



# Recruiting Immigrant Workers EUROPE





**Recruiting Immigrant  
Workers:  
Europe  
2016**

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**Please cite this publication as:**

OECD and EU (2016), *Recruiting Immigrant Workers: Europe 2016*, OECD Publishing, Paris.  
<http://dx.doi.org/10.1787/9789264257290-en>

ISBN 978-92-64-25728-3 (print)  
ISBN 978-92-64-25729-0 (PDF)

Series: Recruiting Immigrant Workers  
ISSN 2225-7950 (print)  
ISSN 2225-7969 (online)

European Union  
ISBN 978-92-79-58041-3 (print)  
ISBN 978-92-79-58040-6 (PDF)

Catalogue number  
DR-01-16-418-EN-C (print)  
DR-01-16-418-EN-N (PDF)

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## *Foreword*

At a time when the attention of policy makers and public opinion is so focused on the humanitarian refugee crisis, it might appear odd to consider issues of legal migration. The urgency of the humanitarian crisis faced by Europe and the need for a common, bold and comprehensive response from Member States do not, however, diminish the importance of addressing the challenges related to the management of legal labour migration in Europe. This *Review of Labour Migration Policy in Europe* seeks to contribute to thinking on one of the current Commission's priorities – namely, how best to manage labour migration in the context of population ageing and the global competition for skills.

Public concern and policy attention with regard to migration have intensified with the focus on forced migration and co-operation over asylum and borders in Europe. The European Union's central migration management institutions face new challenges, and there is agreement that they need to be strengthened if they are to provide a concerted, effective response to the new situation. At the same time, however, the European Union needs to look at those new challenges in the context of the growing competition to attract and retain talented migrants. Indeed, legal migration channels remain a key building block in any comprehensive migration policy. This review seeks to contribute to efforts to improve the European legal migration policy framework.

The central objective of labour migration policy is to meet labour market needs which cannot be satisfied by the domestic labour supply in a reasonable timeframe without adversely affecting the domestic labour market and development prospects in vulnerable origin countries. Although the objective itself can be easily stated, it is a complex matter to determine the criteria for assessing how successfully policy meets that objective. It involves evaluating how well labour market needs have been identified and whether migration has had an impact on the domestic labour market. Both evaluations are analytically difficult.

The issues in labour migration to the European Union as a whole differ from those which impinge on individual Member States, as it has no powers of decision over admissions and does not directly manage admission processes and procedures. To date, it has contributed to the governance of labour migration chiefly through standards and regulations which it negotiates with Member States to ensure they meet shared objectives. This review considers how, in accordance with its mandate, the European Union can improve labour migration management at the Union level and what it could do to make the EU more attractive to highly skilled migrants. The review asks the specific question of how EU rules can help make the EU single market a more appealing destination for skills and talents. It also explores how the EU can improve its labour migration framework to meet current and upcoming challenges against the background of an ageing population.

This review seeks to analyse two key areas in particular:

- the labour migration system’s current policies and the migrant groups that they address;
- the extent to which the system is capable of responding to the current and forecast needs of the labour market and safeguarding it from adverse impact.

The focus is specifically on discretionary labour migration – i.e. the labour migration movements over which policy has direct, immediate oversight. It also considers other categories of migration – family reunification, for example – but only insofar as they influence decisions to admit workers. As for migrant flows governed by agreements on freedom of movement – which are substantial in many European countries – it addresses them only in relation to discretionary labour migration.

This review is part of the joint project between the Directorate General for Migration and Home Affairs of the European Commission and the OECD’s Directorate for Employment, Labour and Social Affairs on “Review of Labour Migration Policy in Europe”. This document has been produced with the financial assistance of the European Union. Grant: HOME/2013/EIFX/CA/002 / 30-CE-0615920/00-38 (DI130895) A.

## ACKNOWLEDGEMENTS

This review is the sixth in a series produced by the OECD Secretariat as a follow-up to the 2009 High Level Policy Forum on International Migration. This review was written by Jonathan Chaloff and edited by Ken Kincaid. The OECD Secretariat would like to thank Laura Corrado of the Directorate-General (DG) Migration and Home Affairs of the European Commission and her colleagues, especially Laurent Aujean, Lieven Brouwers, H el ene Calers, Marie Boscher, Maria Br attemark, Katri Niskanen, Jan Saver and Sebastian Stetter, who worked on preparing, commenting and revising this review. It draws on background work by Anda David, Jean-No el Senne, Flore Gubert, Sankar Ramasamy Kone, Peo Hansen, Emily Farchy, Friedrich Poeschel, Corinne Balleix, Sophie Robin-Olivier, Tommaso Colussi. It benefited from valuable comments from Jean-Christophe Dumont, Stefano Scarpetta, Mark Pearson, Kees Groenendijk, Jean-Yves Carlier, Marco Manacorda and Pawel Kaczmarczyk. Additional analysis was provided by Cansin Arslan, Marianne Gierow, V eronique Gindrey and Jongmi Lee.



## *Table of contents*

Assessment and recommendations .....	13
Executive summary .....	25
<b>Chapter 1. The context for labour migration in Europe .....</b>	<b>29</b>
The context behind labour migration in Europe is one of disparity across Member States .....	30
A common expectation of future skill needs .....	33
The political context: What is EU labour migration policy and where does it originate? .....	36
Why Member States see added value in co-ordinating labour migration at the EU level .....	59
The limits of intervention.....	60
The policy development cycle at the EU level is very long.....	68
Notes .....	71
Bibliography .....	75
<b>Chapter 2. How attractive is the European Union to skilled migrants? .....</b>	<b>79</b>
The position of the European Union in migration flows to OECD countries.....	80
The European Union is the single leading destination for international students .....	98
Surveys of entrepreneurs and executives show a mixed profile of attractiveness .....	99
Many EU residents perceive their countries as good places for migrants .....	101
The European Union is a destination of interest for potential migrants .....	102
Notes .....	113
Bibliography .....	114
<b>Chapter 3. Where does the European Union bring added value in labour migration? .....</b>	<b>117</b>
What is added value in labour migration initiatives at the EU level?.....	118
Attractiveness to migrants.....	118
Increasing mobility .....	120
Increasing retention.....	128

Improving matching systems .....	129
Avoiding duplication in the recognition of foreign qualifications .....	130
Attractiveness for employers .....	131
A single labour market test for a single labour market .....	133
Co-operation with third countries .....	139
Simplification for compliance .....	142
Leveraging competition and preventing a race to the bottom .....	142
Summarising factors of attraction and the value of EU intervention .....	143
Notes .....	145
Bibliography .....	147
<b>Chapter 4. What have EU labour migration Directives changed and how can they be improved?</b> .....	151
Introduction .....	152
Students Directive: Promote the EU as a world centre of excellence for studies .....	152
The Researchers Directive: A new fast-track permit in many Member States .....	159
The Single Permit Directive: Simplifying and harmonising the rules .....	166
The EU Blue Card: Almost invariably a new permit category .....	172
How does the Blue Card compete with national schemes? .....	178
The Seasonal Workers Directive .....	204
The Intra-Corporate Transfer Directive .....	205
What have the Directives discussed changed? .....	207
What are the next possible policy options? .....	211
Notes .....	217
Bibliography .....	220
<i>Annex 4.A1. Labour market mobility for EU Blue Card holders</i> .....	223
<b>Chapter 5. What is missing from the EU labour migration policy framework?</b> .....	227
A broad pool of candidates .....	228
A general recognition system .....	231
Sectors not yet covered under the sector-based approach .....	233
Horizontal approach .....	254
Notes .....	264
Bibliography .....	265
<b>Chapter 6. Recommendations for EU labour migration policy</b> .....	269
Systemic recommendations .....	270
Make the Blue Card more effective and attractive .....	278
Boost added value for participating countries .....	280

Strengthen co-operation with and outreach to third countries .....	283
Increase participation in EU initiatives .....	284
Notes .....	286

## Figures

Figure 1.1. Wide variations in unemployment rates across the European Union, 2015 .....	30
Figure 1.2. The labour force in many European countries is declining .....	31
Figure 1.3. Mobility and migration contribute to population change in different ways across the European Union, 2010 .....	32
Figure 1.4. The foreign-born population has grown in almost all EU Member States in the past decade .....	34
Figure 1.5. The number of third-country nationals in the European Union has increased in recent years .....	35
Figure 1.6. The EU labour force will be better educated by 2020, but a high share of new entries in the less educated parts of the labour force will come from the foreign-born (including intra-EU mobility) .....	35
Figure 1.7. It takes about ten years for European Directives on labour migration to go from being an idea to being applied .....	69
Figure 2.1. The European Union has fewer foreign-born residents than the United States and a smaller share than other OECD countries .....	81
Figure 2.2. The share of immigrants in EU Member States is lower than in competing OECD countries, 2010 .....	82
Figure 2.3. Over the 2000s, increases in the migrant population were more significant in the EU15 than in other OECD countries .....	83
Figure 2.4. The highly educated account for a higher share of recent migrants in the EU than in the United States, 2010 .....	86
Figure 2.5. The European Union as a whole receives more migrants than other OECD destinations, but not relative to its population, 2013 .....	89
Figure 2.6. There is more annual variation in permanent-type migration to EU OECD countries than to other OECD destinations .....	90
Figure 2.7. The regions of origin of migrants to the European Union are different from those to other OECD countries .....	92
Figure 2.8. The European Union takes in a share of the flow of workers who constitute the main groups of labour migrants in other OECD countries .....	95
Figure 2.9. The higher the education level, the less likely migrants are to live in the European Union, 2010 .....	97
Figure 2.10. The European Union has overtaken the United States as the prime destination for international students .....	98

