admitted as a first level EU Blue Card holder.

c) Intra-EU mobility is more facilitated for level 2

The main difference between the different levels of EU Blue Card would be the mobility rights. For level 1 Blue Card holders the national salary threshold would still be applied in the second Member State, whereas for level 2 Blue Card holders only the fulfilment of the minimum standards of that Member State would be required to avoid social dumping.

d) Abolishing parallel national schemes and merging them into the EU Blue Card

This option would be the same as under POP1.

1.3. Policy Option Package 3 (POP3)

POP3: EU legislative action that introduces a standard EU-wide Blue Card
<p>This policy option package would introduce a standard EU-wide set of Blue Card rules applicable across the Member States. There would be no scope for the Member States to adapt any of the conditions or other rules of the EU Blue Card to national labour market circumstances or to apply a labour market test. An EU Blue Card issued by one Member State would be mutually recognised by all Member States and provide unlimited intra-EU mobility. The legislative actions would entail the following:</p> <ul style="list-style-type: none"> a) An EU-wide salary threshold is introduced at a more exclusive level set by the Commission at a yearly basis. The same nominal salary threshold would apply EU-wide in all participating Member States and calculated as at least 1.4 times the average of the <i>highest one-third</i> (33%) of the average gross annual salaries of the Member States applying the Blue Card Directive. It would be set by the Commission by implementing measure via comitology (consulting Member States using the advisory procedure) taking into account of the economic and employment situation in the Member States applying the Blue Card Directive. b) The common elements of POP2 are included. c) An EU level online application management portal for applicants is created. This means that employers or TCN workers can lodge their application online using the portal which then forwards the application to national authorities to be further processed. d) Intra-EU mobility rights of EU Blue Card holders are made comparable to the free movement of EU citizens. The single EU Blue Card enables TCNs to reside and work under the Blue Card conditions in any Member State. e) Any parallel national schemes are abolished and merged into the EU Blue Card: all applicants who qualify will be granted an EU Blue Card, while there can be national schemes for other categories of workers not falling under the scope of the Blue Card.

a) Introducing one EU-wide salary threshold set by the Commission at a yearly basis

Under this option the salary threshold would be determined annually by the Commission and there would be no room for Member States to adjust it according to national specificities. In

order for the EU-wide Blue Card to be feasible, the salary threshold would have to be the same across the EU and correspond to the salaries of Member States with higher income. Any other solution would create major risks of social dumping and largely deprive the salary threshold of its purpose, if workers admitted under a low salary threshold in a low-income Member State would be able to use the same EU Blue Card to go and work in a higher-income Member State.

In practice, the Commission would first use Eurostat data to determine the average salaries of the highest one-third of Member States applying the Blue Card Directive (currently 8 Member States, which were LU, BE, SE, FI, AT, NL, FR and DE according to 2014 data). Then, the average of these salaries would be calculated to serve as a basis for the uniform salary threshold. The minimum factor would be 1.4, but the Commission would be able to adapt the applicable threshold to the EU-wide labour market situation. Member States would participate in setting the threshold through the advisory procedure, which would enable taking into account the existing labour market situations across the EU. However, as the threshold would be uniform for all issued EU Blue Cards, the labour market situations of individual Member States could not be directly reflected in the level of the threshold.

b) Introducing the common elements of POP2

All the elements aimed at making the scheme more streamlined and attractive as proposed for POP2 would apply to this option; see POP2 for details.

c) Creating a single EU level online application management portal for applicants

In order for the EU to be able to manage and monitor the inflow of applications, there would be a new online application portal created at EU level where employers or TCNs could lodge the application for an EU Blue Card. It would still be the competent authorities of the Member State concerned (where the employment would take place) who would actually process the application and issue the permit.

Currently, there are some Member States providing for online application facilities for residence permit applicants, whereas some rely on traditional paper-based procedures. The EU portal would practically push Member States to adopt online tools as the applications lodged in the EU-wide portal would be forwarded to competent national authorities of the (first) Member State of destination to be further examined.

d) Introducing intra-EU mobility comparable to the level of free movement for EU citizens

As the EU Blue Card would be issued as an EU-wide instrument, there would not be any specific conditions for intra-EU mobility: the permit would enable the TCN worker to reside and work freely in the territories of Member States applying the Blue Card Directive. However, the Blue Card conditions would still have to be continuously fulfilled and they would be the same across the EU. It would require some system of notification to keep track of the place of residence of EU Blue Card holders in order to know which Member State is responsible for renewing the permit or otherwise reviewing the grounds for residence at a given moment. As there are no EU-level residence permits in this sense yet, there are no direct models to base this system on.

e) Abolishing parallel national schemes and merging them into the EU Blue Card

This option would be the same as in POP1.

2. HORIZONTAL OPTIONS

These horizontal options could be combined with any of the policy option packages or introduced as self-standing changes.

2.1. Non-legislative actions (PO-A)

Non-legislative actions to improve the effectiveness of the EU Blue Card
This policy option would involve non-legislative actions aimed at enhancing the implementation of the EU Blue Card and the promotion of the brand. Key elements:
a) The Commission enhances the implementation of the Blue Card Directive and supports practical cooperation between Member States. Member State experts exchange information on best practices and perceived trends, as well as on possible fraud and abuse of the Blue Card system.
b) The use of the EU Blue Card scheme is made easier by improving – by practical measures - recognition of foreign qualifications between Member States and in cooperation with third countries.
c) EU and Member States increase the visibility and attractiveness of the EU Blue Card brand through information sharing, promotion, and advertisement activities. The Commission launches a dedicated, user-friendly website on the EU Blue Card within the EU Immigration Portal. Possible promotion tours in third countries can be organised in cooperation with different stakeholders.
d) Measures are developed to improve skills and job matching to make EU employers and TCN (TCN) highly skilled workers more attainable to each other.

A number of non-legislative initiatives could be undertaken to either optimise the status quo without legislative changes or to be combined with any legislative changes. Some of the considered actions imply reinforcing measures already taken and others would require completely new initiatives.

a) Enhancing the implementation of the Blue Card Directive and supporting practical cooperation between Member States

Details on the transposition of the current Directive in Member States are provided in Annex 5; there are some conformity issues to be noted and especially, many Member States were late in their transposition. Infringement proceedings were opened against all Member States that were late in transposing the Directive. A letter of formal notice was sent to 20 Member States and a reasoned opinion to 11 Member States. By October 2013 all cases were closed, as in August 2013 the Directive was transposed and entered into force in all Member States that apply the Directive.

The first implementation report on the application of the Blue Card Directive was adopted in May 2014, based on a detailed conformity assessment of national transposition, and statistics provided by Member States. The report identified a general lack of communication by Member States of data and measures taken in application of the Directive, while the availability of reliable information is essential for the functioning of the EU Blue Card and to evaluate its attractiveness. Therefore, after the adoption of the report the Commission has actively organised the collection and exchange of information between Member States. The Commission requests Member States to regularly submit specific information on topics such as salary thresholds, volumes of admission, labour market tests, return and readmission, and

ethical recruitment via the National Contact Points on the Blue Card Directive. This information is then distributed to Member States.

In order to improve coherence in practices across the EU, these exchanges could be still reinforced, either within the Contact Group Legal Migration or in dedicated expert meetings with the National Contact Points. The exchange of best practices would be useful to make sure that the EU Blue Card scheme is applied effectively and efficiently across the EU, but also to combat possible fraud and abuse. The Commission could contribute to a better implementation of the Directive also by developing guidelines on the interpretation of the different provisions.

b) Improving by practical measures the recognition of foreign qualifications between Member States and in cooperation with third countries

The recognition of foreign qualifications is a broad issue of clear relevance also for the EU Blue Card, as applicants may face problems trying to validate their qualifications necessary for obtaining the permit. While often not included in the formal processing time of the application (which is currently limited to 90 days), the recognition procedure adds weeks or even months to the overall time required for obtaining a permit. It is necessary to distinguish unregulated professions from the regulated ones. For regulated professions³⁶⁷ the required qualifications are mandatory for being able to exercise the profession in the Member State in question. On the contrary, unregulated professions are free of such requirements and in practice it is up to the employer to assess whether the applicant is qualified for the position at hand. Therefore, the significance of the recognition procedure differs greatly depending on whether the profession for which the EU Blue Card is applied for is regulated or not in the Member State concerned.

Whereas there is already a Directive³⁶⁸ in place regarding the recognition of qualifications obtained in the EU (for the purposes of regulated professions)³⁶⁹, it is largely up to the Member States to regulate on qualifications obtained in third countries. The recognition of qualifications could be improved by non-legislative measures such as supporting practical cooperation and exchange of information between Member States. There are well-functioning databases and other mechanisms at national level which could be spread further. Cooperation with third countries would be necessary to get a better understanding of different educational systems and other factors relevant for the evaluation of diplomas and other qualifications.

Recognition of qualifications is a long-standing issue going well beyond the scope of the EU Blue Card review; actions foreseen in the context of the forthcoming EU Skills Initiative (e.g. the revision of the Recommendation on the European Qualification Framework) will also be relevant in this context.

c) Increasing the visibility and attractiveness of the EU Blue Card brand through information sharing, promotion, and advertisement

³⁶⁷ Professions to which access is conditional upon the possession of specific qualifications or for which the use of a specific title is protected, e.g. pharmacists or architects.

³⁶⁸ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005, p. 22–142.

³⁶⁹ The recognition of professional qualifications as laid down in Directive 2005/36/EC enables the free movement of professionals such as doctors or architects within the EU. Other professions such as sailors or aircraft controllers do not fall under Directive 2005/36/EC and are governed by specific legislation. Special laws also exist for lawyers and commercial agents. There is an EU database of regulated professions across Member States: <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?newlang=en>

The EU Blue Card could be more effectively promoted to make it a better-known and more workable tool for all relevant stakeholders: migrants, employers and competent authorities. Currently, information on the EU Blue Card can be found on a few EU level webpages with general information on the Blue Card Directive, on a number of websites of the immigration authorities of several Member States with specific information on the nationally set entry conditions, procedures and rights in the Member State concerned, and on the separate Member State specific pages of the EU Immigration Portal that are drafted by the Member States in collaboration with the Commission. Furthermore, there are a number of private websites that provide general information on the Blue Card and also some Member State specific information on entry conditions, procedures and rights. These private initiatives are often for-profit, sometimes inaccurate and not up-to-date, and sometimes have unclear or confusing affiliations.

Consequently, there is currently no single official and easy-to-use website that provides reliable and up-to-date information on the EU Blue Card in general and practical information on specific entry conditions, procedures and rights the 25 Member States that apply the Blue Card. A first step to improve the visibility of the Blue Card would be to develop a dedicated and extensive section within the EU Immigration Portal, which provides up-to-date information on the EU Blue Card and details of its application in all relevant Member States in a user-friendly format. The maintenance of the website, including the national pages, would be carried out at EU level to ensure full coverage. Visibility could be enhanced with online banner campaigns to target groups.

As a completely new concept, joint EU Blue Card "road shows" could be organised in key third countries to reach potential applicants. These would be coordinated by the Commission with possible participation by Member States, recruiters, employers, and sector organisations. The road shows could offer information sessions on the EU Blue Card, presentations of employment opportunities and living conditions in the EU, and possibilities for job interviews on the spot.

d) Developing measures to improve skills and job matching

In a demand-driven system such as the EU Blue Card, the first prerequisite is the employment relationship between a TCN worker and an EU employer. Therefore, skills and job matching is extremely relevant if the EU is to attract more highly skilled workers. The skills and job matching could include different action going beyond the scope of the Blue Card review, for example cooperation with third countries to improve the visibility and attainability of the EU-wide labour market to TCN workers. Information campaigns targeted to EU employers could be envisaged to make them better aware of practicalities linked to searching for and hiring TCN workforce.

2.2. Extending the EU Blue Card scheme to innovative entrepreneurs (PO-B)

The European Agenda on Migration indicated that the Blue Card review would examine the possibility to cover entrepreneurs willing to invest in Europe. This option would entail creating a new EU legal migration route within the scope of the Blue Card directive for this professional category, which could – especially if the focus is on innovative entrepreneurs – contribute to economic growth. Some Member States have schemes in place to allow the entry and residence of entrepreneurs. These schemes however diverge widely in terms of both admission conditions and supporting measures.

Extending the scope of the Blue Card Directive to entrepreneurs would bring self-employed activity within the EU Blue Card, which now only covers employed workers. The existing admission conditions or rights would not be directly applied on entrepreneurs as they are targeted at situations of employment. Therefore, an entirely new scheme would have to be created within the existing Directive.

2.3. Making the EU Blue Card available for highly-skilled beneficiaries of international protection and asylum applicants (PO-C)

This option would make the EU Blue Card accessible to highly skilled migrants who have applied for or received international protection and who are already present in the EU territory. These categories of migrants are currently explicitly excluded from the scope, which means that they cannot apply for an EU Blue Card even if they fulfil the conditions.

The different variations of this option and their implications are described in detail in Annex 16. Apart from beneficiaries of international protection, asylum seekers and rejected asylum seekers present in the EU, a fourth group to be discussed there are potential beneficiaries of protection who still reside outside the EU. For them, there is no legal impediment to apply for an EU Blue Card, as they do not have any specific status in the EU and are treated as any other third-country nationals. For them, however, targeted non-legislative support could be needed, and some of the actions envisaged under PO-A could be particularly relevant.

a) Extend the scope to beneficiaries of international protection

Beneficiaries of international protection are currently excluded from the personal scope of the Blue Card Directive, so they cannot apply for an EU Blue Card. It is clear that a protection status is more favourable in many aspects (especially social rights, security of residence and protection against return) than the status of an EU Blue Card holder. However, the latter does offer the possibility for intra-EU mobility and it also gives the signal to potential employers that its holder is a person of interest. In any case, it would be crucial to maintain the high level of protection enjoyed by these individuals, and the acquired EU Blue Card should in no way jeopardise the parallel protection status.

b) Extend the scope to asylum seekers

Asylum seekers whose process in the EU is pending cannot apply for an EU Blue Card, as they are excluded from the scope of the Directive. According to Directive 2013/33/EU³⁷⁰, Member States are obliged to grant asylum seekers access to the labour market at the latest after nine months from lodging the application. However, no given job opportunity can lead to obtaining an EU Blue Card, which may deter employers from engaging highly skilled asylum seekers, whose future status in the country is still uncertain. If filing an application for an EU Blue Card was to be allowed during the asylum procedure, an important issue to be addressed would be how to deal with the pending asylum request.

Finally, if an asylum seeker receives a negative decision on the asylum application, he or she becomes an irregular migrant having no legal status in the country. Therefore, applying for an EU Blue Card in the Member State territory is not possible, as this facility is only reserved for those staying legally in the country. No changes to that principle are proposed under this option.

³⁷⁰ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96–116.

ANNEX 14

CALCULATION OF ECONOMIC IMPACTS: ANALYTICAL MODEL, ASSUMPTIONS AND RESULTS ANALYTICAL DESCRIPTION OF POLICY OPTIONS

DISCLAIMER ON THE NUMBERS OF BLUE CARDS USED IN THE KEY ASSUMPTIONS

The numbers of Blue Cards used in the key assumptions in the analysis of impacts (chapter 6) are not target numbers for Blue Cards to be issued but technical assumptions, based on a number of elements such as variations in admission conditions, to be able to generate scenarios to quantify the potential economic impacts and the variations of magnitude according to the various Policy Options Packages.

The calculations in this annex are based on the methodology used by an external contractor in the impact assessment study commissioned by DG Home Affairs in preparation of this impact assessment.