Figure 2.11. Executives in EU Member States perceive greater difficulty in attracting and retaining talent than many other OECD destinations .....	100
Figure 2.12. Business leaders perceive many European destinations to be less attractive to highly skilled foreigners .....	101
Figure 2.13. EU Member States vary significantly in terms of whether they think that their country is a good place for migrants from other countries .....	102
Figure 2.14. The number of Asians interested in migrating to the United States is much larger than the number interested in migrating to the European Union.....	107
Figure 2.15. EU Member States rank top of the destinations for highly educated potential migrants .....	108
Figure 2.16. The European Union is an attractive destination for highly educated potential migrants .....	109
Figure 2.17. The European Union is the preferred destination of highly educated European and sub-Saharan potential migrants .....	110
Figure 3.1. While EU nationals are twice as likely to be mobile as third-country nationals, the highly educated in both groups have similar mobility rates....	122
Figure 3.2. Naturalisation and long-term residence are associated with lower mobility among residents born outside the European Union.....	123
Figure 3.3. Countries with more long-term residents often have a lower share of the highly educated among them.....	125
Figure 3.4. Permanent residents in the European Union, by country of residence, 2010-14.....	126
Figure 3.5. Few people find jobs through the public employment services, especially skilled workers, 2013.....	135
Figure 4.1. Most EU Member States grant international students the right to work to, although hours vary.....	155
Figure 4.2. Member States to which the Student Directive applies have only recently overtaken non-directive countries in admissions of non-European students .....	159
Figure 4.3. There is no fixed relationship between the stock of researchers and inflows of new researchers .....	165
Figure 4.4. The researcher permit appears to be associated with higher inflows into the Netherlands.....	165
Figure 4.5. Fees in many EU Member States were raised with transposition, but are still lower than in non-EU countries, 2010 and 2014 .....	171
Figure 4.6. Only a small fraction of the total employed population earns more than the EU Blue Card threshold.....	185
Figure 4.7. The Blue Card threshold is far less restrictive for more highly educated workers, selected EU Member States, 2010.....	186

Figure 4.8. It is much harder for young educated people to meet EU Blue Card thresholds, 2010.....	187
Figure 4.9. It is much easier to qualify for shortage list occupations in certain EU Member States.....	188
Figure 4.10. There is a significant number of highly educated, highly qualified, high-earning third-country nationals among recent migrants, 2013.....	203
Figure 4.11. Countries that have transposed the ICT Directive have far fewer ICTs than other OECD countries .....	206
Figure 4.12. Many EU Member States do not allow students to extend their permit beyond graduation to work while they search for employment .....	213
Figure 5.1. The European Union is home to a dwindling share of non-EU immigrant inventors.....	236
Figure 5.2. The European Union loses more researchers than it gains.....	237
Figure 5.3. Third-country nationality is no obstacle to self-employment .....	238
Figure 5.4. International students in the European Union mostly leave when they graduate.....	248
Figure 5.5. Southern Europe employs many third-country national domestic workers .....	249
Figure 5.6. Average salaries for nurses in EU Member States are often below the average national salary .....	252
Figure 5.7. Some EU Membe States have a large share of medical personnel born in third countries .....	253
Figure 5.8. High-cost remittance corridors from the European Union tend to be towards the least developed countries .....	262
Figure 5.9. Work permit fees are much higher in non-EU countries .....	263

## Tables

Table 1.1. The barriers to labour migration in selected EU Member States .....	68
Table 2.1. The European Union hosts more migrants from neighbouring European countries than other OECD destinations, and fewer migrants from Asia, 2010.....	82
Table 2.2. The European Union still lags behind other OECD destination countries in migrant education levels and employment, 2000 and 2010.....	85
Table 2.3. The European Union has increased its share of migrants from China and the Philippines, but receives fewer highly educated migrants than other OECD destinations.....	87
Table 2.4. Work is the category which explains much of the variation in permanent-type flows to EU OECD countries .....	91

Table 2.5. A few EU Member States consistently issue the most longer-term work permits.....	91
Table 2.6. Labour migration to the European Union is not dominated by any single country.....	94
Table 2.7. Migrants in the European Union are younger and more likely to have arrived recently.....	96
Table 2.8. Among Asian and African migrants, a much smaller share are highly educated in the European Union than in other OECD destinations, 2010.....	98
Table 2.9. There is a large pool of potential migrants interested in coming to Europe, 2011 .....	104
Table 2.10. The European Union is a less popular destination for temporary workers and students .....	105
Table 2.11. Other OECD destinations attract potential migrants even if they are far away, but the European Union is the most attractive for potential migrants in nearby regions.....	106
Table 2.12. The European Union is more attractive to single, inactive less well educated potential migrants.....	111
Table 2.13. There is interest in migrating to Europe in many countries .....	112
Table 3.1. Naturalisation rates relative to permanent resident stocks are variable .....	127
Table 3.2. Few Member States impose an EU-wide labour market test, and some exclude third-country nationals.....	136
Table 3.3. Summarising the added value in EU-level approaches to labour migration management.....	144
Table 4.1. Mean salaries are very different according to the reference values used.....	182
Table 4.2. Labour market tests applying to national schemes and EU Blue Cards.....	189
Table 4.3. Maximum duration of first permits .....	193
Table 4.4. Examples of qualification requirements under Blue Card schemes .....	197
Table 4.5. There are hundreds of thousands of potential Blue Card holders in the European Union, 2013 .....	202
Table 4.6. Simulating the effect of different salary thresholds on the restrictiveness of the Blue Card in different countries .....	214
Table 4.A1.1. Labour market mobility for EU Blue Card holders.....	224
Table 5.1. The European Union sends working-holiday makers abroad, but does not receive them.....	241

## Assessment and recommendations

### **Europe is facing an historic challenge as the refugee crisis unfolds ...**

In 2015, the number of refugees and asylum seekers entering Europe hit record levels with inflows of more than one million people – and more than 180 000 in the first four months of 2016 alone. Europe has both the capacity and the experience to rise to the challenge, yet such unprecedented numbers in so short a time span have placed great strain on infrastructure. There has also been a powerful impact on public opinion, which remains very sensitive to refugee and migration issues. As a result, policy attention has been devoted mostly to addressing the refugee crisis.

### **... yet it should also continue to improve its labour migration framework to be able to respond to upcoming challenges**

Humanitarian migration does not account for the bulk of migration to the European Union. Nor can it replace the discretionary and selective channels of labour migration through which employers are expected to complement future skill needs of a European labour market where the working age population is declining and sizeable skills shortages could well expand in the near future. In this context, the question remains as to whether Europe remains an attractive place for talents, and what role EU policies can play to strengthen its attractiveness.

### **The European Union is a major migration destination...**

The EU welcomes more migrants than any other single OECD destination – half of all recorded flows in the OECD are to its EU members (EU-OECD). In both 2013 and 2014, permanent-type migration flows to EU-OECD countries from third countries stood at about 1 million. Although numbers have been falling since 2007, they remain comparable to the number of migrants to the United States. The stock of immigrants, by contrast, has been growing. In the 2000s, the

population of adults born outside the EU rose by more than 42% in the EU15 countries alone, to more than 30 million, one-third of all migrants in OECD countries. Third-country nationals (TCNs) aged 15 to 64 who were resident in the European Union increased by 12% between 2006 and 2015.

### **...but only a fraction of incomers arrive as labour migrants or for employment...**

Labour migrants comprise about one in three new migrants to the European Union, while family migrants make up a larger share. Most labour migrants are concentrated in just a few EU Member States (Italy, Spain and the United Kingdom), and principally in those where labour migration policies do not apply education or skill thresholds (southern Europe). This is in contrast to settlement OECD countries (Australia, Canada and New Zealand), where most permanent economic migration occurs through channels which apply restrictive criteria. The share of labour migrants among total flows, however, is higher in EU Member States than in the United States. Overall, migration to the EU has historically had a larger share of family and humanitarian migrants than in settlement countries.

### **...and the overall share and relative inflows are lower than in competing OECD destinations**

Third-country migrants comprise 4% of the total EU working-age population between the ages of 15 and 64, less than half the share in the United States and even less than in Canada, Australia and New Zealand. Yet relative to its population, the EU welcomed flows comparable to those in the United States (0.3% of its population). They were, however, much lower than migration to Canada, Australia and New Zealand.

### **The European Union attracts migrants from a broad range of countries, but is most attractive to those from neighbouring countries ...**

Several large Asian countries – India, China and the Philippines – drive international migration to OECD countries. Migrants to the European Union, though, come from a wider range of countries of origin, especially from non-EU Europe and Africa, because a wide cross-section of migrants see the European Union as an attractive destination. Among potential migrants in the Gallup World Survey (2011), 23% cited EU Member

States, similar to the share which would like to migrate to the United States. However, potential migrants in nearby European and African regions are more likely to cite the European Union as their desired destination.

### **... who are not always the most qualified**

The European Union has attracted fewer higher-educated migrants than other OECD destinations, and hosts only 30% of the high-educated migrants, compared with 47% of the low-educated. Low educated migrants in OECD countries are increasingly concentrated in the European Union: between 2000 and 2010, the share of all low educated migrants in OECD countries living in the EU15 rose from 36% to 45%. The lower education levels and the higher rate of humanitarian migration in the European Union relative to other OECD destinations contribute to the migrants' lower employment rate. In 2014, for example, the employment rate among migrants in the EU15 countries was more than 10 percentage points lower than the rate in non-EU OECD countries. Still, recent migrants to the EU are better educated than earlier arrivals. In 2000, the European Union was home to a smaller share of recent migrants with high education than the United States (21% vs. 27%). This gap closed by 2010 when the share was comparable (34% vs. 33%). This is in contrast to migration intentions in the Gallup World Survey, where the European Union is the desired destination for a larger share of the high educated (27%) than the United States (21%) or other OECD countries (24%).

### **EU Member States have put in place labour migration frameworks to compete with other OECD destinations...**

Labour migration policy in individual EU Member States is the product of national policies that have evolved over past decades, driven by different national goals. However, there has been convergence across the EU Member States around the need to attract talents, including international students. Hardly any EU Member State uses migration as part of a general demographic strategy, or as a central element in developing the labour force, although some do recognise its contribution. Each EU Member State boasts its own comparative advantage in the competition for skills from abroad, and some benefit from the historical links with third countries which shape migration flows.