1. ASSUMPTIONS REGARDING THE NUMBER OF PERMITS FOR HIGHLY-QUALIFIED WORK

1.1. Baseline

As shown in Annex 12 of this Impact Assessment (Statistics), there were 13 724 Blue Cards and 24 913 national **permits for highly-qualified work** issued in 2014 by Member States applying the EU Blue Card, totalling 38 637 permits. These figures represent a lower bound on the estimated number of highly-qualified workers admitted to these Member States, since some highly-qualified migrants admitted for the purposes of work are not designated as such by Member States and/or Eurostat and are not included in the statistics on permits for highly-qualified employment. They are instead included in the overall number of permits issued for the purposes of work – but cannot be distinguished from the other permits.³⁷¹ (see Annex 12 on statistics for detailed figures per Member State).

Eurostat data on the first issuance of long-term (1 year and longer) permits do not capture situations in which the TCN worker is given a shorter-term permit which is subsequently extended. However, data on shorter-term permits, in particular those for work, include a large share of seasonal workers, rendering such data unusable for the purposes of this study. Data on first issuance of permits issued for highly-qualified work excludes those highly-qualified workers which were admitted to Member States which do not have a dedicated admissions scheme in place, which do not identify highly-qualified workers as a separate category or which do not report them consistently

An alternative estimate for the number of permits issued to highly-qualified workers can be obtained by crossing the total number of permits issued for work³⁷² with the share of high-educated migrants among all those coming for work purposes (and with a job offer) as derived from the 2014 EU Labour Force Survey ad hoc module on migrants.³⁷³ In 2014 there were

³⁷¹ First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc], Eurostat.

³⁷² Source: Eurostat. First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc]

³⁷³ 2014 EU Labour Force Survey ad hoc module on migrants.

just over 173 000 **long-duration permits**³⁷⁴ **issued for the purposes of work** in the 25 Member States that currently apply the EU Blue Card.³⁷⁵ The Labour Force Survey module shows around 40 percent of TCN in employment who had found a job before migrating have high qualifications. People with medium and low qualification each make up 30 percent.³⁷⁶ As a consequence, we can assume **around 69 000 highly-qualified workers**, or 40 % of 173 000, are admitted every year.

It is assumed that the baseline for admitting highly-qualified workers consists of 60 % regular highly-skilled workers, 20 % recent graduates and 20 % permits issued for shortage occupations. It is assumed this holds true at the baseline salary threshold. Lowering the salary threshold for selected categories will increase their share. This distribution is a technical assumption for the purposes of this impact assessment, justified by the BC scheme's overall objectives under the different policy options and how these may affect the flow of highly-skilled workers.³⁷⁷

The distribution of permits for highly-qualified work per Member State is shown in the table below. It is based on Member States' reports of both national permits for highly-qualified work and EU Blue Cards issued in the past three years (2012-2014). The table also contains the Member States' share of highly-qualified workers in the total employment of all EU Member States implementing the EU Blue Card.³⁷⁸ This dataset takes into account all workers, native and foreign, and is considered more indicative of a country's labour market needs for high qualifications. A third column contains the anticipated share in job opportunities for highly-qualified workers between 2013 and 2025, based on replacement and expansion demand (CEDEFOP). For the purposes of this impact assessment, the distribution of any additional EU Blue Cards is based on the average of these three distributions.

Table 1 — Estimating the distribution of future permits for highly-qualified workers in EU Blue Card countries

	A. Share in permits issued to TCN for highly-qualified employment	B. Share in highly-qualified employment (all workers)	C. Share in job opportunities for HQ workers 2013-2025	Share in additional Blue Cards
	A.	B.	C.	Average A, B and C
DE	27.3%	20.3%	14.7%	20.8%
FR	9.7%	17.2%	20.4%	15.7%
NL	20.3%	5.4%	6.5%	10.7%
ES	5.8%	10.5%	13.1%	9.8%

³⁷⁴ Long-duration is understood as one year and longer.

³⁷⁵ Source: Eurostat. First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc]

³⁷⁶ Source: specific data extraction based on the 2014 EU Labour Force Survey ad hoc module on migrants. The distribution by education level is calculated among TCN in employment, having arrived in 2014 since less than 6 years for reason of employment and with a job offer prior to migration; data covering all “Blue card countries” except DE, NL, IE who did not implement the survey.

³⁷⁷ While these shares are technical assumptions, Blue Card statistics from Germany show that nearly half of all Blue Cards are issued at the lower salary threshold (i.e. for shortage occupations), and several of those are benefiting recent graduates. EU Blue Card Directive Implementation Report, COM(2014) 287. Available at:

³⁷⁸ Source: Eurostat. EU Labour Force Survey 2014.

IT	4.7%	8.4%	9.9%	7.7%
SE	14.9%	3.4%	2.7%	7.0%
PL	1.4%	9.3%	9.2%	6.6%
BE	2.8%	3.6%	3.0%	3.1%
AT	3.8%	2.1%	1.9%	2.6%
RO	0.3%	2.9%	3.5%	2.2%
FI	2.9%	1.9%	1.8%	2.2%
PT	2.1%	2.1%	1.4%	1.9%
CZ	0.4%	2.2%	2.2%	1.6%
HU	0.0%	2.1%	2.5%	1.6%
EL	0.0%	1.9%	2.0%	1.3%
BG	0.1%	1.6%	1.6%	1.1%
HR	0.6%	0.8%	0.9%	0.8%
SK	0.0%	1.0%	1.1%	0.7%
CY	1.5%	0.2%	0.2%	0.7%
LV	0.7%	0.6%	0.7%	0.7%
LT	0.4%	1.0%	0.5%	0.6%
SI	0.0%	0.6%	0.5%	0.4%
EE	0.0%	0.4%	0.4%	0.3%
LU	0.1%	0.3%	0.3%	0.2%
MT	0.0%	0.1%	0.1%	0.1%

1.2. Additional permits for highly-qualified work

Additional permits for highly-qualified work are calculated using the baseline figures described above, and by applying a percentage increase based on the hypotheses below. The number of additional Blue Card permits which can be expected under the different policy options will be mainly driven by:

- The **salary threshold**. The effect of a change in salary threshold on the number of permits is calculated using the salary data of the EU SILC³⁷⁹ for the 25 Member States which currently apply the EU Blue Card Directive, in the same way as in Annex 7. Lowering the threshold enlarges the group of potential jobs which would qualify for an EU Blue Card; the number of Blue Cards issued is expected to increase proportionally. This applies if the salary threshold is set in relation to the prevailing salary in the host country (so, in effect, having 25 different thresholds) as it is the case with the current Blue Card Directive.
Where a single, EU-wide salary threshold is set (POP 3), the impact on the number of Blue Cards issued can also be determined using the same method. However, the number of additional cards may be very low in lower-income countries while it may be high in the wealthiest of Member States.
- The **minimum duration** of the Blue Card permit. The Blue Card is currently issued for persons with a work contract of 1 year or more. If the minimum duration is lowered, it is expected that a larger number of assignments will qualify for an EU Blue

³⁷⁹ EU-Survey on Income and Living Conditions. Specific extractions based on micro-data. For Germany, data source is GSOEP 2013.

Card. Current permit data, included in Annex 7 of this Impact Assessment, shows a ratio of 3:1 between permits for highly-qualified work issued for more than one year (17 210) and permits issued for 6 months to 1 year (5 712). Past years have shown significantly smaller differences, with ratios as low as of 1.4:1.³⁸⁰ Also, there may be a significant overlap between jobs for which a shorter-term national permit is issued initially and those for which Blue Cards are currently issued. The effect of a reduction in the minimum duration of the Blue Card is therefore difficult to anticipate. For the purposes of this impact assessment, it is assumed the number of eligible jobs will increase by 25 percent. The baseline number of permits (69 000) was estimated using only data on long-term permits. This figure is increased by 25 percent (17 250 permits) in all scenarios to take into account the impact of including shorter-term permits, thereby totalling 86 250 (POP1, POP2A-B-C and POP3). This leads to a corresponding increase in the number of cards issued under all scenarios.

- In the current Blue Card Directive, the **minimum qualification level** required is post-secondary education corresponding to ISCED(97) 5A or higher (see Annex 7 for more details on ISCED levels) as well as an adequate salary. Equivalent professional experience can also be recognised, though this is optional for Member States to apply. If the qualification requirement is maintained as the sole admission condition (as in POP1), without the salary threshold and subject to safeguards, one can expect the number of additional Blue Cards to increase considerably. This increase is estimated by calculating the share of jobs held by highly-qualified workers below the current threshold of 1.5 times the average salary and applying this to the baseline. Given that in POP1 highly qualified workers are admitted without salary threshold only in ISCO groups 1-2, the increase was restricted by applying the share of highly qualified workers working in ISCO 1-2 in each Member State.

For scenario's where the salary threshold is maintained but no qualifications are required, the estimated baseline cannot be used. The number of jobs which would be eligible cannot be estimated.

The possible removal of the **labour market test** is also considered in certain policy options, but its impact is not quantified and is assumed to be relatively small. Indeed, according to the OECD, a labour market test may not represent a real restriction on hiring foreign workers, because such a test is rarely the basis of a rejected application.³⁸¹ On the other hand, the labour market test may serve as a deterrent to potential applicants and may prevent some (or many) from applying for a permit in the first place. This effect is however hard to quantify.

Another potential source of Blue Card applicants is **highly-qualified migrants already present in the EU**, in particular if applications on the territory are allowed. According to the EU Labour Force Survey, there are currently around ninety thousand third-country nationals employed in ISCO 1-3 occupations among the 10% highest salary earners in the Member States which are using the EU Blue Card. This is a stock figure, so not an annual flow but the total number of people in the group. This group can be considered to consist of TCN who would qualify for an EU Blue Card and who may have an interest in applying from the EU territory. The pool is enlarged significantly if one adds the second-highest 10 percent earners, who may also qualify for an EU Blue Card depending on the salary threshold: over 155 000

³⁸⁰ Sources: Eurostat, First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc], Extracted on 11/12/2015.

³⁸¹ OECD (2011), *Recruiting Immigrant Workers: Sweden 2011*, OECD Publishing, p. 69. Available at: <http://dx.doi.org/10.1787/9789264000000-en> and OECD/European Union (2014), *Matching Economic Migration with Labour Market Needs*, OECD Publishing, pp. 372-373. Available at: <http://dx.doi.org/10.1787/9789264216501-en>

TCN currently working in the EU fall into that category. If one looks only at those having arrived recently, a group which is particularly likely to be interested in the additional benefits offered by the EU Blue Card, the pool of potential applicants amounts to 40 700 (highest decile of earnings) or 61 700 (9th and 10th decile). The impact of **highly-qualified migrants already present in the EU but switching to an EU Blue Card** is not estimated. Replacing national permits with EU Blue Cards is expected to increase the overall attractiveness and recognition of the scheme. While this may lead to an increase in applications and cards being issued, the effect of this increase is not estimated for the purposes of this impact assessment. However, the additional mobility rights from which former national permit holders would benefit would have a positive economic impact and are taken into account (see below: *intra-EU mobility*).

An alternative way of estimating an upper bound for the number of additional EU Blue Cards which could be issued in the EU is to look at **unfilled vacancies in shortage occupations** which would meet the requirements of the EU Blue Card (qualifications, salary). Statistics on shortages are explored in depth in Annex 4 of this Impact Assessment (point 1.2 Skills needs and shortages in the EU). For instance, it is estimated that there will be 800 000 unfilled vacancies for ICT professionals in the EU between 2015 and 2020, amounting to 130 000 per year. This figure includes Member States not implementing the EU Blue Card such as the United Kingdom, which has reported relatively large shortages in the ICT sector compared to other Member States.³⁸² However, data on shortages are not fully available across countries and sectors (notably due to the difficulty of defining and measuring them in a harmonised manner) and can therefore not be used directly for the purpose of this impact assessment.

Rather than shortages, analysing Member States' overall labour needs (due to expansion of certain sectors and replacement demand) can provide some indication of the potential. The table below gives an overview of the estimated number of vacancies which will arise by 2025 (according to CEDEFOP estimates) in the 25 Member States implementing the EU Blue Card, including for highly-qualified workers and for the ISCO categories 1 to 3. Note that this forecast only looks at expected labour demand, and does not compare it to the labour supply.

Table 2 — Job opportunities in absolute numbers (thousands) for 25 Member States - 2013-2025 - Cedefop 2015 Skills Forecast

	ALL JOB OPENINGS		HIGHLY QUALIFIED (ISCED11 level 6 or above)		MANAGERS (ISCO 1)		PROFESSIONALS (ISCO 2)		TECHNICIANS AND ASSOCIATE PROFESSIONALS (ISCO 3)	
	Value	Share	Value	Share	Value	Share	Value	Share	Value	Share
TOTAL	89347.8	100.0%	37679.2	100.0%	6447	100.0%	20823.8	100.0%	11978.3	100.0%
AT	1649.6	1.8%	728.2	1.9%	117.4	1.8%	352.8	1.7%	270.8	2.3%
BE	1959.3	2.2%	1123.3	3.0%	176.3	2.7%	581.7	2.8%	280.4	2.3%
BG	1961.4	2.2%	586.6	1.6%	61.6	1.0%	315	1.5%	128.4	1.1%
CY	179.5	0.2%	93.2	0.2%	6.8	0.1%	37.8	0.2%	18.5	0.2%
CZ	1978.3	2.2%	814.7	2.2%	98.4	1.5%	455.3	2.2%	389.4	3.3%

³⁸² Synthesis Report for the EMN Focussed Study 2015. *Determining labour shortages and the need for labour migration from third countries in the EU.*

DE	17911.4	20.0%	5523.4	14.7%	679.4	10.5%	4576.8	22.0%	2983.9	24.9%
EE	382.9	0.4%	142.3	0.4%	10.1	0.2%	94	0.5%	40.6	0.3%
EL	2119.5	2.4%	763	2.0%	73.8	1.1%	386.2	1.9%	158.3	1.3%
ES	8846.1	9.9%	4922.1	13.1%	632.2	9.8%	1188.8	5.7%	1309.2	10.9%
FI	1485.7	1.7%	687.6	1.8%	70	1.1%	419.2	2.0%	169.7	1.4%
FR	13570.9	15.2%	7702.8	20.4%	1254.9	19.5%	3029.1	14.5%	2271.6	19.0%
HR	930.9	1.0%	348.8	0.9%	38.2	0.6%	237.7	1.1%	121.4	1.0%
HU	1979.1	2.2%	949.2	2.5%	191.6	3.0%	514.3	2.5%	201.9	1.7%
IT	11724.2	13.1%	3743.5	9.9%	1713.5	26.6%	2514.1	12.1%	2024.9	16.9%
LT	660.8	0.7%	172.5	0.5%	30.9	0.5%	193.3	0.9%	70.7	0.6%
LU	248.7	0.3%	124.9	0.3%	12.9	0.2%	108.4	0.5%	26.1	0.2%
LV	583.4	0.7%	265.1	0.7%	38.6	0.6%	162.4	0.8%	72.4	0.6%
MT	87.1	0.1%	37.7	0.1%	10.6	0.2%	22.4	0.1%	9.9	0.1%
NL	4285.1	4.8%	2438.5	6.5%	364.7	5.7%	1464.7	7.0%	411.6	3.4%
PL	5524.8	6.2%	3453.8	9.2%	477.5	7.4%	1874.5	9.0%	418.9	3.5%
PT	2303.1	2.6%	541.3	1.4%	198.1	3.1%	333.6	1.6%	113.2	0.9%
RO	4961.3	5.6%	1326.9	3.5%	17.5	0.3%	993.3	4.8%	142.8	1.2%
SE	2733.6	3.1%	1003.8	2.7%	117.2	1.8%	851.1	4.1%	302.2	2.5%
SI	361.9	0.4%	186	0.5%	54.8	0.9%	117.3	0.6%	41.5	0.3%
SK	919.2	1.0%	427.6	1.1%	79.8	1.2%	160.9	0.8%	176.8	1.5%

2. DETERMINING THE NUMBER OF ADDITIONAL EU BLUE CARDS UNDER DIFFERENT POLICY OPTIONS

The salary threshold is one of the main admission criteria in all policy options considered in this impact assessment. The level of the salary threshold will determine how many jobs could in theory be filled by a Blue Card holder in any scenario, and will thus help to determine the number of Blue Cards to be assumed for the purposes of this impact assessment.