**... but despite some policy convergence they have developed a multitude of approaches with different effects on inflows**

Although EU Member States share challenges and – at least some – objectives, there are important differences in the criteria they apply for admission – particularly where there is no EU level harmonisation – and the means they use to manage flows. Many Member States impose education, occupation or salary requirements which can be barriers to recruitment, while others manage migration largely through numerical limits or volumes of admission. Still others rely on labour market tests or trust the market to regulate itself as long as conditions are respected. A number of Member States deny entry to all less skilled labour migrants, while others only admit them for seasonal activities.

The institutional labour migration framework, as well as the labour market situation, also vary among EU Member States. Different policy settings explain in part why just a few EU Member States account for the bulk of issuances of work permits – to be precise, the top three, Italy, Spain and the United Kingdom, issue more than half of all work permits. Furthermore, in contrast to OECD settlement countries with fixed admission targets or caps, there are sharp fluctuations from one year to the next in flows. Since 2010, they have fallen by half. As a result, labour migration flows to EU Member States are less constant than those to other OECD destinations.

**EU Member States have agreed that more can be achieved through co-operation at the EU level**

The European Union has been developing common rules on certain categories of third country nationals since the 1999 Amsterdam Treaty. The 2009 Lisbon Treaty enshrines the agreement of EU Member States that certain objectives should be supported and complemented through EU initiatives and makes the European Parliament co-legislator in the area of legal migration. The common immigration policy regards conditions of entry and residence, including criteria and rights. On the political level, support is particularly strong for common action in making the European Union more attractive for highly qualified third-country nationals. The final decision on admission of third-country nationals rests, however, with individual countries, which may set limits to initial entries of those who come for economic purposes. Three EU Member States are not obligated to participate in these measures,

through a general opt-out in this area (Denmark) or a right to opt-in on a case by case basis (United Kingdom and Ireland).

### **The main legislative instruments are Directives...**

EU-level action in labour migration has been taken through a series of Directives proposed by the Commission and approved by the Council and, after 2009, the European Parliament. Directives are transposed into national legislation and implemented by each Member State. Most Directives have built on existing practices and categories, harmonising them and setting minimum standards. The main Directives in managing labour migration cover researchers, highly-qualified employees (the “Blue Card” Directive), a single residence permit combining stay and employment and harmonising certain rights, seasonal workers and intra-corporate transferees (ICTs). Each of these Directives requires Member States to grant certain rights and structure the admission and stay of a category of migrants. Other Directives cover the acquisition of long-term residence, the right to family reunification and the admission of students. Provisions are generally included to facilitate the mobility of third-country nationals within the European Union, a measure which can only be achieved at the EU level. With few exceptions (the ICT and the Seasonal Workers Directive, as well as the new recast Directive on Students and Researchers), national permit regimes have been allowed to continue alongside the EU schemes, and even to be introduced in the future.

### **...as well as mainstream actions to reinforce the single market and foster harmonisation**

In addition to Directives, the European Union has complementary measures to promote employment and to support the single market, including the mutual recognition of foreign qualifications between EU Member States, and the creation of a network of public employment services to match employees and job seekers in the European Union. Such measures have not been developed specifically for TCNs but can also play an important role in relation to labour migrants coming to the European Union.

## **The policy making process is lengthy and rigid**

The preparation of new Directives takes from five to ten years from the preparatory stage to final transposition in national legislation and entry into force, making it difficult to react to unexpected changes in circumstances. Changing specific elements in a Directive requires a formal amendment and renegotiation with the Council and the European Parliament. There is no scope for the pilot programmes or policy experimentation that often drive national policy. One solution has been to grant flexibility within Directives, but this room for manoeuvre has often led to the development of very different national procedures to the point where they undermine harmonisation. The transposition of the EU Blue Card Directive is a case in point – administrative procedures and eligibility requirements differ across Member States to such a degree that the ease of acquisition of the permit is hardly comparable.

## **EU-level action has not met with the expected uptake...**

Uptake of EU measures has not been universal. Few Member States have made the EU Blue Card their permit of choice for highly-qualified third-country nationals, with most still using their national schemes. At least 10 000 newly arriving third-country nationals should be eligible annually for the EU Blue Card, yet less than half that amount was issued in 2014 as first permits, and a single Member State, Germany, accounted for most of them. There are more than 100 000 potentially eligible TCNs already resident in Blue Card Member States, yet few have switched status to the EU Blue Card to benefit from its advantages. Nor has the Blue Card changed perceptions of the European Union: business and executive surveys suggest that the EU still lags behind other OECD destinations in its attractiveness for talented migrants.

Similarly, the EU Long-Term Resident permit has not been the permit of choice in many EU Member States: only 2.8 million out of the estimated 10-13 million long-term resident third-country nationals hold EU long-term resident permits. Although EU long-term residence was meant to qualify third-country nationals for mobility, it actually appears associated with reduced mobility. In other words, the longer they have been settled in an EU Member State, the less likely a TCN is to be mobile. In fact, mobility of TCNs is only half the level of EU nationals, with the exception of tertiary-educated TCNs.

### **...due to obstacles in the process and uneven transposition of details ...**

Some national schemes may allow faster access to long-term residence, or entail less paperwork than the EU schemes for the highly-qualified, researchers, or long-term residents. EU Directives often allow a labour market test, but do not propose minimum standards for its duration, characteristics, or coverage. Labour market tests are structured very differently across Member States and are not a comparable barrier for labour migrants. Favourable elements in national schemes, such as priority processing or sponsorship, have not always been extended to EU schemes. Directives have also excluded a number of categories for whom participation would be beneficial, such as third-country nationals in the European Union on other grounds, including refugees.

### **The added value of EU action can be strengthened within the current framework...**

EU measures also contain safeguards which complicate application, including reporting requirements, registries of host institutions for researchers, and verification of documents. Registries and verification are managed at the national level, rather than at the EU level, precluding any economy of scale or simplified vetting. Many EU Member States have kept more favourable national measures in place, spawning a patchwork of national schemes competing with the EU measures. Employers are more familiar with national procedures and continue to use them, even when eligibility requirements are similar. Favourable measures should be extended to and incorporated into EU schemes.

### **... by enlarging the candidate pool...**

To increase the number of candidates available to employers and attract more applicants, other OECD countries have experimented with different forms of “Expression of Interest” systems. Although they are not directly transferable to the EU context, variations on the approach behind them at the EU level would bring more added value than any approach at the national level. Possible forms include eligibility lists for specific programmes such as seasonal workers or the EU Blue Card, for all origin countries or as part of bilateral agreements. An EU job search visa could have also increase the number of candidates available to employers, but would require safeguards and monitoring. A mainstream

approach could be to open matching platforms to third-country nationals abroad, including the services offered by EURES.

**... and by more active promotion of the EU's comparative advantages relative to other OECD countries...**

The European Union has not been effective in promoting the factors which make its admission scheme for global talent more accessible and generous than those of its main competitors among OECD countries. More active promotion can build on the EU's competitive advantages: few EU Member States cap admissions of qualified migrants with a job offer; the EU provides a clear pathway to permanent residence; the European Union guarantees family reunification and equal treatment in most domains; fees are much lower in EU Member States than in other OECD countries like the United States; processing times are shorter than in most other OECD migration destinations; EU Member States have a wide variety of national schemes in place, some of which admit less qualified workers, offering labour migration opportunities which are not available elsewhere in the OECD. Highlighting these comparative advantages would help the European Union to attract more candidates, especially away from competing countries with caps or queues.

**... through, for example, more effective use of its measures in co-operation with third countries**

The recently-created EU External Action Service inherited a framework for relations with third countries – the Global Approach to Migration and Mobility (GAMM) – in which the European Union can support negotiations with third countries but cannot offer them guaranteed channels for labour migration. The EU also co-ordinates relations with third countries through its Mobility Partnerships, which act as an umbrella for co-operation, and by supporting different forms of exchange and capacity-building programmes. To date, Mobility Partnerships have not led to changes in flows from the partner countries so far involved.

The European Union has taken on a public relations role, too, promoting the EU abroad and providing information on migration policies in EU Member States. Similarly, an EU Immigration Portal attracts visits from all over the world. The creation of a job-matching portal for third-country nationals or their inclusion in a mainstream platform would give a role to the European Union in negotiating

inclusion in eligibility lists. To develop human capital applicable in more than one EU Member State, training measures and co-operation with education institutions could improve the talent mobility component of Partnerships. With concrete measures in hand, the European Union will be better positioned to negotiate with potentially important origin countries.

### **The Blue Card Directive can be improved...**

The high salary threshold partly explains the low uptake of the EU Blue Card. In most EU Member States, the salary threshold is rather restrictive: in only seven do over 40% of all tertiary-educated full-time employed in skilled occupations meet the salary threshold. Most EU Blue Cards are issued in countries where the threshold is less restrictive proportionately to the salary distribution. National schemes are much less restrictive. There are a number of EU-level measures that might help make the Blue Card more attractive and so increase uptake: adjust the Blue Card threshold for younger workers and new graduates to make the Blue Card more accessible; encourage migrants to upgrade to the Blue Card from other permits as soon as they meet requirements, since many do so only after a few years of residence; streamline the procedure for recognition of foreign qualifications – one of the main barriers to uptake; eliminate labour market tests and change the one-year contract requirement to make the Blue Card more appealing for employers; reduce the time it takes to obtain permanent residence; introduce a common application procedure that allows pre-qualification also in order to accelerate Blue Card applications; raise awareness of the Blue Card's advantages among third-country nationals and other actors so that they choose it over national schemes.

### **...and more flexibility can be built into EU migration governance**

To build more flexibility into labour migration management, Directives could delegate some elements, such as mandatory processing times and costs, the design of labour market tests, requisites for recognition, salary thresholds, etc., to separate implementing measures of the Directives. This would allow for more frequent adjustment of these details, through administrative, political, technical or automatic means.

## Missing elements could be addressed to complete the range of labour migration policy measures

The legislative approach to labour migration taken so far has been largely sector-based, and there remain some migrant groups that legislation has yet to cover or where preferential treatment could be considered – e.g., investors, entrepreneurs, certain regulated professions, and very highly qualified inventors and scientists. Minimum standards are relevant for these categories, but also for domestic workers and youth mobility programmes. An EU Working Holiday programme would attract more participants, expand the pool of qualified candidates and bolster the European Union’s clout in negotiations with third countries. Similarly, if international students find work after graduation, the European Union should offer them a favourable bridge to residence, through labour market test exemptions and the ability to apply for status change within the European Union.

### Summary of the main recommendations

#### A. Increase the added value of EU initiatives

- Improve the framework for recognition of qualifications for third-country nationals and related support procedures.
- Develop EU-wide job-matching databases compatible with labour migration channels and schemes.
- Increase opportunities for intra-EU mobility by lowering barriers, including for seasonal workers, students who have graduated, and other legally present third-country nationals.

#### B. Improve “brand EU” and promote EU migration measures

- Strengthen the EU Immigration Portal and promote the comparative advantages of EU migration policy.
- Develop the labour migration component in mobility partnerships with third countries.
- Develop a gateway platform for initial contact and, in particular, for harmonised EU residence permits.

#### C. Strengthen the harmonisation of EU policies

- Build more flexibility into the EU law-making system by creating mechanisms allowing adjustments to legislative details outside of Directives (implementing measures).

### **Summary of the main recommendations (cont.)**

- Spell out the characteristics of labour market test procedures clearly and state the terms of third country nationals' equal access to employment.
- Standardise application forms for labour migrants.
- Improve the portability of residence periods in mobility, allow applications for permits in one Member State to be filed from another Member State and facilitate international students' bridge to work permits across the European Union.

#### **D. Revise the EU Blue Card to make it more effective and attractive**

- Set separate, lower income thresholds for younger workers and new EU graduates, and waive labour market tests for labour migrants changing status.
- Reduce the required contract duration, waiting period before mobility, and duration to eligibility for permanent residence.
- Develop a “Blue-Card-Ready” pool of candidates whose qualifications have been recognised or who may benefit from facilitated mobility.

#### **E. Fill the gaps in EU policy initiatives**

- Allow refugees to access more favourable EU labour migration schemes.
- Develop an EU-wide youth mobility or Working Holiday scheme.
- Extend minimum standards to additional migrant groups, including investors.



## Executive summary

More than 1 million immigrants come to the European Union each year, more than to any single OECD destination country. The number of people born outside Europe living in the EU rose faster in the 2000s than in the previous decade. The European Union is facing impending skills shortages in a number of areas and Member States, but labour migration has only been a fraction of total migration, and the share of migrants with high levels of skills and qualifications is smaller than in many other OECD destinations, despite recent improvements. Individual EU Member States have developed policies to compete in the global market for skills, but more needs to be done at the EU level to ensure that labour migration yields more than just the sum of these individual efforts.

The EU labour migration system has developed for more than a decade according to a piecemeal approach, yielding a patchwork of approaches to transposition of EU Directives to reflect national specificities and priorities. Although Member States have agreed on common objectives and on establishing common rules at EU level, the EU instruments to achieve these objectives have not been taken up and implemented uniformly at the national level. This is particularly true for the EU Blue Card, aimed at highly qualified and highly remunerated non-EU labour migrants. Fewer than half of those estimated to be eligible have actually received it. Complex administrative procedures for obtaining permits under this and other EU schemes need to be simplified and their benefits strengthened.

Only initiatives at the EU level can create mechanisms for third-country nationals to accumulate rights and enjoy facilitations as they move from one Member State to another. However, EU mechanisms already in place for mobility – for example, under the EU Blue Card and Long Term Residence Directives – have not been widely used, due to limited awareness and shortcomings in the measures which could support mobility, such as information-sharing platforms and standard application forms.

In order for the full added value of co-operation at the EU level to be realised, EU policy schemes should absorb some measures used by national schemes, such as priority processing and exemptions from labour market tests, so that they are as simple and quick to use. Faster and simpler recognition of foreign qualifications and portability of cumulated rights – whether to pension or long-term residence – should also be part of EU schemes.

The European Union is the world's leading destination for international students, but has not been able to capitalise on this to build a solid bridge to labour migration for the graduates who are most needed. Graduates should be retained, since they have learned the local language and hold recognised qualifications valued by employers. The revised Students and Researchers Directive will ensure a job-search and setting-up of a business period, but more should be done to attract students to the EU and to help those who find a job to stay after their studies, by building a privileged pathway to work permits and making it easier for them to search for work across the European Union.

The European Union has to build its brand among potential labour migrants, so that they choose the EU. More information about the current policy should be given, including the ability to check eligibility and to prepare a standard application. Top talents could be given a permit with pan-EU labour market access, and other holders of EU permits for skilled workers could benefit from priority treatment at border crossings. Introducing a youth mobility scheme could broaden the pool of young educated third-country nationals with knowledge of EU Member States and increase skilled migration channels. The European Union should be more active in origin countries, supporting Member States to reach potential students, researchers, and workers, and facilitating a fair recruitment process.

Smaller EU Member States are off the radar for potential labour migrants in origin countries. The full weight of the EU labour market could be brought to bear by creating pools of pre-qualified candidates who are interested in coming to work in the European Union, and matching them with opportunities. A pool could also accelerate the administrative procedure for evaluating applications and issuing permits. The labour market test requirements should be clarified, including the use of an EU platform for listing vacancies and the consideration of all residents with the right to work in the European Union.

The legislative process at the EU level is long and complex, and past Directives have often taken five to ten years from initial discussion to final transposition. To add flexibility to EU measures, mechanisms for adjustment need to be found outside of the Directives, through automatic safeguards or consultations with representatives of Member States to adjust policy levers. Since policy innovation in this area often occurs through pilot programmes, space for testing new approaches needs to be carved out within Directives as well.



## *Chapter 1*

### **The context for labour migration in Europe**

*The context underlying labour migration in the European Union is economic, demographic and political in nature. Regarding the first point, there are wide variations among Member States in growth and in the current employment situation. Overall the working-age population is peaking or starting to decline, although this effect also varies. Despite these differences, there are some common challenges and common principles. The political competence at the EU level is to achieve added value in areas of shared interest. EU labour migration policy is not the sum of the individual Member States' decisions but a legislative framework to achieve common goals through concerted measures. It is rooted in a long-standing commitment to favouring mobility of workers and to ensuring their rights. Broad agreement EU-wide on basic rights and principles of equal treatment have allowed progress in this area. Regarding labour migration admission conditions and criteria, there have been specific measures leading to a fragmented rather than a broad labour migration framework. National systems evolved through very different processes and priorities, not all of which have converged.*

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

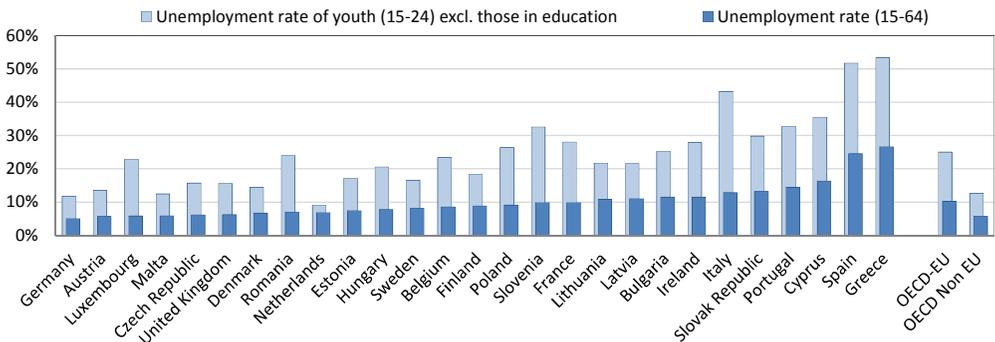
## The context behind labour migration in Europe is one of disparity across Member States

A labour migration policy needs both to meet the demands of the present and address longer-term considerations in the labour force. The labour market Europe-wide is far from uniform. Demand and supply evolve unevenly, with significant differences between individual Member States. Growth rates are very different, for example, with some Member States experiencing continuous growth in recent decades, while others are still reeling from the financial and economic crisis in 2008. And among the hard-hit countries, some have staged strong recoveries, while others have languished in recession. At the end of the 2000s, the European Union set an ambitious employment and growth target to work towards, the Europe 2020 Strategy. The goal of 75% employment among 20-to-64 year-olds by 2020, however still appears far off, and only a few Member States are on course to meet their national employment targets.

Indeed, differences between Member States are immediately apparent in their employment situations. Although there is a single European labour market, unemployment levels range widely, especially for youth (Figure 1.1), which disguises further disparities in participation rates – they are much higher in Northern than in Southern Europe.

**Figure 1.1. Wide variations in unemployment rates across the European Union, 2015**

Unemployment rates, total and youth not in education



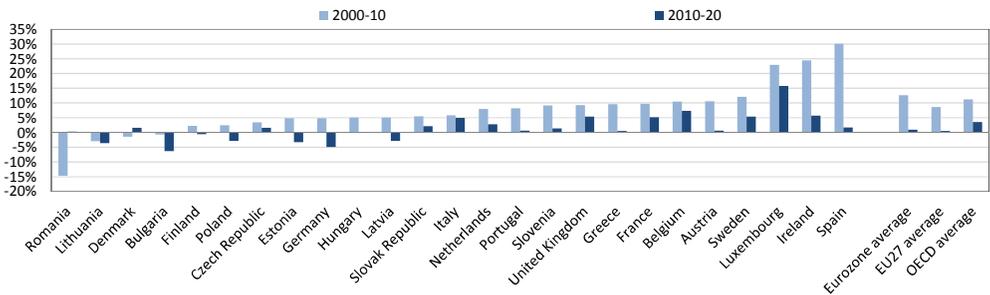
Note: Data refer to the working-age population (15-64).