The salary distribution of Blue Card jobs is assumed to be similar to that of the all jobs which would meet the Blue Card salary criteria (so, the salary distribution curves follow a similar pattern beyond/above the salary threshold, which is the tail end of a bell-shaped curve). This ignores the fact that salaries of highly-skilled migrant workers may tend to cluster just above the salary threshold – a result of employers setting the salary of TCN in such a way so as to just meet the entry conditions but not exceed them. The data used for determining salary distribution is based on full-time employees (see also data sources in Annex 7).

The salary distribution in each of the Member States implementing the EU Blue Card allows calculating the share of jobs held by highly-qualified employees which sits above a certain threshold. The table below shows these shares per Member State, for values such as 0.8, 1.0, 1.2, 1.4 or 1.5 times the average salary. The table also shows the increase in this share, if the threshold is lowered from currently 1.5 to certain values. Annex 7 contains a graphical representation of the effects of national thresholds at various levels.

Table 3 — Share of population earning above the threshold, according to different thresholds, based on EU-SILC and GSOEP, 2013, only those in “high educated” category, equivalent to post-secondary non-vocational (ISCED 1997 5-6)³⁸³

	Percentage highly-qualified workers earning more than..					Relative increase in jobs eligible for a Blue Card			
	0.8 x mean	1 x mean	1.2 x mean	1.4 x mean	1.5 x mean	from 1.5 to 0.8 x mean	from 1.5 to 1 x mean	from 1.5 to 1.2 x mean	from 1.5 to 1.4 x mean
AT	80%	67%	53%	39%	32%	+151.1%	+110.1%	+65.9%	+21.5%
BE	76%	53%	34%	22%	19%	+310.8%	+185.9%	+82.2%	+18.9%
BG	79%	62%	44%	30%	25%	+210.6%	+142.9%	+71.7%	+18.9%
CY	65%	54%	45%	35%	31%	+105.4%	+71.7%	+41.7%	+10.8%
CZ	87%	71%	53%	37%	32%	+168.7%	+118.9%	+64.1%	+13.6%
DE	81%	65%	48%	35%	31%	+163.9%	+114.1%	+56.7%	+15.4%
EE	67%	50%	39%	29%	27%	+152.1%	+89.4%	+45.7%	+9.8%
EL	76%	55%	36%	24%	18%	+329.2%	+207.9%	+100.6%	+32.6%
ES	74%	61%	48%	37%	32%	+133.7%	+92.1%	+52.4%	+18.1%
FI	75%	56%	39%	28%	24%	+216.9%	+134.2%	+65.8%	+17.3%
FR	77%	58%	40%	27%	23%	+234.9%	+151.5%	+73.4%	+19.7%
HR	85%	77%	65%	49%	40%	+113.4%	+93.5%	+64.0%	+23.4%
HU	83%	71%	56%	43%	39%	+112.3%	+82.8%	+43.6%	+10.0%
IT	78%	59%	41%	28%	25%	+215.0%	+138.1%	+66.0%	+14.2%
LT	73%	59%	45%	34%	29%	+147.3%	+100.0%	+54.4%	+15.3%
LU	81%	72%	59%	46%	39%	+110.1%	+86.0%	+53.2%	+18.3%
LV	71%	59%	47%	35%	31%	+129.1%	+92.2%	+50.5%	+14.2%
MT	84%	68%	46%	31%	27%	+218.5%	+157.4%	+74.7%	+16.2%
NL	80%	61%	44%	28%	22%	+257.0%	+174.0%	+97.3%	+25.1%
PL	76%	60%	46%	35%	31%	+147.7%	+97.1%	+48.7%	+13.1%
PT	85%	77%	66%	52%	47%	+83.0%	+65.5%	+41.4%	+12.0%
RO	87%	72%	59%	42%	35%	+145.9%	+102.5%	+67.4%	+17.6%
SE	74%	49%	32%	21%	17%	+329.7%	+182.0%	+83.7%	+20.3%
SI	80%	69%	56%	42%	34%	+132.8%	+99.1%	+62.2%	+21.2%
SK	81%	67%	42%	25%	22%	+262.8%	+198.7%	+89.2%	+12.6%

2.1. POP 1

The effect of having no salary threshold while maintaining the qualification requirement can be determined by calculating the share of highly-qualified workers currently earning less than 1.5 times the average salary. Assuming the share of third-country nationals currently not admitted due to the salary threshold is similar, the additional number of permits which can be expected in the absence of a salary criterion can be calculated using the same baseline of 69 000, increased by 25 percent due to the inclusion of shorter-duration permits. The scheme

³⁸³ For Germany, data source is GSOEP 2013 and education attainment is classified in different way (less than high school/high school/more than high school). For other countries, 2013 EU-SILC was used.

would be limited to ISCO 1 or 2 occupations, which make up between 46 and 85 percent of all jobs held by highly-qualified workers (according to 2014 Labour force survey data).

Compared to other options, the effect is large in all Member States. It would lead to **142 610** additional cards across the 25 Member States applying the EU Blue Card.

Table 4 — Increase in EU Blue Cards for highly-qualified workers without salary threshold

	Share in additional Blue Cards	Calculated baseline for all HSW	Additional Blue Cards of short duration at 1.5 x mean	Share of HSW below 1.5 x mean (%)	Share of highly-qualified working in ISCO 1-2	Additional Blue Cards without salary threshold (%)	Additional Blue Cards without salary threshold (number)
	A	B	C	D	E	$F = D / (1-D)$	$G = E \text{ and } F \text{ applied to } B + C$
AT	2.6%	1 808	452	68.3%	49%	+215.5%	2 389
BE	3.1%	2 135	534	81.5%	61%	+440.5%	7 129
BG	1.1%	742	185	74.6%	60%	+293.7%	1 646
CY	0.7%	458	114	68.6%	47%	+218.5%	592
CZ	1.6%	1 108	277	67.7%	66%	+209.6%	1 905
DE	20.7%	14 291	3 573	69.5%	55%	+227.9%	22 339
EE	0.3%	193	48	73.5%	54%	+277.4%	362
EL	1.3%	900	225	82.2%	46%	+461.8%	2 909
ES	9.8%	6 731	1 683	68.5%	54%	+217.5%	8 468
FI	2.2%	1 523	381	76.3%	50%	+321.9%	3 310
FR	15.7%	10 814	2 703	77.1%	56%	+336.7%	22 971
HR	0.8%	536	134	60.3%	68%	+151.9%	696
HU	1.5%	1 065	266	61.0%	68%	+156.4%	1 414
IT	7.6%	5 266	1 317	75.3%	52%	+304.9%	10 450
LT	0.6%	429	107	70.6%	70%	+240.1%	903
LU	0.2%	163	41	61.3%	85%	+158.4%	273
LV	0.7%	454	113	69.1%	60%	+223.6%	761
MT	0.1%	45	11	73.5%	73%	+277.4%	113
NL	10.7%	7 382	1 845	77.7%	66%	+348.4%	21 114
PL	6.6%	4 551	1 138	69.4%	66%	+226.8%	8 552
PT	1.9%	1 309	327	53.4%	74%	+114.6%	1 396
RO	2.2%	1 541	385	64.7%	73%	+183.3%	2 562
SE	7.0%	4 820	1 205	82.8%	65%	+481.4%	18 783
SI	0.4%	248	62	65.6%	74%	+190.7%	439
SK	0.7%	489	122	77.7%	53%	+348.4%	1 133
TOTAL		69 000					142 610

The effect of having a salary threshold but no qualification requirements cannot be reliably estimated using the method described above. However, as above, SILC data can show the share of medium-skilled jobs which surpass a certain salary threshold. This shows the size of

the labour market which would be open to the scheme as proposed in POP1: between 3.8 and 8 million jobs.

Table 5 — Medium-skilled jobs surpassing a certain salary threshold (share and absolute numbers)³⁸⁴

	Total number of medium-skilled jobs	1.4*mean	1.7*mean	1.4*mean	1.7*mean
AT	1 966 346	14%	7%	269 389	131 745
BE	1 519 431	5%	2%	71 413	24 311
BG	1 512 209	11%	5%	164 831	72 586
CY	114 750	13%	7%	14 344	7 573
CZ	2 975 378	10%	4%	282 661	116 040
DE	21 833 683	10%	5%	2 248 869	1 048 017
EE	293 181	14%	8%	40 752	23 161
EL	3 363 484	8%	4%	262 352	141 266
ES	961 483	15%	7%	142 300	67 304
FI	10 249 615	5%	2%	512 481	204 992
FR	942 380	7%	3%	66 909	29 214
HR	841 380	11%	4%	89 186	30 290
HU	2 255 229	9%	4%	198 460	99 230
IT	8 278 890	13%	6%	1 092 813	529 849
LT	600 019	10%	5%	60 002	28 201
LU	77 856	13%	5%	10 277	3 737
LV	452 463	13%	7%	57 010	30 315
MT	51 093	13%	7%	6 642	3 423
NL	2 964 856	7%	2%	198 645	68 192
PL	7 493 638	10%	6%	734 377	419 644
PT	956 698	16%	10%	155 942	99 497
RO	3 755 364	8%	4%	281 652	135 193
SE	2 019 681	10%	5%	203 988	92 905
SI	423 289	5%	2%	22 434	10 159
SK	1 454 700	10%	4%	142 561	53 824
Total	77 357 095	10%	5%	8 045 138	3 790 498

2.2. POP 2A

The figures in Table 3 above can be combined with the baseline figure of 69 000 permits — separated into 60 % regular Blue Cards, 20 % for shortage occupations and 20 % for recent graduates — and the distribution per Member State calculated in Table 1, as well as the 25 percent increase across the board due to the inclusion of shorter-duration permits. This shows the impact on the number of EU Blue Cards which can be expected from a decrease in the salary threshold — all other effects being equal — included in the table below. This

³⁸⁴ The total number of jobs held by workers with medium level of education in table 8 (first column) is taken from the EU Labour force survey (2014).

method does entail some double-counting: some national schemes for admitting highly-qualified workers do not currently have a salary threshold, or have one which is below the one set for the EU Blue Card (see Annex 7). In such cases, the increase in admissions resulting from lowering the EU Blue Card threshold is likely to be lower. The extent of this double-counting is not estimated.

Table 6 shows the effect on the number of permits for highly-skilled work. The combined effect of a decrease in salary threshold and an extension of the scope to shorter-duration permits would be an increase in the number of cards issued between **9 278** (if the salary threshold is lowered to 1.4 times the average salary in each Member State) and **68 280** (with the threshold set at the average salary in each Member State). This wide range stems from the flexible fork from 1.0 to 1.4 to be applied in POP 2A and the uncertainty about what decisions Member States would take.

Table 7 shows the effect of applying the lower threshold range to shortage occupations and jobs for recent graduates. The baseline is lower — 40 percent of the total baseline — but the lower salary thresholds result in a larger impact. As above, the effect of extending of the scope to shorter-duration permits is also taken into account. Lowering the threshold to between 1.2 and 0.8 times (i.e. 80% of respectively 1.4 and 1.0) the average salary would result in between **23 206** and **69 410** cards being issued additionally.

Table 6 — Increase in regular EU Blue Cards for highly-qualified workers with thresholds at 1.4 and 1.0 times the average salary instead of the current 1.5

	Share in additional Blue Cards	Estimated baseline	Additional Blue Cards of short duration at 1.5 x mean	Additional Blue Cards at 1.0 x mean (%)	Additional Blue Cards at 1.4 x mean (%)	Additional Blue Cards at or above 1.0 x mean (number)	Additional Blue Cards at or above 1.4 x mean (number)
	A	B	C	D	E	F = applying D to B and C	G = applying E to B and C
AT	2.6%	1 085	271	+110.1%	+21.5%	1 493	291
BE	3.1%	1 281	320	+185.9%	+18.9%	2 978	303
BG	1.1%	445	111	+142.9%	+18.9%	795	105
CY	0.7%	275	69	+71.7%	+10.8%	246	37
CZ	1.6%	665	166	+118.9%	+13.6%	988	113
DE	20.7%	8 575	2 144	+114.1%	+15.4%	12 229	1 652
EE	0.3%	116	29	+89.4%	+9.8%	129	14
EL	1.3%	540	135	+207.9%	+32.6%	1 404	220
ES	9.8%	4 038	1 010	+92.1%	+18.1%	4 647	913
FI	2.2%	914	228	+134.2%	+17.3%	1 533	198
FR	15.7%	6 488	1 622	+151.5%	+19.7%	12 289	1 594
HR	0.8%	322	80	+93.5%	+23.4%	376	94
HU	1.5%	639	160	+82.8%	+10.0%	662	80
IT	7.6%	3 160	790	+138.1%	+14.2%	5 453	560
LT	0.6%	258	64	+100.0%	+15.3%	322	49
LU	0.2%	98	24	+86.0%	+18.3%	105	22
LV	0.7%	272	68	+92.2%	+14.2%	314	48
MT	0.1%	27	7	+157.4%	+16.2%	53	5

NL	10.7%	4 429	1 107	+174.0%	+25.1%	9 633	1 390
PL	6.6%	2 730	683	+97.1%	+13.1%	3 313	446
PT	1.9%	785	196	+65.5%	+12.0%	643	118
RO	2.2%	925	231	+102.5%	+17.6%	1 185	203
SE	7.0%	2 892	723	+182.0%	+20.3%	6 578	736
SI	0.4%	149	37	+99.1%	+21.2%	184	39
SK	0.7%	293	73	+198.7%	+12.6%	728	46
TOTAL		41 400	10 350			68 280	9 278

Table 7 — Increase in EU Blue Cards for highly-qualified recent graduates and workers in shortage occupations with thresholds at 0.8 and 1.2 times the average salary (i.e. 80% of the 1 - 1.4 fork)

	Share in additional Blue Cards	Calculated baseline for graduates and shortage	Additional Blue Cards of short duration at 1.5 x mean	Additional Blue Cards at 0.8 x mean (%)	Additional Blue Cards at 1.2 x mean (%)	Additional Blue Cards at or above 0.8 x mean (number)	Additional Blue Cards at or above 1.2 x mean (number)
	A	B	C	D	E	F = applying D to B + C	G = applying E to B + C
AT	2.6%	723	181	+151.1%	+65.9%	1 366	596
BE	3.1%	854	214	+310.8%	+82.2%	3 318	877
BG	1.1%	297	74	+210.6%	+71.7%	781	266
CY	0.7%	183	46	+105.4%	+41.7%	241	95
CZ	1.6%	443	111	+168.7%	+64.1%	935	355
DE	20.7%	5 716	1 429	+163.9%	+56.7%	11 714	4 053
EE	0.3%	77	19	+152.1%	+45.7%	147	44
EL	1.3%	360	90	+329.2%	+100.6%	1 482	453
ES	9.8%	2 692	673	+133.7%	+52.4%	4 498	1 763
FI	2.2%	609	152	+216.9%	+65.8%	1 652	501
FR	15.7%	4 326	1 081	+234.9%	+73.4%	12 703	3 967
HR	0.8%	214	54	+113.4%	+64.0%	304	172
HU	1.5%	426	107	+112.3%	+43.6%	598	232
IT	7.6%	2 107	527	+215.0%	+66.0%	5 661	1 738
LT	0.6%	172	43	+147.3%	+54.4%	316	117
LU	0.2%	65	16	+110.1%	+53.2%	90	43
LV	0.7%	181	45	+129.1%	+50.5%	293	115
MT	0.1%	18	4	+218.5%	+74.7%	49	17
NL	10.7%	2 953	738	+257.0%	+97.3%	9 484	3 592
PL	6.6%	1 820	455	+147.7%	+48.7%	3 361	1 108
PT	1.9%	524	131	+83.0%	+41.4%	544	271
RO	2.2%	616	154	+145.9%	+67.4%	1 124	520
SE	7.0%	1 928	482	+329.7%	+83.7%	7 945	2 018
SI	0.4%	99	25	+132.8%	+62.2%	165	77
SK	0.7%	195	49	+262.8%	+89.2%	642	218

TOTAL		27 600				69 410	23 206
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2.3. POP 2B

Policy option package 2B entails setting the salary threshold at between 1.5 and 1.7 times the average salary. In this analysis, any salary threshold above 1.5 times the average has a negative impact on the number of cards issued. The positive effect (+ 25 percent) of extending the scope of the EU Blue card to shorter-duration permits remains and, in some countries, outweighs the negative impact of the higher salary threshold.

The net impact of this scenario ranges from an increase in the number of cards of **17 250** (if the threshold is kept at 1.5 times the average salary) to a slight decrease (**- 8 149**) compared to the baseline (if the threshold is moved to 1.7 the average salary). The total number of Blue Cards issued would be between **86 250** and **60 851**.

A positive impact can be expected from the increase in intra-EU mobility for the remaining Blue Cards which would be issued (see further). If Member States maintain national schemes for admitting highly-qualified employees, the negative impact (fewer cards) resulting from any exclusion of lower-paid TCN workers (i.e. not meeting the threshold) could be mitigated.

Table 8 — Number of permits being issued with threshold for EU Blue Card set at 1.5 and 1.7 times the average salary

	Share in additional Blue Cards	Calculated baseline for regular threshold	Additional Blue Cards of short duration at 1.5 x mean	Net number of Blue Cards being issued at or above 1.5 x mean	Additional permits for HSW at 1.7 x mean (%)	Additional permits for HSW at or above 1.7 x mean (number)	Net number of Blue Cards being issued at or above 1.7 x mean
		A	B	A+B	C. Applied to A+B	Effect B and C	Compared to A
AT	2.6%	1 808	452	2 260	-26.2%	- 140	1 668
BE	3.1%	2 135	534	2 669	-31.9%	- 317	1 818
BG	1.1%	742	185	927	-29.5%	- 88	653
CY	0.7%	458	114	572	-21.7%	- 9	448
CZ	1.6%	1 108	277	1 385	-28.5%	- 117	991
DE	20.7%	14 291	3 573	17 864	-31.8%	-2 109	12 182
EE	0.3%	193	48	241	-34.0%	- 34	159
EL	1.3%	900	225	1 125	-25.8%	- 66	835
ES	9.8%	6 731	1 683	8 413	-33.3%	-1 122	5 609
FI	2.2%	1 523	381	1 904	-32.5%	- 238	1 285
FR	15.7%	10 814	2 703	13 517	-27.1%	- 956	9 858
HR	0.8%	536	134	670	-37.8%	- 119	417
HU	1.5%	1 065	266	1 331	-24.6%	- 61	1 004
IT	7.6%	5 266	1 317	6 583	-19.8%	11	5 277

LT	0.6%	429	107	537	-28.6%	- 46	383
LU	0.2%	163	41	204	-35.9%	- 32	131
LV	0.7%	454	113	567	-23.6%	- 21	433
MT	0.1%	45	11	56	-23.4%	- 2	43
NL	10.7%	7 382	1 845	9 227	-35.4%	-1 423	5 959
PL	6.6%	4 551	1 138	5 688	-24.8%	- 275	4 275
PT	1.9%	1 309	327	1 636	-18.9%	18	1 327
RO	2.2%	1 541	385	1 926	-26.3%	- 122	1 419
SE	7.0%	4 820	1 205	6 025	-32.0%	- 722	4 098
SI	0.4%	248	62	310	-26.5%	- 20	228
SK	0.7%	489	122	611	-42.6%	- 138	351
TOTAL		69 000		86 250		- 8 149	60 851

2.4. POP 3

The effect of setting an EU-wide salary threshold based on the average salary in the top-third wealthiest Member States applying the EU Blue Card (POP 3) can be done using the same method as before. For the purposes of this calculation, the threshold is set at 49 700 EUR, equalling 1.4 times the average salary of the 7 highest-income countries as reported in SILC. The average salary of Germany is not taken into account since there was no corresponding value in the SILC data extraction used. As can be expected given the large differences in average salaries between Member States, the effect of a single EU-wide threshold on the number of eligible jobs compared to the baseline varies significantly. While nearly 56 percent of highly-qualified workers earn more than this threshold in Luxemburg, this share is less than 1 percent in 9 out of 25 Member States. If Member States maintain national schemes for admitting highly-qualified employees, the (in some Member States substantial) negative impact resulting from the exclusion of lower-paid TCN workers could be mitigated.

The introduction of an EU-wide salary threshold would reduce the number of cards issued by **24 926**. Combined with the (positive) effect of lowering the minimum duration, this would lead to **61 324** Blue Cards being issued.

Table 9 — Number of EU Blue Cards per Member State if one EU-wide salary threshold, based on the wealthiest one-third of Member States, is applied. (*) SILC data for Germany was not available & an approximation was made based on GSOEP. The salary threshold for this exercise was set at 49 700 EUR.

	Share in additional Blue Cards	Calculated baseline	Additional Blue Cards of short duration at 1.5 x mean	Share of jobs at or above the set EU wide threshold	Change in eligible jobs compared to baseline	Additional permits at set EU-wide threshold	Net number of Blue Cards being issued at or above set EU-wide threshold
AT	2.6%	1 808	452	29.0%	-9%	-193	2 068
BE	3.1%	2 135	534	20.7%	12%	317	2 986
BG	1.1%	742	185	0.1%	-100%	-923	4
CY	0.7%	458	114	11.6%	-63%	-361	211
CZ	1.6%	1 108	277	1.0%	-97%	-1 342	43

DE (*)	20.7%	14 291	3 573	29.0%	41%	-879	16 985
EE	0.3%	193	48	0.6%	-98%	-236	5
EL	1.3%	900	225	2.4%	-87%	-974	152
ES	9.8%	6 731	1 683	8.0%	-75%	-6 277	2 137
FI	2.2%	1 523	381	27.2%	15%	281	2 185
FR	15.7%	10 814	2 703	14.1%	-38%	-5 194	8 323
HR	0.8%	536	134	0.4%	-99%	-664	7
HU	1.5%	1 065	266	0.1%	-100%	-1 328	3
IT	7.6%	5 266	1 317	12.7%	-49%	-3 198	3 385
LT	0.6%	429	107	0.0%	-100%	-537	0
LU	0.2%	163	41	55.9%	44%	91	294
LV	0.7%	454	113	0.7%	-98%	-554	13
MT	0.1%	45	11	5.1%	-81%	-45	11
NL	10.7%	7 382	1 845	35.7%	60%	5 545	14 772
PL	6.6%	4 551	1 138	0.6%	-98%	-5 577	112
PT	1.9%	1 309	327	4.0%	-91%	-1 496	140
RO	2.2%	1 541	385	0.0%	-100%	-1 926	0
SE	7.0%	4 820	1 205	21.2%	23%	1 401	7 426
SI	0.4%	248	62	6.6%	-81%	-250	59
SK	0.7%	489	122	0.1%	-100%	-608	3
TOTAL		69 000				-24 926	61 324

3. ASSUMPTIONS REGARDING THE SALARY LEVELS FOR DETERMINING ECONOMIC IMPACT

The economic impact of an additional EU Blue Card is determined by the salary which the corresponding job will pay. This figure will be corrected (reduced) to take into account remittances. Newly admitted workers are assumed to be net additions to the economy, with no displacement effect as far as highly-qualified workers is concerned.

Salary levels differ significantly between the Member States implementing the EU Blue Card. Therefore, the impact of any additional Blue Cards will be based on average salary levels per Member State, except for those policy options where an EU-wide salary threshold is set. The salary used in this calculation of impacts should be above the relevant salary threshold. The **salary levels used in the impact calculations** are derived from the Structure of Earnings Survey (SES), which is a 4-yearly survey which provides EU-wide harmonised structural data on gross earnings, hours paid and annual days of paid holiday leave. Member States' average salaries in each of the Blue Card's target groups can be derived from the survey's results and are listed in the table below.

Three categories of reference salaries are calculated per Member State, and shown in [Table 10](#) below. The policy options for which the salaries are relevant are mentioned between brackets.

- For **highly-qualified workers**, based on the average salary for ISCED97 5a and (where available) ISCED97 6 workers as reported in the 2010 SES,³⁸⁵ weighted

³⁸⁵ No salary data for ISCED97 level 6 were available for AT, DE, HU in the dataset (*Mean annual earnings by sex, economic activity and educational attainment* [earn_ses10_30]). ISCED97 level 5A salaries were used instead.

according to the sizes of the respective populations of ISCED 5a and ISCED 6 workers in that Member State.³⁸⁶ If the salaries of ISCED 6 were not reported, the salary for 5A is taken by itself. These values are shown in italic and marked by (*) in the table below. [POP2(a), POP2(c)]

A separate calculation shows the average salary for highly-qualified workers admitted under a scheme with a higher salary threshold (1.7 x average salary, with their average salary estimated at 1.8 x the average salary as reported in SES), as well as the salary of those highly-qualified workers excluded from such a scheme (estimated at around 1.6 times the average salary as reported in SES) [POP2(b)]

For the scenario where an EU-wide salary threshold is taken, the average salary of the admitted workers is assumed to be equal to the average salary for highly-qualified workers in the Member State concerned if this is above the EU-wide threshold. In countries where the average salary of highly-qualified workers is below the EU-wide threshold, the threshold itself is used to calculate the economic impact; this is an underestimation, since some cards would be issued for jobs offering wages above the threshold. [POP3].

- For **managers, professionals, technicians and associate professionals** (ISCO 1, 2 & 3), by taking the weighted average of salaries of the relevant jobs in that Member State. If the salaries of occupational categories were not given, the ISCO 1-2 salary is estimated at 130 percent of the average salary for workers in that Member State, while ISCO 1-3 is estimated at 120 percent.³⁸⁷ The latter are shown in italic and marked by a (**) in the table below. [POP2(a), POP2(c), POP(1)]
- For **recent graduates**, by reducing the average wage for highly-qualified workers in a Member State with the age penalty evident from SES data. SES data shows wages on under-30s are between 66 and 99 percent of average wages.³⁸⁸ Although these figures show there is a large variety across countries, the age penalty is fairly stable between job categories within the same country.³⁸⁹ [POP2(a), POP2(c), POP(1)]
- An **EU-wide reference salary**, based on the salary of highly-qualified workers in the top-third most prosperous Blue Card Member States. This sits above the EU-wide threshold of 49 700 EUR and is estimated at 61 596 EUR, based on SES data [POP(3)]

Table 10 — Average / Reference salaries in the Blue Card Member States according to the Structure of Earnings Survey

	All workers	Highly-qualified workers			Managers and professionals	Managers, professionals, associate professionals and technicians	Recent graduates
		Average highly-qualified	1.6 x average all	1.8x average all			
					ISCO 1-2	ISCO 1-3	

³⁸⁶ Level 5A according to ISCED97 as reported in dataset "Mean annual earnings by sex, size class of the enterprise and occupation" [earn_ses10_30] of the Structure of Earnings Survey 2010.

³⁸⁷ Source: Eurostat, Structure of Earnings Survey 2010. Mean annual earnings by sex, size class of the enterprise and occupation [earn_ses10_32]

³⁸⁸ Source: Eurostat, Structure of Earnings Survey 2010. Mean annual earnings by sex, age and occupation - NACE Rev. 2, B-S excluding O [earn_ses10_28]

³⁸⁹ Source: Eurostat, Structure of Earnings Survey 2010. Mean annual earnings by sex, age and economic activity [earn_ses10_27] and Mean annual earnings by sex, age and occupation - NACE Rev. 2, B-S excluding O [earn_ses10_28]

			workers	workers			
AT	38 895	68 020*	62 232	70 011	50 564**	46 674**	46 511
BE	43 388	69 365	69 421	78 098	56 404**	52 066**	53 099
BG	4 618	7 599	7 389	8 312	6 033	5 477	6 940
CY	26 927	41 147	43 083	48 469	35 005**	32 312**	27 267
CZ	12 592	21 665	20 147	22 666	18 611	15 866	18 522
DE	38 735	62 873*	61 976	69 723	55 681	48 803	39 654
EE	10 395	15 900	16 632	18 711	13 708	12 876	15 109
EL	25 669	33 180	41 070	46 204	33 370**	30 803**	22 572
ES	27 057	37 670	43 291	48 703	34 847	31 006	27 781
FI	40 281	51 587	64 450	72 506	55 711	48 764	43 108
FR	33 897	49 172	54 235	61 015	53 451	47 215	34 601
HR	12 494	21 769	19 990	22 489	16 242**	14 993**	16 997
HU	9 916	17 056*	15 866	17 849	12 707	10 978	14 141
IT	31 680	52 261	50 688	57 024	41 184**	38 016**	37 726
LT	7 138	10 494	11 421	12 848	8 602	7 965	10 342
LU	51 663	86 058	82 661	92 993	66 958	61 861	59 724
LV	8 357	12 582	13 371	15 043	9 809	9 260	12 478
MT	18 744	24 635	29 990	33 739	24 367**	22 493**	20 762
NL	41 149	62 355	65 838	74 068	53 494**	49 379**	43 237
PL	10 426	15 660	16 682	18 767	12 191	11 394	12 462
PT	18 354	35 920	29 366	33 037	23 860**	22 025**	23 684
RO	5 991	10 845	9 586	10 784	6 451	5 435	9 173
SE	38 716	43 339	61 946	69 689	49 535	47 258	39 293
SI	21 135	35 062	33 816	38 043	27 476**	25 362**	28 007
SK	10 232	16 421	16 371	18 418	12 814	11 865	14 646
Wealthiest 1/3 of MS	40 841	61 596					

4. APPLICABLE SALARY THRESHOLDS

The average salaries calculated above are based on survey data and give an idea of what an average employee will earn and hence the impact he or she will have on the host country's economy. It should be noted that for the purposes of the implementation of the EU Blue Card, it is unlikely that survey data will be used to set the salary threshold. Instead, the salary threshold is likely to be set based on actual labour market data (administrative data or National accounts). The wage thresholds can be calculated based on the actual average salary — dividing a Member State's wages and salaries³⁹⁰ by the number of employees.³⁹¹ These thresholds are not used in calculation of impacts. However, they do place a lower bound on the salaries calculated before and can serve as a reality check. Thresholds which are underlined are at a level which risks excluding a (significant) part of their target population (see salary levels in Table 10).

³⁹⁰ *Wages and salaries — current prices* [nama_10_gdp]. Eurostat. Data from Croatia is missing.

³⁹¹ *Employees domestic concept* [naida_10_pe]. Eurostat.

- The salary threshold of POP2a and POP1 for HSW are set at 1.0 – 1.4 times the average salary in the Member State concerned. The salary threshold for shortage occupations is set at 80 percent of the same range (i.e. 0.8 to 1.2 times the average).
- The salary threshold of POP2b is set at 1.5 to 1.7 times the average salary.
- The salary threshold for POP3 should be at least 1.4 times the average salary in the third most prosperous EU Member States implementing the EU Blue Card (8 Member States: LU, BE, SE, FI, AT, NL, FR, DE).