Source: European countries and Turkey: Labour Force Surveys (Eurostat); Australia, Canada, Israel: Labour Force Surveys; Mexico: Encuesta Nacional de Ocupación y Empleo (ENOE); United States: Current Population Surveys.

Demographic trends vary widely, too. Some European countries are already contending with shrinking working-age populations (Figure 1.2). Based on data available for 2010, the European working-age population is expected to grow by just half of 1% over the current decade, with a number of countries – particularly in the Eastern and Southern parts of the European Union – experiencing declines. In all countries, growth will be far below the levels of the first decade of the century.

**Figure 1.2. The labour force in many European countries is declining**

Projected growth in the labour force, 2000-10 and 2010-20



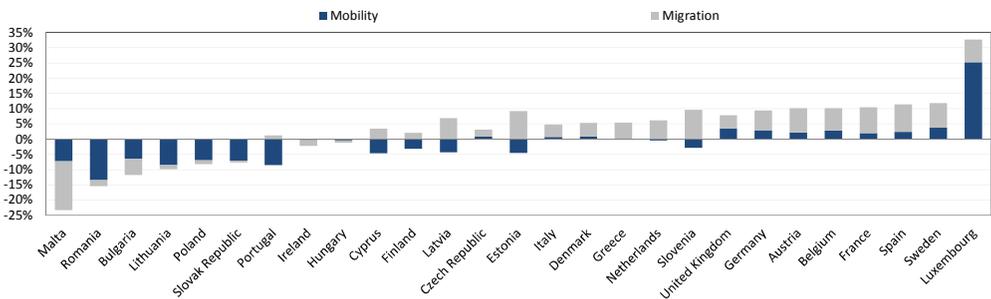
*Source:* European countries: European Labour Force Surveys (Eurostat), 2010; United States: American Community Survey 2010; all countries: World Population Prospects – 2010 Revision; ILO Estimates and Projections of the Economically Active Population 1990-2020; Eurostat EUROPOP 2010 Population Projections.

Trends are not driven solely by natural population declines – the consequence of lower fertility rates – but by dramatic patterns of migration and mobility across the European Union. They have exerted a powerful effect on population development, in most cases amplifying the projections made a few years ago. EUROPOP2013 projections for 2025 and 2050 differ substantially from projections made pre-2004, especially for Eastern European countries which have seen high mobility outflows and Southern European countries which had high migration inflows. This change is evident in the figures for net migration (the difference between non-EU-born in the country and native-born in non-EU countries) and net mobility (the difference between EU-born in the country and native-born in other EU Member States) in 2010 (Figure 1.3). A number of countries have significant negative net migration due to mobility, while others have been net recipients. Both mobility and migration have been negative or positive in most countries. For example, there are more people born in Malta living in other EU and non-EU countries than there

are EU nationals and non-EU nationals living in Malta, while the opposite is true for Sweden. The exceptions, such as Estonia and Slovenia, have negative net mobility and positive net migration, due to large long-standing populations born in third-countries, rather than recent migrants. Overall, of course, the European Union is a net recipient of migration from all over the world. Migrant flows between the EU and OECD countries, however, are broadly balanced – there are about as many EU-born people living in other OECD countries as non-EU, OECD-born migrants living in the EU (David and Senne, 2016).

**Figure 1.3. Mobility and migration contribute to population change in different ways across the European Union, 2010**

Net mobility and net migration as a share of the population aged 15+



Source: OECD Database on Immigrants in OECD Countries (DIOC) 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

The educational composition of the working-age population is also changing, with increasing education levels across EU Member States, although in different ways in different countries. The asylum crisis of 2015 – with the unexpected arrival of hundreds of thousands of potentially long-term additions to the EU labour force concentrated in a handful of Member States – further complicates the demographic picture, although it is not sufficient to change the overall scenario of a stall in total working-age population growth.

Nor are working conditions the same from one EU Member State to another. There is a wide spread in average salaries, for example – 13 times higher in Luxembourg than in Bulgaria – and the gaps remain significant even when differences in living standards are taken into account. Employment protection legislation and industrial relations also vary, while education and training, active labour market policy, social

benefits and pension systems are organised differently across the EU Member States.

Language further fragments the European labour market. There are 24 official languages in the European Union, some of which are little practiced outside a single Member State, while others are common to a number of Member States and at least three are spoken in many countries throughout the world. Little-spoken languages can inhibit mobility and some countries may struggle to recruit workers. By contrast, well-known languages make it much easier for employers in certain Member States – particularly those where English is spoken and, to a lesser extent, Spanish and French – to recruit workers from abroad.

The geographic position of EU Member States relative to external borders also varies, affecting their proximity to third-country workers and the complexity of cross-border employment. Only some EU Member States have external borders, while others are island countries which control entries and exits. The borderless Schengen Area unites many EU Member states and includes Norway and Switzerland – Schengen associated countries but not members of the European Union. Although there are few major population centres straddling the EU's Eastern borders, the regulation of cross-border work along these external borders is an important policy issue for some EU Member States.

## **A common expectation of future skill needs**

EU Member States nevertheless face a number of shared challenges. As mentioned, demographic difficulties affect the entire Union, although intra-European movements have cushioned the full blow of natural population decline in some EU Member States, and even reversed the trend in others. However, mobility potential is running out fast in the Member States which have supplied the bulk of mobile workers, meaning that future mobility will not likely have the magnitude of the large flows of workers seen over the past decade.

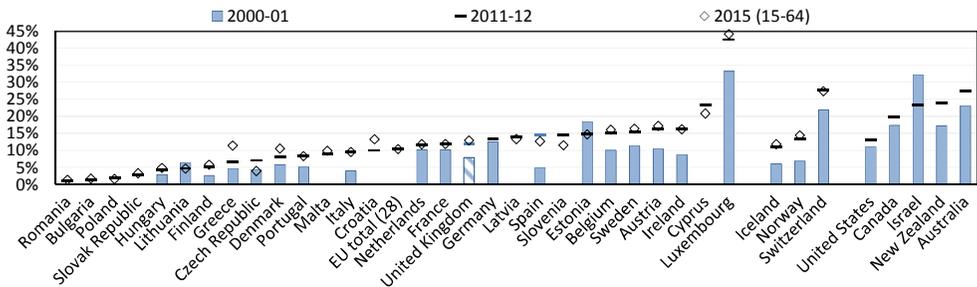
Across Europe, there is an unmet skills demand which is likely to grow and of which Member States are aware. It is expected that the coming decade will see a large number of job opportunities across the EU. The European Centre for the Development of Vocational Training (CEDEFOP) estimates in its 2015 Skills Forecast that between 2013 and 2025 across the European Union there will be more than 100 million job opportunities (the sum of net employment change and

replacement demand). CEDEFOP also expects total employment numbers to increase by 3.6% and the working-age population to be stable in the ten years from 2015 to 2025 (CEDEFOP, 2015).

Member States compete, to different extents, for talent, seeking not only to retain their own residents but also to attract and retain foreigners who have come from abroad to study and work. Most EU Member States – with the exception of some of the countries which joined the Union in the 2000s – have become accustomed to migration and mobility being an important and growing part in meeting labour demand. The average EU-wide increase in the foreign-born share of the population in the first decade of the 2000s was above 50%. Only the Baltic countries saw their foreign-born populations decline. In the European Union as a whole, more than 10% of the resident population is foreign-born (Figure 1.4).

**Figure 1.4. The foreign-born population has grown in almost all EU Member States in the past decade**

Foreign-born population, 2000-01 and 2011-12, and age 15-64, 2015, % of the total population

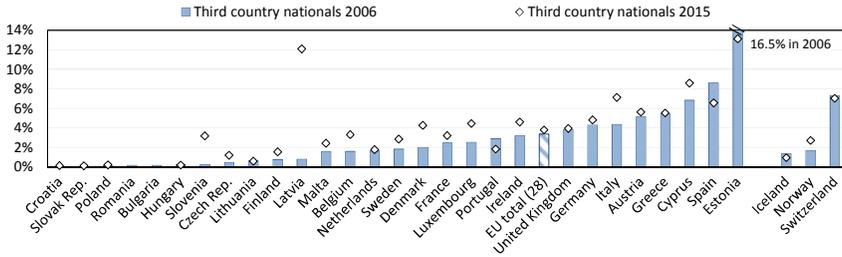


Source: OECD Database on International Migration (2000-01 and 2010-11). Eurostat Database on International Migration and Asylum for non-OECD EU member countries (2012-13). Labour Force Survey (Eurostat) 2012-13 for Croatia. Labour Force Survey (Eurostat), 2015.

Moreover, among the EU’s foreign-born residents, the number of third-country nationals aged 15-64 has also increased – by 12% between 2006 and 2015 – and comprises 3.8% of the EU population in that age range (Figure 1.5).

**Figure 1.5. The number of third-country nationals in the European Union has increased in recent years**

Populations of third-country nationals, 2006 and 2015, % of the total population aged 15-64



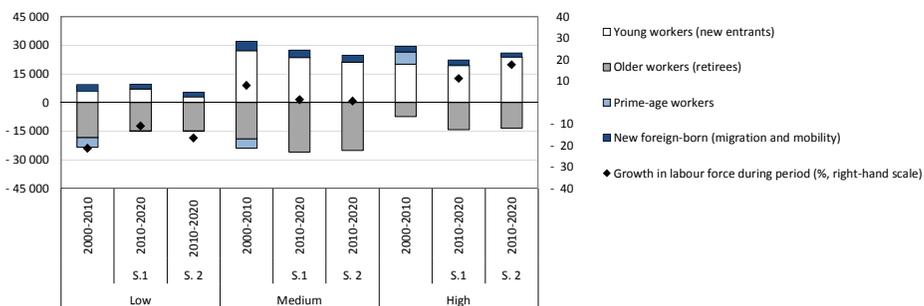
Source: Labour Force Surveys (Eurostat) 2006 and 2015.