Table 11 — Salary threshold ranges using national accounts (high to low)

	Regular occupations		Shortage occupations and recent graduates		Selective scheme	
	1.0 x mean	1.4 x mean	0.8 x mean	1.2 x mean	1.5 x mean	1.7 x mean
LU	€ 55 426	€ 77 596	€ 44 341	€ 62 077	€ 83 138	€ 94 224
BE	€ 38 809	€ 54 332	€ 31 047	€ 43 466	€ 58 213	€ 65 974
SE	€ 38 373	<u>€ 53 722</u>	€ 30 698	€ 42 978	€ 57 559	€ 65 234
FI	€ 37 453	<u>€ 52 435</u>	€ 29 963	€ 41 948	€ 56 180	€ 63 671
AT	€ 35 322	€ 49 451	€ 28 258	€ 39 561	€ 52 983	€ 60 048
NL	€ 35 070	€ 49 097	€ 28 056	€ 39 278	€ 52 604	€ 59 618
FR	€ 33 455	€ 46 837	€ 26 764	<u>€ 37 469</u>	€ 50 182	€ 56 873
DE	€ 31 615	€ 44 260	€ 25 292	€ 35 408	€ 47 422	€ 53 745
Average top-8		€ 53 466				
IT	€ 25 972	€ 36 360	€ 20 777	€ 29 088	€ 38 958	€ 44 152
ES	€ 25 244	€ 35 341	€ 20 195	<u>€ 28 273</u>	€ 37 866	€ 42 915
CY	€ 21 229	€ 29 721	€ 16 983	€ 23 777	€ 31 844	€ 36 090
SI	€ 21 151	€ 29 612	€ 16 921	€ 23 690	€ 31 727	€ 35 957
MT	€ 19 552	<u>€ 27 373</u>	€ 15 642	<u>€ 21 898</u>	€ 29 328	€ 33 239
EL	€ 16 521	€ 23 130	€ 13 217	€ 18 504	€ 24 782	€ 28 086
PT	€ 15 738	€ 22 033	€ 12 590	€ 17 626	€ 23 606	€ 26 754
EE	€ 12 487	<u>€ 17 482</u>	€ 9 990	<u>€ 13 986</u>	€ 18 731	€ 21 228
SK	€ 11 572	€ 16 201	€ 9 258	<u>€ 12 961</u>	€ 17 358	€ 19 673
CZ	€ 10 892	€ 15 249	€ 8 714	€ 12 199	€ 16 338	€ 18 517
LV	€ 10 808	<u>€ 15 132</u>	€ 8 647	<u>€ 12 105</u>	€ 16 213	€ 18 374
PL	€ 10 422	€ 14 591	€ 8 338	<u>€ 11 673</u>	€ 15 633	€ 17 718
LT	€ 9 845	<u>€ 13 783</u>	<u>€ 7 876</u>	<u>€ 11 026</u>	€ 14 767	€ 16 736
HU	€ 9 142	€ 12 798	€ 7 313	€ 10 239	€ 13 713	€ 15 541
RO	€ 6 431	€ 9 004	€ 5 145	<u>€ 7 203</u>	€ 9 647	€ 10 933
BG	€ 5 973	<u>€ 8 362</u>	€ 4 778	€ 6 689	€ 8 959	€ 10 153

5. DISPLACEMENT EFFECT ON LOCAL WORKERS

Some studies indicate labour migration may lead to displacement of local workers,³⁹² while others find no such effect. Leaving aside the obvious concerns this would raise with policy makers and stakeholders, any displacement would affect the economic benefit as calculated here for the purposes of this impact assessment.

In light of existing research, it seems reasonable to distinguish between displacement effect on (and by) highly-skilled workers on the one hand, and the effect on the medium-skilled job-market. The Blue Card scheme is aimed at highly-qualified (tertiary-educated) and relatively well-paid employees. However, at least one option proposes to apply a salary threshold without additional requirements as regards the person's qualifications.

Studies on displacement which disaggregate according to levels of skill or qualification show impacts vary considerably. At least one study has found the negative impact on natives' employment is limited to workers with O-level (or secondary) qualifications, while finding no effect for graduates.³⁹³ Several studies find a positive effect of highly skilled migration on productivity, investment, innovation³⁹⁴ and, ultimately, growth.³⁹⁵

There are a number of elements specific to the EU Blue Card scheme which would limit any displacement effect. The salary threshold acts as a barrier to labour market entry and as a proxy for skills, and will therefore provide some protection against labour competition, above and beyond schemes which do not have a salary threshold. Where lower-level qualifications are considered in the revised Blue Card proposal, it would be limited to the highest ISCO categories, further limiting the scope for displacement.

The EU Blue Card requires the applicant to have a binding job offer before being granted a permit. In the absence of a displacement effect for highly-qualified jobs, no downward pressure of wages is to be expected.

For the purposes of this impact assessment, it is assumed highly-qualified workers do not displace native workers. The economic impact of admitting medium-skilled workers (one element of POP 1) could not be calculated.

6. INTRA-EU MOBILITY OF BLUE CARD HOLDERS

The impact study includes an estimate of the share of BC holders which will avail themselves of intra-EU mobility rights. The impact of intra-EU mobility is calculated by multiplying the number of Blue Card holders who make use of this facility with the expected rise in pay.

The **upper bound** of the mobility rate, applicable to the most mobile of HSW, is based on the rate which was assumed for intra-corporate transferees.³⁹⁶ The impact assessment for the proposal for a Directive on intra-corporate transferees, a highly-mobile kind of employee,

³⁹² UK Migration Advisory Committee. *Analysis of the Impacts of Migration*. January 2012. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257235/analysis-of-the-impacts.pdf

³⁹³ Christian Dustmann, Francesca Fabbri and Ian Preston. *The impact of immigration on the British labour market*. The Economic Journal, 115 (November), F324–F341. Available at: http://www.ucl.ac.uk/~uctpb21/Cpapers/ecoj_1038.pdf

³⁹⁴ Claudio Fassio, Fabio Montobbio and Alessandra Venturini. *How Do Native and Migrant Workers Contribute to Innovation? A Study on France, Germany and the UK*. IZA Discussion Paper No. 9062, May 2015.

³⁹⁵ European Commission, Employment and Social Developments in Europe 2015.

³⁹⁶ Covered by Directive 2014/66/EU

assumed around 10-25 percent of these ICT permit holders would need mobility.³⁹⁷ Actual mobility by ICT permit holders can be assumed to be a bit lower given the constraints which remain.

The **lower bound** for mobility rates is based on mobility figures of EU citizens. Annual cross-border mobility rates of EU citizens is estimated to be around 0.2 – 0.3 percent, but recently-arrived TCN holding intra-EU mobility rights can be assumed to be more mobile than the general population.

In light of the evidence above, mobility of Blue Card holders is estimated at 2 percent annually, increasing to 4 percent if far-reaching mobility rights are given to a select group of workers (POP 2b and POP 3).

Intra-EU mobility by Blue Card holders for the purposes of taking up employment in a second Member State is expected to be accompanied or driven by an **increase in salary**. For the purposes of this impact assessment, it is assumed that EU Blue Card holders who decide to take up a job in another Member State will benefit from a 15 % pay rise on average. Although this is a technical assumption for the purposes of this impact assessment, it seems unlikely a HSW would wish to relocate for a smaller increase.

Some policy options presume the EU Blue Card scheme will replace national schemes for highly-qualified workers, which do not offer mobility. Under such scenarios, the positive impact from intra-EU mobility derives from all admissions (and not just the additional Blue Cards resulting from the new EU Blue Card scheme).

7. ADMINISTRATIVE COSTS AND GAINS

Administrative costs are explored and detailed in **Annex 15** and are included in the overall calculations of impacts.

In terms of **gains for public authorities**, additional income tax revenue linked to the increase in HSW paying taxes per policy option is included in **table 12**.

8. REMITTANCES

In 2014, the World Bank estimated that the total remittance flow to developing countries to be \$ 436 billion.³⁹⁸ This was three times the official development aid to developing countries.³⁹⁹ However remittances mainly originate from low skilled migration. It has been argued that HSW are more likely to come from wealthier families in the sending countries so the need to

³⁹⁷ European Commission, SEC(2010) 884. Available at: http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2010/sec_2010_0884_en.pdf

³⁹⁸ Vidal, P. (2015). 'The emigration of health-care workers: Malawi's recurring challenges'. Migration Policy Institute. Available at <http://www.migrationpolicy.org/article/emigration-health-care-workers-malawis-recurring-challenges>

³⁹⁹ Vidal, P. (2015). 'The emigration of health-care workers: Malawi's recurring challenges'. Migration Policy Institute. Available at <http://www.migrationpolicy.org/article/emigration-health-care-workers-malawis-recurring-challenges>

remit is lower⁴⁰⁰ and that HSW tend to bring their families with them to the host countries reducing the need to remit.⁴⁰¹

In light of these findings, remittances are estimated at 10 % for highly skilled workers and 20 % for medium-skilled workers.

Remittances constitute a transfer from the host country to the country of origin. They are reduced from the economic impact calculated here.

9. ADDITIONAL REVENUE FOR HIGHER EDUCATION

The impact assessment assumes the revised EU Blue Card may attract **additional foreign students** to the EU, who will generate revenue through tuition fees. The EU is the world's most attractive destination for international students, with around 1 million non-EU students residing here. Therefore, a small positive effect on the EU's attractiveness may result in a significant increase in the number of students.

The lower requirements for young graduates are likely to attract foreign students. The number of additional students is estimated to equal the number of additional EU Blue Cards which will be issued to recent graduates. While these may not necessarily be the same people, the size of both groups can be expected to be correlated.

The increase in student admissions generates revenue for the Member States, both through tuition and through sustenance spending by the student. Tuition fees are estimated at € 8 600 per year,⁴⁰² while living costs are estimated at € 10 400 per year.⁴⁰³

It is assumed that all additional students complete their three years of study. Only direct economic benefits — tuition fees and sustenance spending — are taken into account. Indirect economic benefits such as visitor spending are not considered. Financial assistance received by students is not considered, but use of public services is. Evidence from the UK indicates that public expenditure may be about five times less than the income international students help to generate.⁴⁰⁴ We assume a similar ratio for the EU (i.e. 20% of income generated are spent on the provision of public services).

⁴⁰⁰ Faini, R. (2006). 'Remittances and the Brain Drain'. University of Rome Tor Vergata, LdA, CEPR and IZE Bonn. Available at: <http://ftp.iza.org/dp2155.pdf>

⁴⁰¹ Faini, R. (2006). 'Remittances and the Brain Drain'. University of Rome Tor Vergata, LdA, CEPR and IZE Bonn. Available at: <http://ftp.iza.org/dp2155.pdf>

⁴⁰² EU average - tuition fees is based on data from [mastersportal.eu](http://www.mastersportal.eu) which indicate that average tuition fees for a Bachelors programme in the EU is about € 8,600 for non-EEA students per annum. See <http://www.mastersportal.eu/articles/405/tuition-fees-at-universities-in-europe-overview-and-comparison.html>

⁴⁰³ Data on students' living expenses are based on averages in the four MS where uptake of permits for HSW scheme was highest, i.e. DE, NL and SE. See below. Living costs are estimated to be an average of €865 per month or 10,400 per annum.

- Data from [study-in.de](http://www.study-in.de) suggest that living costs for students in Germany is in line with the EU average which are estimated at about €800 per month or €9,600 per annum; https://www.study-in.de/en/plan-your-stay/money-and-costs/cost-of-living_28220.php
- Data from [studyinholland.nl](http://www.studyinholland.nl) suggest that living costs for students in the Netherlands are an estimated €1,000 per month or €12,000 per annum; <https://www.studyinholland.nl/practical-matters/daily-expenses>
- Data from Lund University suggest that living costs for students in Sweden are an estimated €860 per month or €10,320 per annum <http://www.lunduniversity.lu.se/student-life/preparing-to-come/money-and-living-costs>

⁴⁰⁴ <http://www.consultancy.uk/news/2115/international-students-add-23-billion-to-uk-economy>

10. IMPACT ON INNOVATION AND RESEARCH

Overall, increased numbers of HSW would have a positive impact on the capacity of companies for R&D and would benefit the EU's overall capacity for innovation and research. Especially for companies in highly innovative sectors the capacity for recruiting HSW would increase for much-in-demand STEM (science, technology, engineering and mathematics) fields which would increase their capacity for innovation and entrepreneurship⁴⁰⁵.

Also, research suggests that HSW have a small yet positive net effect on innovation in receiving countries due to increased workforce diversity, especially seen in export intensive sectors⁴⁰⁶. Various studies suggest a positive contribution to technological development measured through patent indicators in host countries⁴⁰⁷, exceptional scientific contributions⁴⁰⁸, and a positive contribution on the innovative performance of European regions⁴⁰⁹. In addition, allowing entrepreneurship on the side of employed activity sends a clear message of favouring entrepreneurial spirit (i.e. allowing entrepreneurial activities in the own time while keeping a day job). Research suggests that the risk and uncertainty associated with entrepreneurial activity deters entry and contributes to high rates of new business failure. Reduce these risks influences entrepreneurial entry and survival; the chances on failure would be 33% lower⁴¹⁰.

11. OVERALL ADMINISTRATIVE COSTS AND GAINS ACROSS POPS

The overall administrative costs and gains across the POPS are summarised in table 12 below.

POP 1

- The impact is calculated for additional permits to highly-qualified workers who do not meet the salary threshold in the baseline scenario
- The benefits from mobility are calculated assuming the lower rate of mobility (2%)
- The number of students attracted by the new scheme is equal to the maximum impact scenario under POP 2A

⁴⁰⁵ Kerr, W. R. (2013). 'U.S. High-Skilled Immigration, Innovation, and Entrepreneurship: Empirical Approaches and Evidence.' National Bureau of Economic Research Working Paper Series No. 19377.

⁴⁰⁶ Nathan, M. (2013). 'The wider economic impacts of high-skilled migrants: A survey of the literature'. National Institute of Economic and Social Research.

⁴⁰⁷ Hunt, J. 2013. Are Immigrants the Best and Brightest U.S. Engineers? *National Bureau of Economic Research Working Paper Series*, No. 18696; Breschi, S., Lissoni, F., Tarasconi, G., 2013, Inventor Data for Research on Migration & Innovation, 'WIPO Experts Meeting on Intellectual Property, the International Mobility of Knowledge Workers and the Brain Drain', World Intellectual Property Organization, Geneva

⁴⁰⁸ Stephan, P.E., Levin, S.G., 2001. Exceptional contributions to US science by the foreign-born and foreign-educated. *Population Research and Policy Review*, 20, 59-79; Hunt, J. 2013. Are Immigrants the Best and Brightest U.S. Engineers? *National Bureau of Economic Research Working Paper Series*, No. 18696.

⁴⁰⁹ Ozgen, C., Nijkamp, P., Poot, J. *Immigration and innovation in European regions*. Discussion paper, Forschungsinstitut zur Zukunft der Arbeit; Niebuhr, A. 2010. Migration and Innovation: Does Cultural Diversity Matter for Regional R&D Activity? *Papers in Regional Science*, 89, 563-85.

⁴¹⁰ Raffiee, J. & Feng, J. (2014). 'Should I quit my day job? A hybrid path to entrepreneurship', *Academy of Management Journal*, 57, p. 936-963.