The rise in the share of foreign-born, whether through migration or mobility, has affected the composition of the labour force. The foreign-born have had a more significant effect in expanding the less educated parts of the work force, where many European native-born are retiring, than on the more highly educated, where many young European native-born with tertiary education are entering the labour market (Figure 1.6). The trend is likely to continue over the current decade, with immigrants compensating for some of the fall in the low-educated labour force and contributing to growth in the medium and high educated labour force.

**Figure 1.6. The EU labour force will be better educated by 2020, but a high share of new entries in the less educated parts of the labour force will come from the foreign-born (including intra-EU mobility)**

Changes in the educational attainment of the EU27 labour force, by source, number of persons in thousands, 2000-10 and 2010-20.

Two scenarios: S.1 workers do not upgrade their qualifications; S.2 current workers upgrade their qualifications



Source: Projections based on Labour Force Surveys (Eurostat 2000 and 2010); See OECD/EU (2014).

There are substantial differences between EU Member States in the role immigration has played in recent labour force changes. However, in countries where immigration flows have been significant, migrants have contributed relatively more to the size of the lower-educated labour force than to the higher educated labour force.

In declining occupations – where total employment has been falling – immigrants accounted for a greater share of new entries over 2000-10 than in occupations where employment was on the rise. The trend was true across Europe.

When it comes to skills level, EU Member States currently face little pressure for labour migration programmes to meet demand in unskilled jobs. While the low-educated population in Europe continues to decline in line with improving education and the shifting nature of the economy, migration channels such as family migration and humanitarian migration are substantial in a number of EU Member States. These channels are dominated by less educated migrants and will contribute to ensuring a sufficient supply of workers to meet demand in declining unskilled occupations. A number of high-growth less-skilled occupations are providing jobs to less skilled workers – this is already apparent for example in long-term care and live-in care. It is not possible to rule out increased demand in the future, yet this is not where the large-scale skill needs for labour migration are felt across the European Union.

### **The political context: What is EU labour migration policy and where does it originate?**

In light of the current characteristics of migration to EU Member States, the role occupied by the European Union in global migration patterns, and the profile of emerging skill needs, what should EU labour migration policy accomplish?

To answer that question, it is important first to trace the development of EU labour migration policy, especially relative to policies at the national level. The European Union is a unique body in the world, and cannot be compared to a single national state or a federation. Its statutes have evolved since the first treaties. Members have granted growing legislative competences to the Union over time, and the number of countries which belong to it have increased from a core of six Western European countries in the 1950s to 28 in 2016, stretching into South-Eastern Europe and the Mediterranean islands.

In brief, the European Union remains a union of individual countries, where decisions are taken by the representatives of Member States at ministerial level (the Council) in co-decision with the European Parliament made up of elected representatives from each Member State. Its executive body is the Commission, which is also tasked with developing proposals (“right of initiative”). Its fundamental purpose is to achieve shared goals through actions which are best conducted at the European level rather than by single nations. That approach is explicitly set out in the current Treaty on the Functioning of the European Union (see Box 1.1). Any discussion of labour migration policy in Europe must therefore trace the competence of the European Union in that field and when and how it developed.

### **Box 1.1. The current competence of the European Union in the area of labour migration policy**

The current policy-making space of the European Union is defined by the Treaty on the Functioning of the European Union (TFEU), in its current form in force since 2009. The EU may exercise “exclusive”, “shared” or “supporting” competences in accordance with Articles 3, 4 and 6 of the treaty.

When it comes to migration, it is to develop “a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows”. In order to “ensure efficient management of migration” the European Union may adopt measures that determine “the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits”. The EU does not have exclusive competence in deciding the conditions of entry for third-country nationals: this depends on the purpose of the admission and on whether the EU has already adopted relevant policies. Admission falls under the principle of subsidiarity, meaning the EU shall act “only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

The TFEU clearly states that the European Union cannot require individual countries to admit third-country nationals for employment and self-employment, as Member States themselves decide the final number (or “volumes of admission”) they allow in.

The United Kingdom and Ireland have an opt-in to EU migration-related legislation. Only when they choose to opt in are they bound by EU migration policy measures. Denmark has an opt-out clause and is not subject to any EU migration policy decision. Other countries which are part of the European single market and apply freedom of movement rules (namely, Switzerland and Norway) are not bound by EU measures.

The obligation to “add value” to the actions of individual Member States is central to understanding EU policy making in the field. The justification for a European labour migration policy lies in the common

aspects of the European Union itself. First and foremost, all countries belong to a political union with shared jurisprudence and body of rights. All EU Member States' policy choices affect those of their peers, including those with whom they do not share common borders. The political union is also an economic union which shares growth objectives and a large number of economic governance rules. There is, in particular, a single labour market in which EU nationals are able to take up employment and reside with their family across the European Union. Finally, there are the common goals of promoting employment and efficiently managing migration.

### ***From the Treaty of Rome to the Treaty of Lisbon***

From the very beginning of the European project, EU policy has been concerned with labour migration. The 1957 Treaty of Rome established freedom of movement for workers within the European Community. Countries established guest-worker programmes with non-European partners throughout the 1960s, with no co-ordination or governance at the European level. Member States began discontinuing such recruitment schemes in the early 1970s before the 1973 oil crisis put definitive end to them. There was little policy interest in pushing for the co-ordination of labour migration policy at the European level. In its official policy documents, the Commission (or “Commission of the European Communities” as it was called at the time) generally took a hard line on labour migration, especially from non-OECD countries. Hansen (2016) argues that the call for a “zero migration” policy was meant to reassure EU citizens that the transformations brought about by the single market would not spark a rise in migration from outside the EU (see also Hansen and Hager, 2010).

In the mid-1970s, a clear formulation of the common interest regarding migration policy was already evident in the Action Programme in Favour of Migrant Workers and their Families – which covered both intra-EU mobility of EU workers and third-country nationals – drawn up in 1974 and endorsed by the Council in 1976:

The lack of co-ordination at Community level of the migration policies of Member States has proved a major factor in the haphazard and ill-planned use of manpower. It has also contributed to the over-development of the central regions of the Community with a consequent aggravation of the difficulties in the peripheral areas and the social and economic problems which follow. There are at present no safeguards, at Community level, against conflicts

between national migration policies and Community policies in social, regional and industrial affairs nor in the field of development aid policy, particularly in relation to the Mediterranean countries. The absence of coordination has also left unresolved the conflicting interests of migrants and their employers and of the economies of the Member States using migrant labour and those exporting workers. All this points to the need for the Member States and the Commission to consider the question together with a view to adopting a common strategy to meet the problem. (Commission of the European Communities, 1974)

The Action Programme aimed not to increase labour migration but to prevent exploitation, irregular migration and inefficiencies – in other words, one Member State admitting third-country workers while another sent them home.

The European Union has been much more focused on rights than other OECD migration destinations and individual Member States. Although caution over inflows prevailed, the EU's reluctance to support increases in labour migration did not reflect disinterest in the situation of non-EU workers. In the mid-1970s, attention at the European level shifted from the admission to the condition of third-country workers already resident in Europe. The 1974 Action Programme noted that:

“migrant workers from third countries are generally treated less favourably than workers coming from the Member States, and the situation of these third country migrants varies considerably from one country to another.

[...]

... third country migrants have no Community protection and rely solely on often restrictive national legislation.

[...]

For this reason, solutions in common must be found ... These solutions must take account of the migrant workers' needs and their rightful place in a society to whose prosperity and well-being they contribute.”

The 1989 Community Charter of Fundamental Social Rights of Workers, which spells out the main tenets of EU labour law, did not mention mobility or migration. However, the action programme (European Commission, 1989) which followed it was a sign that the

Commission still perceived the non-equal circumstances of non-EU workers as a potential problem for the social rights of workers.<sup>1</sup>

EU-level efforts to address the rights of third-country workers have gone beyond social protection to include right of access to the labour market. In 1991, as part of preparations for the Maastricht Treaty, ministers of immigration from EU Member States submitted a work programme on asylum and migration to the Council. The programme proposed measures on labour migration, particularly the “harmonisation of national policies on admission to employment for third-country nationals taking account of possible labour requirements in Member States over the years to come”.<sup>2</sup> Ministers also asked the Council to examine the possibility of granting long-term resident third-country nationals the same labour market access and freedom of movement enjoyed by EU nationals. The Maastricht Treaty itself affirmed a common interest in the conditions of entry, movement and residence of third-country nationals.<sup>3</sup> By 1994, the rights of third-country nationals had, in Commission documents, become an assumed part of building the European labour market. Indeed, the 1994 Social Policy White Paper (European Commission, 1994) noted that “the pursuit of the goal of free movement for the citizens of the Union and the more so for settled third country immigrants” was essential. The European Council did not always take that proposal forward, and the harmonisation of admission policies did not happen.

Nonetheless, a communication from the Commission on immigration and asylum policies in 1994 (European Commission, 1994b) continued to support the three-pronged strategy of the 1991 approach:

- take action on migration pressure;
- control migration flows to keep them within a manageable structure;
- strengthen integration policies for the benefit of legal immigrants.

The sentiments in the Communication reflected the policy concern of the time over unfair competition with resident workers, conditioned by relatively high unemployment and large inflows of asylum seekers. Indeed, it states that, in the short term, labour migration policy should remain restrictive. It leaves room for the possibility of allowing labour migration to open up – through numerical quotas – should it be “established that the effects would be positive”. The Communication also took a favourable stance on temporary work schemes.

Throughout the 1990s, however, the situation in Europe changed, with important shifts in labour migration which was now heading for new destinations and in larger numbers. Asylum flows declined. Unemployment levels fell. EU Member States which had relatively undeveloped labour migration frameworks discovered that greater numbers of foreigners were coming in to take up employment. Although Member States were still highly concerned over irregular migration, they could no longer dismiss economic migration so easily as superfluous. The migration balance had turned from negative to positive by the late 1990s in Southern European countries, where organised forms of labour migration through centralised planning and selection were ill suited. The result was inadequate, ineffective implementation (Pastore, 2014).

Between 1994 and 1995, the Council adopted a raft of non-binding measures which tended towards creating a restrictive minimum standard, although Member States were not bound to strict implementation. As regards admitting third-country nationals for employment, the Council resolved in 1994 that restrictive measures should be continued and even reinforced.<sup>4</sup> It stated that “Member States will refuse entry to their territories of third-country nationals for the purpose of employment”, before listing exceptions and derogations. Elements of the resolution would later reappear in Directives on categories for which derogations were offered (seasonal workers, intra-corporate transfers, etc.). More pointedly, resolutions in favour of the admission of students and certain self-employed third-country nationals were also promulgated, the former also providing the basis for the Students Directive to come in the next decade.

By the time of the ratification of the Amsterdam Treaty in 1999, the situation had clearly changed. The aim of the Treaty was to develop the European Union as an “area of freedom, security and justice”. It drew the broad outlines of EU policy on migration and asylum accordingly, although policy was built incrementally following the indications of Article 61 of Title IV:

In order to establish progressively an area of freedom, security and justice, the Council shall adopt: (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons [...] in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration [...] (b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries. (European Union, 1997)

This clause was particularly difficult to negotiate due to opposition from certain Member States, and specific protocols were annexed to the Treaties to allow certain countries – the United Kingdom, Ireland and Denmark – to opt in on an *ad hoc* basis, or, in the case of Denmark, generally opt-out of actions in the field of migration.<sup>5</sup> The three Member States thus generally remain outside the coverage of EU measures on legal migration, even today.

In light of the new competence and perspective set out in the Treaty of Amsterdam, the Commission moved away from its previous reluctance to take up labour migration. The October 1999 Tampere meeting of the European Council – the first European Council ever devoted to Justice and Home Affairs, and the first where immigration was at the centre of discussion – called for a common immigration policy. In 2000, the Commission issued a Communication on a “Community immigration policy” which explicitly asked the question, “why a new approach to immigration?”, before answering it with both empirical observation and a review of the changes in the Commission’s political mandate (European Commission, 2000). On the one hand, “it [was] clear from an analysis of the economic and demographic context of the Union and of the countries of origin, that there [was] a growing recognition that the ‘zero’ immigration policies of the past 30 years [were] no longer appropriate”.

The Tampere European Council meeting set the format for political direction in migration, with the creation of a multi-annual programme which determined legislative activity. Similarly, the Council meetings which followed (at the Hague in 2004 and Stockholm in 2009) gave rise to five-year migration policy programmes. The European Pact on Immigration and Asylum, initiated by the French Presidency in 2008, was another instance of political positions shaping action.

During the 2000s, EU debate on labour migration was affected by the 2004 and 2007 accession of 12 countries, which added more than 45 million individuals to the EU’s labour force, increasing it by more than 30%. Although a limited share of new EU citizens exercised mobility, their access to the labour markets of most of the prior EU Member States was restricted for a transitional period and mobility was initially directed at the United Kingdom and Ireland, and to some extent to Germany, Austria, Italy and Spain. For some Member States, mobility appeared to be a reliable primary resource for filling vacancies.

The enlarged EU did not lessen policy interest in migration at the EU level. Tight labour markets in many countries in the mid-2000s, together with a period of economic expansion and a construction boom, sustained interest in recruitment from third countries.

Concern about irregular migration, especially from across the Mediterranean, prompted the Council to ask in 2005 for a migration priorities paper. The paper produced, “the Global Approach to Migration: Priority actions focusing on Africa and the Mediterranean”, was a short policy document which considered labour migration not from the demand perspective, but from that of management and relations with third countries, including the promotion of legal migration channels. The approach was extended to relations with third countries in general.

In 2008, the European Commission issued a communication, the “Common Immigration Policy for Europe: Principles, actions and tools” (European Commission, 2008). It set out the role of labour migration more clearly, seeing it as “helping to address future labour and skill shortages as well as to increase the EU’s growth potential and prosperity, complementing ongoing structural reforms,” and stated clearly that immigration is a factor affecting the competitiveness of the European Union.

The Treaty of Lisbon, ratified in 2009, ushered in a significant change in the way the EU developed its migration policy objectives and methods. With regard to objectives, the treaty formalised the competence of the EU in the “area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”. As for methods, the treaty changed the way in which decisions were made in the area of legal migration from unanimity to qualified majority voting in the Council, and the European Parliament acquired co-decision powers.<sup>6</sup> A qualified majority is achieved if a proposal is approved by 55% of Member States who also represent at least 65% of the total EU population. When not all Council members participate in the vote, for example due to an opt-out in certain policy areas, a decision is adopted if 55% of the participating Council members, representing at least 65% of the population of these Member States, vote in favour.

The Treaty of Lisbon went beyond the Amsterdam Treaty in that it referred explicitly to immigration policy. “The Union shall develop a common immigration policy”, it states, adding that the policy should aim

at “ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings” (Title V, Chapter 2, Article 79). However, there is a clear limit to the ability of the European Union to make final decisions on the admission of labour migrants, since Article 79 of the Lisbon Treaty “shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed”. While there is no ability at the EU level to compel Member States to admit labour migrants, Article 79 indicates by exclusion that the common policy area includes *labour* migration, with the exception of volumes of admission (Hansen, 2016).

The Lisbon Treaty also revived earlier policy priorities regarding integration of third-country nationals with implications for their mobility within Europe. However, the Amsterdam Treaty had already assigned to the Council the task of adopting “measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States”. The Tampere Declaration had called for rights and obligations comparable to those of EU nationals for third country nationals. It also called for third-country nationals with long-term residence permits to be granted “in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens”, although the list of rights did not, in the Tampere Declaration, extend to mobility. Moreover, as regards integration policy, the Lisbon Treaty introduced a specific provision [Article 79(4) TFEU] whereby the EU can establish “measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories”. This however excludes “any harmonisation of the laws and regulations of the Member States”.

Labour migration is not the top priority for EU action on migration, but part of a set of priorities focusing on combating irregular migration, reinforcing border security, strengthening the asylum system, and improving visa, return and readmission policy. Labour migration initiatives have been made to some extent contingent on border controls, compliance and enforcement. In 2011, the Global Approach to Migration and Mobility (GAMM) explicitly stated so,<sup>7</sup> associating skills and talent with migration, something absent from both the 2005 Global Approach and the Lisbon Treaty. The legal migration pillar in the GAMM is

concerned with skill matching, upgrade and transfer of skills, and does not explicitly refer to unskilled migration.

### ***From a horizontal to a sectoral approach***

EU policy on labour migration has shifted from a “horizontal” approach, or strategy, to a “sector-based” approach. The horizontal approach seeks to create a broad common framework that governs the admission, conditions of residence and rights granted to any third-country nationals (TCNs) engaging in paid work and self-employed activities. The horizontal approach was already visible in the broad but restrictive resolutions passed in the 1990s. In the wake of the Tampere mandate, in 2001 the Commission presented an economic labour migration package with a high level of harmonisation, simplicity, transparency and as little differentiation as possible amongst third country workers [COM(2001)386 final]. The draft Directive, “on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities” was a departure from the previous decade. Instead of closing the door on migration, it set out conditions for opening it, calling for third-country nationals admitted for work in the European Union to be treated as a single category. A pathway to permanent residence was identified. Member States were to retain the “right to limit admission” as well as being provided with other forms of discretion. It also stated that the principle of domestic preference over third-country nationals should apply. Despite a favourable response by the European Parliament and the European Economic and Social Committee (EESC), however, the proposal did not receive support from the Council. Member States were very reluctant to place their entire migration framework under the Directive. It was withdrawn by the Commission in 2006.

In response to the reservations of Member States, a 2005 Green Paper (European Commission, 2005) advocated a sectoral approach as an alternative, “putting aside for the time being any overall common framework for the admission of third-country workers”. The Green Paper identified a series of specific categories which had, by and large, already been discussed in previous proposals. Two Directives (on students and researchers) had earlier taken the sectoral approach and the Policy Plan on Legal Migration, released shortly after the Green Paper, officially adopted it. The Policy Plan outlined a roadmap for the next four years, specifying that the Commission’s priority would be to table five Directives. Four were to address sector specific categories of

migrants (highly skilled, seasonal, intra-corporate transferees and remunerated trainees). A fifth would establish a framework Directive (the Single Permit Directive) defining basic rights for labour migrants.

### ***External relations***

Co-operation with third countries is a key element of EU competence in the area of labour migration, and has been part of strategic documents since the programme set out in the Tampere Declaration. The 2005 Global Approach to Migration aims to manage migration more effectively. Of the four objectives that it sets forth, the first is to organise legal immigration and mobility, and the fourth is to maximise its development impact. To that end, the European Union proceeds through a number of mechanisms (Balleix, 2016), including regional dialogues and bilateral policy dialogues.

The main form of co-operation is the Mobility Partnership (MP), which provides the policy framework governing arrangements for labour migration. While the Tampere Declaration identified the fight against irregular migration as Europe's initial priority, the promise of legal migration opportunities was the carrot for co-operation. More than a mere carrot, the promise also entailed taking circular migration and EU Member States' particular labour market needs into account. The Mobility Partnership was made explicit in 2007. Eight MPs have since been signed, although only a few are with major countries of origin – Moldova, Morocco and Tunisia. With the exception of Cape Verde, MPs target the EU's geographic neighbours.