POP 2A

- The minimal impact is obtained with the salary threshold at 1.4 x average salary for regular highly-skilled workers and 1.2 x average salary for graduates and workers in shortage occupations
- The maximum impact is obtained with the salary threshold at 1.0 x average salary for regular highly-skilled workers and 0.8 x average salary for graduates and workers in shortage occupations
- The benefits from mobility are calculated assuming the lower rate of mobility (2%)

POP 2B:

- The minimal impact is obtained with the salary threshold at 1.7 x average salary for all highly-skilled workers. The salary on which basis the impact is calculated corresponds to 1.8 x the average salary.
- The maximum impact is obtained with the salary threshold at 1.5 x average salary for all highly-skilled workers. The salary on which basis the impact is calculated corresponds to the average salary of a highly-skilled worker, as in other POPs.
- No additional third-country students are attracted as the scheme does not provide any advantages to them
- The benefits from mobility are calculated assuming the higher rate of mobility (4%)

POP 2C:

- The impacts from POP 2A and POP 2B are combined

POP 3

- Salary threshold is set at € 49 700 for all Member States applying the EU Blue Card.
- The benefits from mobility are calculated assuming the higher rate of mobility (4%)

Table 12 — Overall administrative costs and gains across POPs	POP 1	POP 2A		POP 2B		POP 2C		POP 3
		<i>min</i>	<i>Max</i>	<i>min</i>	<i>max</i>	<i>min</i>	<i>max</i>	
Baseline permits	69000	69000				69000		0
for HSW		41400				41400		
for shortage occupations		13800				13800		
for recent graduates		13800				13800		
New permits	142 610	32 484	137 690	- 8 149	17 250	24 334	154 940	61 324
for HSW	142 610	9 278	68 280	- 8 149	17 250	1 129	85 530	61 324
for shortage occupations	<i>n.a.</i>	11 603	34 705	<i>n.a.</i>	<i>n.a.</i>	11 603	34 705	<i>n.a.</i>
for recent graduates	<i>n.a.</i>	11 603	34 705	<i>n.a.</i>	<i>n.a.</i>	11 603	34 705	<i>n.a.</i>
Additional TCN students	34 705	11 603	34 705	0	0	11 603	34 705	0
Wages paid to additional permits	€ 6 868 477 298	€ 1 377 426 238	€ 6 151 956 003	- € 491 376 338	€ 816 547 863	€ 886 049 900	€ 6 968 503 866	€ 3 578 598 683
Impact of add HSW	€ 6 868 477 298	€ 449 918 206	€ 3 335 742 226	- € 491 376 338	€ 816 547 863	- € 41 458 132	€ 4 152 290 089	€ 3 578 598 683
Impact of add shortages	0	€ 524 006 821	€ 1 592 873 503			€ 524 006 821	€ 1 592 873 503	
Impact of add grad students	0	€ 403 501 211	€ 1 223 340 274			€ 403 501 211	€ 1 223 340 274	
Impact of mobility	€ 20 605 432	€ 29 478 427	€ 43 802 016	- € 2 948 258	€ 4 899 287	€ 6 875 115	€ 48 701 303	€ 21 471 592
baseline permits	€ 20 605 432	€ 25 346 148	€ 25 346 148			€ 25 346 148	€ 25 346 148	
regular mobility rights		€ 4 132 279	€ 18 455 868			€ 4 132 279	€ 18 455 868	
enhanced mobility rights				- € 2 948 258	€ 4 899 287	- € 2 948 258	€ 4 899 287	€ 21 471 592
Reduction for remittances	- € 686 847 730	- € 137 742 624	- € 615 195 600	€ 49 137 634	- € 81 654 786	- € 88 604 990	- € 696 850 387	- € 357 859 868

Added higher education revenue	€ 659 398 596	€ 220 453 692	€ 659 398 596	€0	€0	€ 220 453 692	€ 659 398 596	
From tuition fees	€ 298 464 628	€ 99 784 302	€ 298 464 628			€ 99 784 302	€ 298 464 628	0
From sustenance	€ 360 933 968	€ 120 669 389	€ 360 933 968	€	€	€ 120 669 389	€ 360 933 968	0
Administrative impact on Member States	- € 28 703 995	- € 6 534 881	- € 27 864 864	€ 1 674 373	- € 3 367 907	- € 4 860 509	- € 31 232 771	€2,843,324
TOTAL	€ 6 832 929 601	€ 1 483 080 851	€ 6 212 096 151	-€ 443 512 590	€ 736 424 456	€ 1 039 568 262	€ 6 948 520 608	€ 3 245 053 730
Of which income tax revenue	€ 1 575 134 126	€ 310 338 210	€ 1 404 058 750	-€ 110 720 251	€ 184 509 792	€ 199 617 958	€ 1 588 568 541	€ 839 074 775

ANNEX 15

ADMINISTRATIVE BURDEN

DISCLAIMER ON THE NUMBERS OF BLUE CARDS USED IN THE KEY ASSUMPTIONS

The numbers of Blue Cards used in the key assumptions in the analysis of costs (in section 2) are not target numbers for Blue Cards to be issued but technical assumptions, based on a number of elements such as variations in admission conditions, to be able to generate scenarios to quantify the potential economic impacts and the variations of magnitude according to the various Policy Options Packages (POP).

The calculations in Section 2 of this annex are broadly based on the methodology used by an external contractor in the impact assessment study commissioned by DG Home Affairs.

1. ADMINISTRATIVE BURDEN ON APPLICANTS

Administrative costs to applicants, third-country nationals and/or employers, would be broadly in line with existing practices for issuing permits for work. The main benefits stemming from several of the options are due to:

- 1) reduced processing times in general and even more for options that foresee a "trusted employers scheme" and, to a certain extent, reduced fees;
- 2) easier and quicker procedures when moving to a second Member State— or no procedure at all if there is no second Blue Card needed as in POP3— as well as limited to no possibility to carry out a labour market test;
- 3) practical simplifications in the procedure for recognition of qualifications and skills.

Such benefits entail first of all **time savings** for applicants and employers, but also **reduced administrative formalities**. It was not possible to provide a monetary estimation of such benefits due to a lack of comprehensive data, but a qualitative assessment is provided below based on stakeholders' input.

1.1. Reduced processing times and fees, and easier procedures

The time required to submit and have applications processed is one of the critical issues for employers, as raised by several business' stakeholders. According to a survey by the Council for Global Immigration, 86 % of employers report that ability to obtain permits in a timely, predictable, and flexible manner is critical to their business objectives.⁴¹¹ In another survey conducted by PwC, 63% of the responding CEO's were concerned about prompt skills availability.⁴¹² **Long processing times** run counter to these employers' requirements and constitute a **clearly identifiable burden hampering international recruitment**. This is also confirmed in the public consultation launched by the Commission on labour migration and the

⁴¹¹ CGI, *2014 Employer Immigration Metrics Survey* (EIM).

⁴¹² PwC, *Skills gap is hampering business's recruitment efforts*, 20th May 2014.

Blue Card (*see annex 2*) where 25 % of the employers who had never before employed a TCN explained that this was due to the high administrative burden involved.

The current Blue Card Directive imposes a maximum processing time of 90 days, with an obligation to decide as soon as possible. The same procedural deadline applies to intra-EU mobility of EU Blue Card holders. This deadline is often shorter under national schemes. POP2 (all sub-options) and POP3 would propose reducing processing times compared to the baseline by setting the target deadline regarding all applicants to 30 days, and the maximum processing time would be shortened to 60 days. Moreover, under those POPs Member States could introduce a system of recognised employers who would be guaranteed quicker processing, and the same goes for applications for an EU Blue Card in a second Member State (intra-EU mobility). POP3, which entails an EU-wide permit recognised by all Member States, would bring further time savings and no additional administrative formality in that no application would be necessary in any second Member State in case of intra-EU mobility.

Moreover, in POP2 (all sub-options) and POP3, Member States would no longer be allowed to impose a **labour market test** on EU Blue Card applicants as a general measure: in POP 2(b) and POP3 they cannot be imposed even in exceptional circumstances (contrary to POP2(a) and(c)). In addition, in those options facilitating intra-EU mobility (POP 2(all sub-options) and POP 3), the labour market test would not be applied in the second Member State in any situation. Even if the timing and modalities for carrying out the labour market test are not harmonised and vary across Member States, this would greatly contribute to reducing processing times, especially given that the labour market test is often carried out by a different authority than the one issuing the permit.

Legal fees paid by employers or individuals to obtain legal assistance when applying for an EU Blue Card, are an equally significant burden, particularly for SMEs. The public consultation showed that 23 % of the responding employers used third party help with the immigration procedures (e.g. a lawyer or specialised firm) when recruiting from abroad. The majority of the respondents who relied on professional help reportedly did so because the application procedures are too complex and the consequences in the case of non-compliance with the requirements (even when involuntary) are severe. In addition, using a third party saves time. For instance, one major company explained that they used a global service provider because legal requirements are complicated and in-house legal professionals often do not have enough expertise. TCN workers residing in the EU also reported to be relying on third-part help (24 % of respondents). According to the KPMG's Global assignment Policies and Practices (GaPP) Survey, 44 % of the employers highlight that there has been an increase in the overall number of international assignments for the last two years and expect long-term overseas assignments to increase.⁴¹³

Application fees (i.e. the fees paid directly to Member States authorities for the issuance of a residence permit) charged by Member States vary considerably according to data collected by

⁴¹³ KPMG, *Global Assignment Policies and Practices*, Survey 2015

the European Migration Network as well as the impact assessment study by ICF consulting.⁴¹⁴ The Blue Card Directive does not harmonise the level of application fees, nor is this proposed in any of the policy options. However, under POP3 a single, EU-wide Blue Card would preclude having to apply for a new EU Blue Card in case of intra-EU mobility. Under this policy option, mobility is assumed to be high (4 % of EU Blue Card holders per year) given the favourable regime that would apply. As shown in Annex 14, this would amount to more than 2 500 EU Blue Card holders yearly who would not be subject to a second application fee.

Application fees are also relevant in terms of gains for public administration (see section 2 below).

1.2. Facilitation of the recognition of qualifications

The EU Blue Cards targets highly skilled third-country nationals, which imply that applicants will have to demonstrate they possess the required qualifications. The maximum time for examining the application for an EU Blue Card (currently 90 days) does not include the time needed for the possible recognition of professional qualifications.

The length of the procedure for getting foreign qualifications recognised — which remains a national competence — varies considerably between Member States and between individual cases. For instance in Germany, if an applicant requests the recognition of a degree which has been previously recognised and exists in the database (*Anabin*), the procedure takes mere minutes. However, if the degree is previously unknown to the German authorities, the procedure takes from 4 to 12 weeks. The latter timeline is similar to several other EU Member States' practices, where processing times for recognition range between 1 and 4 months.⁴¹⁵

The recognition of foreign qualifications in the destination country is often cited by applicants and employers as a major source of administrative burden. In the public consultation, employers considered that the **recognition of foreign qualifications remains a lengthy procedure**. Of all respondents who stated that they had to have their qualifications recognised, more than half said it took more than 3 months.⁴¹⁶

While none of the different policy options harmonises the recognition procedure — as this would go beyond the EU competence — in several of them Member States are encouraged to facilitate this recognition procedure at least for unregulated professions⁴¹⁷.

For example, the fact of considering the recognition of professional experience as equivalent to formal qualifications (as in POPs 2(a) and 2(c)) is an important element of simplification.

⁴¹⁴ See EMN Inform, *Applicable fees for issuance of residence permits to third-country nationals*. European Migration Network, 2014. Available at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-informs/emn_inform_applicable_fees_in_member_states_october2014_en.pdf

⁴¹⁵ EMN Ad Hoc Query 465/2013. In total, 22 Member States responded to the query, however not all specified the timeframe for the procedure of the recognition of foreign qualifications specifically.

⁴¹⁶ See Annex 2

⁴¹⁷ For regulated professions (e.g. lawyers, doctors) this is not feasible since, given that this usually involves professional bodies that have to check that the person fulfils the conditions for exercising that profession in the Member State.

POP1 goes even further: in case the applicant fulfils the relevant salary threshold, there is no longer the need to present formal qualifications.

Moreover, in case of recognised employers (POP2 (all sub-options) and POP3) this aspect is even further simplified, i.e. Member States cannot ask the applicant to present qualifications in case of unregulated professions if the employer is recognised, leading to considerable time savings for the applicant.

In case of intra-EU mobility, for *unregulated professions*, in POP2 (all sub-options) it is proposed that an EU Blue Card holder will not need to re-submit his or her qualifications when applying for a new EU Blue Card in a second Member State. The EU Blue Card issued by the first Member State and the period of work already carried out there would provide sufficient guarantees that the TCN is highly skilled. In light of the lengthy procedures cited above, this facilitation would result in considerable time savings for the applicant and the employer. Under POP3, no new Blue Card would have to be applied for in the second Member State so the savings would be even higher.

2. ADMINISTRATIVE BURDEN ON MEMBER STATES' ADMINISTRATION

Administrative costs to Member States in all legislative options consist of the transposition and implementation of the revised Directive, as well as variable costs related to the issuance of the EU Blue Cards (see 2.1).

Member States already have implemented the EU Blue Card Directive in its current form and organisational or administrative changes would therefore be minimal. The EU Blue Card would be built on existing provisions for residence permits (Council Regulation 1030/2002) and mirror the provisions of the Single Permit Directive (Directive 2011/98/EU), further limiting the costs of introducing the new EU Blue Card.

The implementation of the revised Directive may entail costs of providing information, such as on a government website. This is not estimated for the purposes of this impact assessment. The revised Directive may also require closer cooperation between Member States to facilitate the implementation of the intra-EU mobility provisions and to fight abuses. Where intra-EU mobility rights of Blue Card holders are based on nationally-issued Blue Cards, rather than a mutual recognition of permits, this cost is not estimated and is likely to be small. Where a mutual recognition is envisaged (POP3), efforts would be comparable to those needed for the implementation of the Directive on intra-corporate transferees.⁴¹⁸

Cost savings compared to the status quo would be due to both the simplification linked to further harmonisation and reduced fragmentation — particularly in POP1, POP2(a) and POP3 — to the additional income provided by the taxes paid by additional HSW (the fiscal impact

⁴¹⁸ See financial and administrative costs of policy option 3, as outlined in paragraph 5.2 of the *Impact Assessment accompanying the proposal for the ICT Directive the framework of an intra-corporate transfer*. European Commission, SEC(2010) 884, 13 July 2010. http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2010/sec_2010_0884_en.pdf

for this category being generally positive)⁴¹⁹ and to the fees paid by applicants that would partly compensate the additional administrative burden due to an increased number of applications and permits issued in several options. While it was not possible to quantify the savings related to simplification, an estimate is made as regards gains deriving from fees paid by the applicants and from additional income deriving from taxes paid by HSW. Calculation of administrative costs to Member States⁴²⁰.

The cost for processing an individual application and issuing an EU Blue Card was calculated on the duration (in minutes) of related activities and the labour cost per minute in each Member State's administration.

The duration of processing an individual application is expected to vary depending on the number of applications a Member State receives each year. If the Member State receives less than 100 applications every year (i.e. less than two per week), processing times are assumed to be significantly longer due to a lack of economies of scale (e.g. learning effects, routine, automation).

The following assumptions were made:

Volume:

- The number of Blue Cards per POP is taken from the calculations in Annex 14
- Rejection rates for highly skilled applicants tend to be lower than for other categories of labour migrants; for every 100 successful applicants, there are assumed to be 5 non-successful ones.⁴²¹ It is assumed rejected applicants do not resubmit an application for the Blue Card in the same year nor appeal the decision via the courts.

Time:

- The average time to receive and acknowledge receipt of an application is estimated at *15 minutes*. This time is applicable to all applications, successful or unsuccessful.
- For different POPs, the average time to examine and decide on an application has been assumed to be *6 hours* for Member States processing less than 100 applications and *2 hours* for Member States processing more than 100 applications. This time is applicable to all applications, successful or unsuccessful. Actual processing times may vary significantly from case to case and between Member States. They will be influenced by the complexity of the file and/or the nature of the checks to be carried out in each Member State.

⁴¹⁹ OECD (2013), “The fiscal impact of immigration in OECD countries”, in *International Migration Outlook 2013*, OECD Publishing. http://dx.doi.org/10.1787/migr_outlook-2013-6-en, p. 128

⁴²⁰ The external contractor in the impact assessment study commissioned by DG Home Affairs in preparation of this impact assessment developed a cost model for estimating the cost implications of amending the EU Blue Card Directive.

⁴²¹ This success rate is derived from data on labour migration to Germany, as reported in OECD (2013), *Recruiting Immigrant Workers: Germany*, OECD Publishing. <http://dx.doi.org/10.1787/9789264189034-en>, p. 93.

- Average time to produce the Blue Card and notify the applicants of the decision is estimated at *1 hour*. This time is applicable to all applications, successful or unsuccessful.

Unit cost:

- The per-minute costs of processing Blue Card applications are estimated to be commensurate to the Hourly Labour cost, wages and salaries in 2012 - NACE Rev. 2 [lc_ncostot_r2] for Public administration and defence for each Member States. This cost is relevant for all applications, including those which are unsuccessful.
- The costs of producing and sending the Blue Card and are estimated at €35 per EU Blue Card. This cost is relevant for successful applicants only.

By multiplying the unit cost with the time spent at each stage of the application, it is possible to calculate a cost per card issued. The cost of 5% non-successful applications is also included in this.

Table 12 — Unit labour cost and administrative cost per EU Blue Card issued, estimated for the purposes of this impact assessment (Source: ICF impact assessment study)

	Unit labour cost	Cost per card issued	
	<i>Per minute</i>	<i>If > 100 applications per year</i>	<i>If =< 100 applications per year</i>
AT	€0.50	€212	€407
BE	€0.50	€212	€407
BG	€0.07	€75	€102
CY	€0.31	€150	€268
CZ	€0.18	€109	€178
DE	€0.55	€226	€438
EE	€0.16	€105	€168
EL	€0.20	€118	€197
ES	€0.37	€171	€315
FI	€0.59	€238	€466
FR	€0.50	€211	€405
HR	€0.18	€97	€150
HU	€0.14	€97	€150
IT	€0.50	€210	€402
LT	€0.12	€93	€141
LU	€0.50	€212	€407
LV	€0.12	€92	€139
MT	€0.44	€191	€360
NL	€0.69	€271	€538
PL	€0.16	€103	€163
PT	€0.23	€126	€214
RO	€0.07	€77	€105
SE	€0.50	€212	€407
SI	€0.31	€150	€269
SK	€0.14	€99	€154

The total administrative cost of the different policy options depends on the number of *additional* EU Blue Cards assumed to be issued under each scenario (taken from Annex 14). The cost also depends on whether national schemes are maintained in parallel (as is the case in POP 2b); this would reduce the economies of scale which can be achieved when issuing permits of one kind, i.e. EU Blue Cards. Where no national schemes are foreseen, the total number of EU Blue Cards is taken into account to determine whether economies of scale are present or not, while the additional administrative burden is obtained by considering only to the number of additional EU Blue Cards.

Below is an overview of the number of additional cards assumed to be issued under each of the policy options. Scenario's leading to 100 cards or fewer being issued per year are underlined.

Table 13 — Additional number of EU Blue Cards estimated, for the purposes of this impact assessment, to be issued under the different POPs

	POP1	POP 2a		POP 2b		POP2c		POP3
		<i>low</i>	<i>high</i>	<i>low</i>	<i>high</i>	<i>low</i>	<i>high</i>	
AT	2389	887	2859	-140	452	747	3311	-193
BE	7129	1180	6296	-317	534	863	6830	317
BG	1646	371	1576	-88	185	282	1761	<u>-923</u>
CY	592	133	487	-9	114	123	602	-361
CZ	1905	468	1923	-117	277	351	2200	<u>-1342</u>
DE	22339	5705	23943	-2109	3573	3596	27516	-879
EE	362	58	276	-34	48	25	324	<u>-236</u>
EL	2909	673	2885	-66	225	607	3110	-974
ES	8468	2676	9145	-1122	1683	1554	10828	-6277
FI	3310	699	3185	-238	381	461	3565	281
FR	22971	5560	24992	-956	2703	4604	27696	-5194
HR	696	266	680	-119	134	147	814	<u>-664</u>
HU	1414	312	1260	-61	266	251	1526	<u>-1328</u>
IT	10450	2297	11114	11	1317	2308	12430	-3198
LT	903	166	638	-46	107	120	746	<u>-537</u>
LU	273	66	195	-32	41	33	236	91
LV	761	163	607	-21	113	142	720	<u>-554</u>
MT	113	<u>22</u>	102	<u>-2</u>	<u>11</u>	20	113	<u>-45</u>
NL	21114	4982	19117	-1423	1845	3559	20962	5545
PL	8552	1554	6673	-275	1138	1279	7811	-5577
PT	1396	389	1186	18	327	407	1513	-1496
RO	2562	723	2309	-122	385	600	2695	-1926
SE	18783	2753	14523	-722	1205	2032	15728	1401
SI	439	117	349	-20	62	97	411	<u>-250</u>
SK	1133	264	1370	-138	122	126	1492	<u>-608</u>
	142 610	32 484	137 690	-8 149	17 250	24 334	154 940	-24 926

The additional administrative cost per Member State of the policy options is given in the table below. The main factor is the volume of cards issued under each scenario. Application fees levied by Member States will reduce or fully offset the total burden on Member States' finances.

Table 14 — Administrative cost for issuing EU Blue Cards under various POPs

	POP1	POP 2a		POP 2b		POP2c		POP3
		low	high	low	high	low	high	
AT	€ 505 960	€ 187 820	€ 605 433	-€29 592	€ 95 722	€ 158 228	€ 701 155	-€40 765
BE	€ 1 509 680	€ 249 908	€ 1 333 251	-€67 212	€ 113 039	€ 182 696	€ 1 446 290	€ 67 212
BG	€ 123 605	€ 27 840	€ 118 322	-€6 631	€ 13 920	€ 21 209	€ 132 242	-€69 327
CY	€ 88 642	€ 19 848	€ 72 902	-€1 418	€ 17 121	€ 18 430	€ 90 023	-€53 981
CZ	€ 207 898	€ 51 114	€ 209 885	-€12 825	€ 30 238	€ 38 289	€ 240 122	-€146 507
DE	€ 5 050 962	€ 1 289 827	€ 5 413 564	-€476 733	€ 807 797	€ 813 094	€ 6 221 361	-€198 639
EE	€ 38 015	€ 6 111	€ 28 971	-€3 533	€ 5 061	€ 2 578	€ 34 032	-€24 731
EL	€ 342 547	€ 79 207	€ 339 755	-€7 742	€ 26 502	€ 71 465	€ 366 257	-€114 641
ES	€ 1 444 122	€ 456 387	€ 1 559 551	-€191 300	€ 286 950	€ 265 087	€ 1 846 501	-€1070 369
FI	€ 788 611	€ 166 511	€ 758 679	-€56 652	€ 90 720	€ 109 859	€ 849 399	€ 66 987
FR	€ 4 851 173	€ 1 174 283	€ 5 278 042	-€201 947	€ 570 936	€ 972 336	€ 5 848 978	-€1096 995
HR	€ 67 221	€ 25 685	€ 65 697	-€11 521	€ 12 957	€ 14 164	€ 78 653	-€64 130
HU	€ 136 641	€ 30 155	€ 121 740	-€5 939	€ 25 734	€ 24 216	€ 147 474	-€128 339
IT	€ 2 193 198	€ 482 167	€ 2 332 526	€ 2 237	€ 276 323	€ 484 405	€ 2 608 849	-€671 230
LT	€ 83 583	€ 15 378	€ 59 078	-€4 258	€ 9 936	€ 11 119	€ 69 015	-€49 682
LU	€ 57 899	€ 13 934	€ 41 268	-€6 867	€ 8 628	€ 7 067	€ 49 896	€ 19 174
LV	€ 69 848	€ 14 950	€ 55 660	-€1 886	€ 10 405	€ 13 065	€ 66 065	-€50 845
MT	€ 21 554	€ 4 239	€ 19 451	-€ 363	€ 2 140	€ 3 876	€ 21 591	-€8 639
NL	€ 5 717 262	€ 1 349 056	€ 5 176 609	-€385 444	€ 499 733	€ 963 611	€ 5 676 342	€ 1 501 441
PL	€ 878 875	€ 159 708	€ 685 825	-€28 274	€ 116 915	€ 131 434	€ 802 740	-€573 113
PT	€ 175 507	€ 48 897	€ 149 075	€ 2 295	€ 41 130	€ 51 192	€ 190 205	-€187 999
RO	€ 196 007	€ 55 276	€ 176 682	-€9 352	€ 29 475	€ 45 924	€ 206 157	-€147 374
SE	€ 3 977 608	€ 583 047	€ 3 075 463	-€152 809	€ 255 176	€ 430 238	€ 3 330 639	€ 296 716
SI	€ 65 968	€ 17 516	€ 52 441	-€3 005	€ 9 313	€ 14 511	€ 61 754	-€37 632
SK	€ 111 607	€ 26 017	€ 134 995	-€13 602	€ 12 037	€ 12 415	€ 147 032	-€59 914
	€ 28 703 995	€ 6 534 881	€ 27 864 864	-€1 674 373	€ 3 367 907	€ 4 860 509	€ 31 232 771	-€2 843 324

2.1 Cost savings

2.1.1 Fees perceived by public administration

While the number of cards issued drives the administrative cost for Member States, it also drives the revenue generated from application fees. There is a large variety in application fees

currently charged by Member States⁴²² which cannot be explained by differences in cost structure (e.g. salaries of officials) alone. Permits for workers can be subject to relatively high fees, since the administration may decide that the economic actors recruiting from abroad should (fully) bear the costs linked to the process. Some Member States offer expedited procedures, at an additional cost. This approach reflects the concerns of employers, confirmed in the public consultation, that fast and simple procedures are important, while fees considered less relevant in light of other expenses linked to international recruitment and the salaries to be paid to the highly-qualified worker.

The table below gives a partial overview of the standard fees currently in place in selected Member States, collected through the European Migration Network. These generally concern first applications (not extensions) and do not visa fees.

Table 15 — Reported application fees for a permit for highly-qualified work (EU Blue card or equivalent national permit, source: European Migration Network)

AT	100 EUR
BE	215 EUR
CY	200 EUR
CZ	92.50 EUR
DE	100 – 110 EUR
EE	96 – 100 EUR
EL	150 EUR
ES	85.85 EUR
FI	450 – 500 EUR
FR	260 EUR
HR	ca. 137 EUR
IT	273.50 EUR
LT	142 EUR
LU	80 EUR
LV	99.60 EUR
NL	870 EUR
PL	113 EUR
SE	214 EUR
SK	0 EUR

2.1.2. Revenue from income tax

Member States will also generate revenue from income tax on the highly-qualified workers. Since the revised Blue Card would remain a demand-driven system, requiring the TCN to be employed, this tax revenue is significant. The following table shows the estimated income tax rates which would apply to the salary of an average highly-qualified worker. This revenue is

included in the overview of impacts in Annex 14. In order to gauge the impact on national administrations, it includes only income taxes and not social contributions, which is an additional source of revenue. This income tax rate can be applied to the relevant salaries included in Annex 14 to calculate the total income tax revenue under each of the POPs (see section 7 of Annex 14).

Table 16 — estimated income tax rates at average salary of a highly-qualified worker (source: calculations based on OECD Tax-Benefit Calculator, available at <http://www.oecd.org/els/soc/benefitsandwagestax-benefitcalculator.htm>)

AT	22%
BE	34%
BG	9%
CY	n/a
CZ	16%
DE	24%
EE	n/a
EL	18%
ES	20%
FI	28%
FR	18%
HR	15%
HU	17%
IT	29%
LT	15%
LU	25%
LV	20%
MT	15%
NL	22%
PL	8%
PT	26%
RO	13%
SE	24%
SI	18%
SK	12%
EU-25 average	18%

ANNEX 16

HIGHLY SKILLED WORKERS AND INTERNATIONAL PROTECTION

1. CONTEXT

The lives of many resourceful, highly-skilled and entrepreneurial people are uprooted due to conflict and other hardship. For reasons out of their control they may look at years of great adversity and professional inactivity before acquiring some degree of certainty again.

To date international protection and other, especially economically driven channels of migration have been kept rather separate. This is also the approach taken by the EU in all labour migration directives in not allowing asylum seekers or beneficiaries of international protection to apply for residence permits under these instruments⁴²³. However, even for those persons who do or might qualify for international protection, choosing a labour migration route or opting to get a labour migrant status in addition to the protection status can be a relevant option, enabling them to avoid some negative aspects associated with the asylum route/status, such as the hazardous initial journey, long processing times as well as the sometimes perceived stigmatisation effect.

The Blue Card is a specific and relatively selective scheme for the admission of highly skilled workers and as such, it does not serve as a large-scale alternative to asylum seeking. The review of the Blue Card Directive should therefore not be seen as a measure to address the refugee crisis. However, particularly as the EU is faced with unprecedented numbers of asylum seekers⁴²⁴, it is a legitimate question to ask whether the highly skilled persons amongst the third-country nationals seeking or enjoying international protection should not have the possibility to apply for a Blue Card and benefit from the rights and advantages linked to that status (for example, facilitated intra-EU mobility). This is especially relevant as almost 75 % of the asylum seekers who arrived in the EU during 2015 were of working age (between 18 and 64 years old)⁴²⁵. In terms of family reunification, there is already a very favourable scheme in place for refugees' family members in certain situations⁴²⁶, but for those who do not qualify for that, the facilitations under the Blue Card Directive (e.g. no waiting period, shorter maximum processing time) might be welcome.

The table below shows the different categories of third-country nationals concerned, and the rights they enjoy under the asylum acquis⁴²⁷, compared to those associated with the status of a Blue Card holder. Beneficiaries of international protection have no intra-EU mobility rights (apart from regular mobility under the Schengen acquis) before they acquire the EU long-term

⁴²³ Apart from the Blue Card Directive 2009/50/EC, asylum seekers and beneficiaries of international protection in the EU are also excluded from the scope of Directives 2011/98/EU (Single Permit), 2014/36/EU (Seasonal Workers), and 2014/66/EU (Intra-Corporate Transferees). For the last two the exclusion is not explicit, but only persons residing outside the EU can apply for admission under those Directives.

⁴²⁴ According to Eurostat data [migr_asyapp], during 2015, 1 255 640 persons sought asylum in the EU for the first time – more than twice as much as during 2014 (562 680).

⁴²⁵ Eurostat [migr_asyappctzm]

⁴²⁶ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Chapter V; OJ L 251, 3.10.2003, p. 12–18

⁴²⁷ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, 20.12.2011, p. 9–26; Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96–116

resident status, for which they can apply after five years of residence in the Member State concerned.

RIGHTS OF DIFFERENT CATEGORIES OF THIRD-COUNTRY NATIONALS LINKED TO INTERNATIONAL PROTECTION AND POSSIBLE ADDED VALUE OF THE BLUE CARD				
	Residence rights	Access to the labour market	Intra-EU mobility rights	Benefits from obtaining an EU Blue Card** (accessible to highly skilled worker)
Asylum seekers	Right to stay while their application is being processed	Access at the latest after 9 months from lodging the application, if no first instance decision has been taken*	No rights	<ul style="list-style-type: none"> • Right of residence (possibly parallel to future protection status) • Access to highly skilled employment • Mobility rights after 18 months • Favourable family reunification scheme
Rejected asylum seekers	No right to reside	No access	No rights	Same as for asylum seekers
Beneficiaries of international protection	Temporary or permanent residence permit, high level of protection against expulsion, access to long-term resident status after 5 years of residence	Immediate access to the labour market	Mobility rights only after obtaining the long-term resident status	<ul style="list-style-type: none"> • Right of residence parallel to the protection status • Mobility rights after 18 months • Favourable family reunification scheme for those who do not profit from the most advantageous refugee regime
Potential beneficiaries of international protection residing outside the EU	No residence right yet in the EU, possibility to apply for any residence permit for which they qualify	No access	No rights	Same as for asylum seekers
<p>* The period of 9 months is the maximum allowed by Directive 2013/33/EU. In practice, the 25 Member States applying the Blue Card Directive (excluding DK, IE, UK) currently have various periods in place:</p> <ul style="list-style-type: none"> • three Member States give immediate labour market access • five Member States apply a period between 2 and 4 months • seven Member States apply a period of 6 months • nine Member States apply the maximum period of 9 months • one Member State gives no labour market access to asylum seekers <p>As further conditions for access Member States may e.g. require obtaining a work permit, apply a labour market test, or limit accessible professions.</p> <p>** Reference is made to the current Blue Card scheme; changes are envisaged to grant e.g. more extensive mobility rights to EU Blue Card holders.</p>				

2. SKILL LEVELS OF ASYLUM SEEKERS AND BENEFICIARIES OF INTERNATIONAL PROTECTION IN THE EU

Persons having arrived in the EU to seek protection have a variety of educational and professional backgrounds. Information on education level and actual skill sets of asylum seekers and beneficiaries of international protection is heterogeneous and different studies provide contradicting results. Anecdotal evidence suggests that the majority of these people - whose reason for migration is primarily not work but escaping war and persecution - are not highly educated, their skill set is comparatively low⁴²⁸, and they usually do not speak the language of the host country. However, other anecdotal information suggests that there are differences across countries of origin. Syrians in particular seem to have a higher level of education, but even in those cases there are contradicting accounts. In any case Syrian nationals, who filed the highest number of asylum claims in the EU in 2014, were in sixth place among accepted Blue Card applicants during the same year with 554 issued permits⁴²⁹.

As there is no extensive data on the professions and skill sets of asylum seekers or beneficiaries of international protection in the EU, it is not possible to reliably predict how many such persons would be interested in applying for a Blue Card or end up qualifying for it. However, in the following there are some examples of information gathered on the issue of education and skill levels:

In Sweden, statistics from 2014 show that over 40 % of Syrians have at least upper secondary education, compared to 20 % of Afghans, 10 % of Eritreans and 68 % of Swedes⁴³⁰. Surveys of refugees arriving in the Netherlands show that, in the first half of 2015, over 1/3 of registered refugees aged between 18 and 65 had university-level education, and up to 70 % had concluded secondary schooling, especially those fleeing the conflict in Syria. A significant proportion has skills and experience in various professions and trades.⁴³¹ According to a UNHCR survey with 1 139 respondents, 43% of Syrians arriving in Greece had secondary education and 43 % had university level education. In terms of occupations, 16 % were students, 9 % merchants or working in trade, 8 % worked in the private sector, 7 % represented technical professions (carpenters, electricians etc.), 5 % were engineers and architects, 5 % were teachers, and 4 % were pharmacists, doctors, veterinarians, biologists or chemists. A total of 78 % were under the age of 35, and 21 % were aged between 36 and 59.⁴³² Eurostat data shows that newcomers are typically younger than the populations of the countries they are fleeing to: of the 729 000 asylum seekers registered between May and October 2015 in the EU, 82% were younger than 34 years of age. Their median age is around half of that of Germany, the latter being 46 years.⁴³³

In a German survey, 81 % of unemployed refugees had no professional qualifications or even high school diploma. Illiteracy and non-literacy in the Latin alphabet were identified as major problems.⁴³⁴ In another survey, 63 % of German employers saw little chance of hiring refugees as trainees, 78 % for skilled positions and 97 % for management roles. Employers

⁴²⁸ Institut für Arbeitsmarkt- und Berufsforschung (IAB), 'Asyl- und Flüchtlingsmigration in die EU und nach Deutschland.' Aktuelle Berichte 8/2015; IAB, 'Flüchtlinge und andere Migranten am deutschen Arbeitsmarkt: Der Stand im September 2015.' Aktuelle Berichte, 14/2015

⁴²⁹ Eurostat [migr_resbc1]

⁴³⁰ Statistics Sweden

⁴³¹ Dutch Central Agency Asylum Seekers Reception (COA) in 'Getting the new arrivals to work', Economist, 12/12/2015

⁴³² UNHCR, *Syrian Refugee Arrivals in Greece*, April - September 2015

⁴³³ Eurostat data

⁴³⁴ Survey of the German Federal Labour Agency, October 2015 in 'Frustrations mount for refugees navigating Germany's jobs market', Financial Times, 3/1/2016

mentioned barriers such as lacking knowledge of German, low qualifications, strict employment rules, and the German minimum wage. Yet, those who are educated are more likely to have a degree than the domestic population (37 % versus 21 %).⁴³⁵

3. IMPLICATIONS OF A POSSIBLE EXTENSION OF THE BLUE CARD TO THIRD COUNTRY NATIONALS SEEKING OR ENJOYING INTERNATIONAL PROTECTION

This Section presents the different groups of third-country nationals who have either applied for or been granted international protection in the territory of a Member State and who are currently excluded from the scope of the Blue Card. The inclusion of asylum seekers and beneficiaries of international protection is covered in the Impact Assessment report under policy option PO-C. However, rejected asylum seekers have not been included in that policy option as it seems sufficient to address the applicants still in process; with the latter also the risk of creating a pull factor for irregular migration is likely to be smaller.

3.1 Asylum seekers in the territory of the EU

As a result of the substantial influx of asylum seekers into the EU, the question of labour market integration of these migrants has become ever more topical. Some of the newcomers may have specific skills immediately relevant for the labour market of the host country, but this resource may be lost if the skills are not used from the outset. According to the recently recast Directive 2013/33/EU, Member States are obliged to grant asylum seekers access to the labour market at the latest within nine months from lodging the application. Asylum seekers may provide for valuable workforce and their integration is likely to get a swift start through entering the labour market quickly. The sooner the skills are identified, the sooner they can be put to full use. Obviously, not all asylum seekers will get recognised as refugees or other beneficiaries of international protection, and those rejected might be eventually returned.

While the question of labour market access for asylum seekers is regulated by the asylum acquis (see details in the table above), the current Blue Card Directive explicitly excludes asylum applicants from its scope (points (a) to (c) of first subparagraph of Article 3(2)). This means that even if they have access to the labour market of the Member State concerned, they cannot apply for a Blue Card while awaiting a decision on their application.

If submitting an application for a Blue Card was to be allowed during the asylum procedure, an important issue to be addressed would be how to deal with the pending asylum request. The main options would be to:

- a) *Examine both applications in parallel and grant both permits to eligible applicants*
This would be the most flexible option for applicants as no choice would have to be made between the two tracks. The two applications would be processed in parallel and if both applications were successful, two distinct permits would be granted.
- b) *Suspend the examination of the asylum claim and resume it in case the Blue Card application is rejected or the initially granted Blue Card is subsequently withdrawn or not renewed*
In this option no double processing or double status would be envisaged, but instead, the Blue Card application would take priority over the asylum claim at the first stage. Member States should find a practical solution for suspending the asylum application and

⁴³⁵ Survey of Ifo institute in 'German companies gloomy on employing refugees, survey says', Financial Times, 26/11/2015

reactivating it in case the Blue Card application either is not successful or the permit is subsequently withdrawn or not renewed. It would be particularly important to guarantee that the asylum claim is properly examined before any expulsion measure is taken.

c) Suspend the examination of the Blue Card application and pursue it only in case the asylum request is rejected

Under this option the application for a Blue Card would have to be submitted while the asylum request is still pending, but the application would only become effective in case the asylum claim was rejected. This option would enable access to international protection for those who qualify, however without providing for a double status. The Blue Card would become accessible only after being rejected in the asylum process.

d) Discontinue the examination of the asylum claim

In this option no system of parallel or suspended applications would be created. It would still be possible for a Blue Card holder to subsequently seek asylum, and it should be ensured that the first claim set aside by the Blue Card application would not negatively affect the assessment of the second claim.

3.2 Rejected asylum seekers

Third-country nationals whose expulsion decision has been suspended for reasons of fact or law (point (i) of first subparagraph of Article 3(2)) as well as those whose stay is not legal (Article 10(3)) may not apply for a Blue Card in the territory of Member States. This means that a rejected asylum applicant cannot immediately apply for a Blue Card even if he or she had a highly skilled job, but has to exit the Member State territory before doing so. If asylum seekers still in process were granted the possibility to apply for a Blue Card, it could be considered to extend this right to rejected applicants as well. This could be limited to cases where the relevant employment relationship began already during the asylum-seeking period, and there would only be a short grace period for applying for a Blue Card after being rejected as an asylum seeker. Some minimum period of preceding work and other conditions could be envisaged. In practice, this would be close to option c) under 2.2.

3.3 Beneficiaries of international protection in the EU

Beneficiaries of international protection are currently excluded from the personal scope of the Blue Card Directive (points (b) to (c) of first subparagraph of Article 3(2)); this means that they cannot apply for a Blue Card. This group consists of persons whose right of residence in the host country is already well secured and access to rights and benefits is extensive. They already have immediate access to employment under Article 26(1) of Directive 2011/95/EU. Therefore, the main added value of the Blue Card for this group would be facilitated intra-EU mobility, which is under the current EU rules only accessible to them only after obtaining the status of long-term resident under Directive 2003/109/EC⁴³⁶ (i.e. after at least five years of continuous residence in the host Member State) .

The main options would be either to (1) allow applying for a Blue Card in any Member State or (2) allow it in any other Member State apart from the one having granted international protection. Under the first option the third-country national could choose to apply for an EU Blue Card already in the Member State having granted the protection status, which would mean that in case the application is successful, he or she would have a double status in that

⁴³⁶ Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53

Member State. The person could profit from the mobility scheme of the Blue Card Directive similarly to any other EU Blue Card holder, which means that moving to a second Member State under the mobility rules would be possible after having been employed as highly skilled for a certain period in the first Member State. Alternatively, the person could directly apply for a first EU Blue Card in another Member State like any first applicant. Under the second option the double status would not be possible, but instead, only applying in other Member States than the one having granted protection would be allowed. In either case, this extension would make the highly skilled labour markets of different Member States accessible to beneficiaries of international protection.

As Member States do not mutually recognise asylum decisions, if the beneficiary of international protection obtained a Blue Card in a second Member State or a double status holder moved to a second Member State under the Blue Card mobility scheme, he/she would not enjoy international protection in that Member State. Therefore, the first Member State (having granted the protection status) would necessarily remain obliged to readmit the person who would otherwise be expelled to his or her country of origin or other third country against which the protection has been granted. This kind of system was already envisaged when the EU long-term resident status was opened to beneficiaries of international protection upon a modification of Directive 2003/109/EC⁴³⁷.

Furthermore, the rationale behind including beneficiaries of international protection in the Blue Card scheme would also be to promote their labour market integration by making them more visible to employers. Currently, many highly skilled third-country nationals residing in the EU end up unemployed or in positions not corresponding to their level of education and expertise⁴³⁸. Naturally, this problem has many other dimensions than those related to the type of residence permit, such as the recognition of qualifications and integration challenges.

4. THE SPECIFIC CASE OF POTENTIAL BENEFICIARIES OF INTERNATIONAL PROTECTION OUTSIDE OF THE EU TERRITORY

This group of third-country nationals has not been explicitly mentioned under any of the policy options in the Impact Assessment report, as addressing challenges faced by them is not primarily a question of amending the Blue Card scheme as such, but rather of practical facilitation, which is dealt with at a general level in policy option PO-A. Many of the non-legislative actions under that policy option could have a specific significance for this group of potential Blue Card applicants.

For persons outside the EU who are potentially in need of international protection there is no legal impediment to apply for a Blue Card. These persons are treated like any applicant residing outside the EU under the current scheme. However, they may experience pronounced practical obstacles related to e.g. matching with potential employers in the EU and presenting the required formal qualifications. Verification of diplomas can be difficult in countries where basic infrastructure has been compromised because of war or conflict, or where there is persecution or systematic discrimination of certain population groups by relevant authorities. It may also be the case that due to periods of professional inactivity some re-training would be required in order for these people to be able to resume their career in the EU – this is especially relevant for regulated professions.

⁴³⁷ Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection; OJ L 132, 19.5.2011, p. 1–4;

⁴³⁸ See e.g. a joint OECD/EC publication *Indicators of Immigrant Integration 2015: Settling In*, table 1.3., p. 31.

In principle, existing resettlement programmes could provide a framework for giving information and assistance to those who wish to enter the EU under the Blue Card umbrella. However, any access based on employment and skills should not replace or compromise the resettlement of refugees with specific protection needs and vulnerability.

It is clear that if third-country nationals are admitted as Blue Card holders to the EU, even if they had been previously recognised as refugees by UNHCR or by other actors outside the EU, they will not be *ipso facto* considered as beneficiaries of international protection by the Member States. On the other hand, it is equally clear that every person admitted in the EU territory has the right to apply for asylum to get his/her need of protection examined. Therefore, these persons might also end up as double status holders, if this was to be allowed in the Blue Card Directive. In any case, the initial Blue Card application or permit should not have the effect of hindering subsequent access to international protection, if the grounds are present.

Waiving the condition of presenting formal qualifications in the Blue Card Directive for a defined group of migrants (e.g. refugees recognised by the UNHCR or other relevant body or authority) and if necessary, replacing it with less burdensome safeguards might help to bring more people within the scheme. However, there would be equal treatment and non-discrimination concerns to take into account. In any case, non-legislative measures such as better skills validation and matching with potential employers are a big part of the solution. Also other practical ways and means could be sought to enhance this additional legal avenue for highly skilled people in refugee camps outside the EU. It could for example be promoted as a possible part of the social responsibility strategies of European companies to recruit highly skilled people from refugee camps or similar circumstances, and projects for the involvement of private recruitment companies operating in third countries could also be envisaged.

5. STAKEHOLDER AND EXPERT OPINIONS

The United Nations Refugee Agency (UNHCR) has in its position paper on the Blue Card review stated that this instrument could provide for a pertinent legal avenue for highly qualified persons having fled from conflict or other hardship. It is recognised that the labour market integration of this group can be challenging, and specific support measures should be designed for different stages of the process. These may include matching with employers, facilitation of the recognition of qualifications, targeted skills development, issuance of travel documents, and the guaranteed respect for family unity. UNHCR stresses that persons recognised as refugees outside the EU should not end up in a less favourable position than they previously were, if they take the Blue Card route to enter the EU. Essentially, *non-refoulement*⁴³⁹ and other principles of international and refugee law should be respected. In addition, opting for the labour migration route should be based on correct information on relevant rights and obligations, and the final decision to participate should always be the migrant's own.⁴⁴⁰

⁴³⁹ The principle of *non-refoulement* has first been laid out in 1954 in the United Nations Convention relating to the Status of Refugees(Article 33(1)): "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

⁴⁴⁰ UNHCR's Contribution to the EU's New European Policy on Legal Migration and the Review of the Blue Card Directive, p. 3-4

In its position paper a German Employers' Association BDA is in favour of allowing rejected asylum seekers access to the Blue Card, if they fulfil the conditions and especially if they are to work in a shortage occupation⁴⁴¹. In a written contribution replying to the Public Consultation on labour migration carried out by the Commission (described in Annex 2), the Confederation of German Trade Unions (DGB) advocates the inclusion of beneficiaries of international protection in the Blue Card scheme.

The issue of making the Blue Card more accessible to migrants either applying for or enjoying international protection has been discussed in the first and second meeting of the Expert Group on Economic Migration in March and December 2015 respectively. Concerning the possibility of opening access to the Blue Card for highly skilled *asylum seekers*, participants expressed some concerns, related e.g. to picking and choosing people based on skills. It was often felt that the two tracks should be kept separate. Also, it was pointed out that if this option was to be opened in terms of the Blue Card, there would be pressure to give asylum seekers access to other residence permit categories as well. Some found that any inclusion could become a pull factor, creating incentives for more people to apply for asylum. However, others suggested that schemes that allow an application change from asylum to work, and possibly back to asylum in case of unemployment, could be taken into consideration. This is particularly pertinent as it seems that Europe will continue to face important numbers of asylum seekers and their (labour market) integration is a big task at hand.⁴⁴²

Regarding the group of *beneficiaries of international protection*, most experts were in favour of including them in the Blue Card scheme as double status holders. It was agreed that the added value might be limited, but there seems to be no major objections to the inclusion, either. It was underlined that no separate category of Blue Card holders should be created, but grant double status holders all the same rights as the "regular" Blue Card holders enjoy. Also, any contribution to the creation of a specific labour market with inferior work conditions and pay should be carefully avoided. There were also more general views expressed that all third-country nationals legally residing in Member States should be granted access to apply for any kind of permit without undue restrictions.

⁴⁴¹ *Make future-oriented use of labour market potential of asylum seekers and tolerated residents*; Updated position paper on labour market access for asylum seekers and tolerated residence, BDA, 12 June 2015

⁴⁴² <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=19237&no=2>, Summary of discussions, p. 5 (+second meeting once uploaded)