The MP policy framework is highly flexible and acts as an umbrella for bilateral activities. It is driven by funding disbursed by the Directorate General for International Cooperation and Development, although spending by Member States can also be combined or assigned to meet MP objectives. MPs are not binding, nor are the initiatives that they support generally market-driven, which affects the sustainability of their labour migration measures (Balleix, 2016).

Visa facilitation is another area, along with readmission agreements, where the European Union can negotiate agreements as a bloc. The ability to handle negotiations on behalf of Member States is a powerful bargaining tool.

## *EU labour migration Directives*

Concretely, the EU legislative framework governing migration comprises a series of Directives. This section looks at their political development.

### *The Long-Term Residence Directive (2003)*

The Directive concerning the status of third country nationals who are long-term residents was proposed alongside the 2001 horizontal approach. The Directive was approved in 2003 and establishes the conditions under which a Member State confers (and revokes) long-term resident (LTR) status and accompanying rights to legally resident third-country nationals. The Directive lays down rules governing the rights of residence of third country nationals in member states other than the one that has granted them long-term resident status. The Directive does not apply to labour migrants alone, as its key standard is five years continuous legal residence. Applicants must demonstrate:

- “stable and regular resources” that enable them to support themselves and their family dependants, “without recourse to the social assistance system of the Member State concerned”;
- that they have sickness insurance;
- that they abide by national integration obligations where they apply.

The Directive seeks to meet the long-stated goal of narrowing the gap between the rights and labour mobility of Member State nationals (or EU citizens) and legally resident TCNs – a single market requirement. The Directive itself does not explicitly target labour migrants and many of its beneficiaries did not indeed enter as labour migrants. Nonetheless, the Directive’s roots can be traced as far back as the post-war period, when multilateral co-operation on labour migration in Europe advised that residence conditions be relaxed after five years of employment. Decades of concern in policy documents with aligning TCNs’ rights more closely with of citizens’ were expressed in the Tampere Programme’s commitment to “safeguarding the rights of third country nationals” which reappears in the preamble to most other Directives on labour migration policy.

Naturalisation remains the exclusive province of national laws, and long-term residence is no substitute. Since the national requirement for

eligibility for naturalisation in EU Member States is years of legal, rather than long-term, residence, there is no direct link between naturalisation and LTR. Long-term resident status is meant to grant TCNs rights as close as possible to those enjoyed by nationals, without actually conferring EU citizenship.

Over and above the question of rights within an individual country, the added value of European co-ordination is the provision of intra-EU mobility rights. No country's migration policy has ever factored third-country nationals' residence in another EU Member State into its decision to grant permits. The 2003 Long-Term Residence Directive states that "a genuine area of freedom, security and justice" is "unthinkable without a degree of mobility for third-country nationals residing there legally, and particularly for those residing on a long-term basis". Mobility is important both as a worker's right and because it is in line with the objective of greater labour mobility. The two are related, in fact: the lack of mobility reduces the bargaining power of third country nationals as they are unable to seek work in other EU Member States.

The 2003 Directive was less ambitious than the 2001 proposal, which allowed fewer conditions on issuance (i.e. no housing or integration tests) and denied the second Member State the ability to refuse mobility for employment. The Directive also afforded countries substantial room for manoeuvre in determining the contents of the issuance requirements and permitted more favourable national schemes (e.g., with shorter residency requirements) to continue.

### *The Students and Researchers Directives (2004 and 2005)*

Adopted a year after the 2003 Long-Term Residents Directive, the Students Directive<sup>8</sup> was not explicitly related to labour migration, and is explicitly dissociated from "the labour-market situation in the host country". Yet in any national labour migration system, international students are a key component. In addition to potential work rights during study, they are a major source of labour migration as many enter the host country's work force following graduation, for which they are well suited as they possess local qualifications, language and host-country knowledge. Post-graduation conditions are not mentioned in the Students Directive, however.

Building on the broad objectives of championing the European Union as a world centre of educational excellence and promoting third-country student mobility to the EU, the Directive's immediate purpose is

to create a common legal framework that governs the conditions and procedural rules for admitting TCNs to the EU “for a period exceeding three months for the purpose of studies, pupil exchange, unremunerated training or voluntary service”. While the Directive “shall apply” to TCNs who apply for purposes of study (i.e. higher education), Member States “may also decide” whether the Directive encompasses the other activities.

As part of the wider focus on mobility, the Directive stipulates that students who apply to conduct a part of their studies at a higher education establishment in a Member State other than the one to which they were first admitted “shall be admitted” to that Member State in due course and subject to certain conditions. Equally relevant in this context – and notwithstanding the assertion in the preamble that the Directive’s migration provisions are not conditioned by “the labour-market situation in the host country” – is the provision in Article 17 that “students shall be entitled to be employed and may be entitled to exercise self-employed economic activity”. However, Member States are allowed to impose a number of restrictions.

Closely related to the Students Directive, the so-called “Researchers Directive” (Dir. 2005/71/EC)<sup>9</sup> was adopted in October 2005. It seeks to attract third-country researchers to the EU and is an integral part of the drive to create a European research area and the Lisbon strategy of turning the EU into “the most competitive and dynamic knowledge-based economy in the world by 2010”. It was, however, launched for the more specific purpose of contributing to the target (set in 2003) of a 3% increase in expenditure on research and development by 2010, which was estimated to require an additional 700 000 researchers.<sup>10</sup>

The Directive sets out the (simplified) admission terms for researchers from third countries applying to carry out research in a Member State for more than three months – on the condition that there is a hosting agreement in place with a registered research organisation. Researchers are granted rights comparable to those of Member State nationals in a number of areas (much in line with the Long-Term Residents’ Directive). Unlike students, however, they are afforded more favourable intra-EU mobility rights as well as family reunification and EU mobility for family members, neither of which apply to students. Contrary to later labour migration Directives (such as the Blue Card Directive), there is no provision for labour market tests or wage requirements for remunerated researchers (Chou, 2012).

The Researchers' Directive is designed to improve conditions for tertiary-educated third-country nationals and make the European Union a more attractive destination, rather than granting more rights or benefits to third-country nationals already resident (even if the latter may benefit). By concentrating on conditions of admission and residence, it creates a framework under which Member States are required to admit certain third-country nationals, which – along with the Students Directive – makes it the first instance of supranational harmonisation of migrant admission policies.

The European Commission produced reports on the Students' and Researchers' Directives in 2011, as the Directives themselves had required. With the GAMM as a touchstone, the Commission identified a number of areas where transposition was less than satisfactory and where changes could be made. With regard to the Students Directive, processing times and transparency were identified as areas for improvement, as was the possibility of post-graduation work. As for the Researchers Directive, low inflows were attributed to problems of definition and insufficient publicity of the permit. For both Directives, the reports called to encourage these categories of admission in EU programmes of co-operation and relations with priority third countries.

In the spring of 2013, the Commission proposed to merge the two Directives into a single one, calling for improvements and additions to a number of key components, such as admission procedures, rights, intra-EU mobility, the number of binding rules and overall coherence.<sup>11</sup>

The Commission's overriding concern, though, was to dovetail the Directives with the Europe 2020 Strategy and the GAMM,<sup>12</sup> highlighting the ever-increasing importance of attracting talented third-country students and researchers to the EU. To meet the 2020 Strategy's innovation goal, for example, it warned that the forecast need for researchers had now risen to "1 million by 2020". Similarly, the 2011 Innovative Union Competitiveness report identified an "innovation emergency", where Europe was falling behind other OECD economies. It explicitly called on the European Union to compete for global talent, which includes researchers and students.

The Commission's proposal to make the recast Directive wider in scope and limit alternative national schemes was largely unsuccessful. Its proposal sought to make binding previously optional rules relating to school pupils, unpaid trainees, volunteers and – two new categories – au

pairs and paid trainees.<sup>13</sup> It also prevented Member States from having alternative schemes for these categories.

In the final version of the Directive, adopted in May 2016, admission conditions are generally facilitated, and some of the previously optional categories (remunerated and unremunerated trainees, and volunteers under the European Voluntary Service Scheme) have become binding. The amended Directive also extends and improves intra-EU mobility for students and researchers and labour market access for members of the families of third-country researchers (but not students). It grants them coverage under the EU Family Reunification Directive, but exempts researchers from many of its most restrictive conditions (those related to integration measures before reunification and waiting periods). Mobility provisions for both students and researchers are increased.

The amended Directive is much more explicit than the two 2013 draft original Directives in its emphasis on the labour migration aspect. In its draft, it plainly calls for students and researchers to be allowed to work on completing their studies and research work, describing them as “a future pool of highly skilled workers as they speak the language and are integrated in the host society”. The amended Directive offers students greater opportunity to work while studying. It allows both students and researchers to stay on for an additional nine months after completion of studies or research in order to seek work or to start a business. The nine-month period was a compromise between the 18 months favoured by the Parliament and the six months put forward by the Council.

### *The Blue Card Directive (2009)*

The Blue Card Directive,<sup>14</sup> adopted in May 2009, is the Directive with the clearest link to labour migration to date. It is explicitly meant to attract highly qualified labour migrants to the European Union. Building on the Amsterdam Treaty and Hague Programme, seeking to address projected labour and skills shortages, and drawing on the Lisbon Strategy, the Directive lays down the terms of entry, residence and intra-EU mobility for highly qualified third-country workers – tertiary-educated, holding an offer of employment in a matching occupation, meeting a salary threshold – and their families. As with the Long-Term Residence and Researchers Directives, it stipulates socio-economic and labour rights in accordance with the goal of aligning the rights of TCNs with those of Member State nationals. The Directive explicitly seeks to encourage circular migration between countries of origin and the EU,

while drawing a path to long-term resident status in the EU in keeping with the rules of the LTR Directive.

The conditions of admission are meant to establish a baseline that is more favourable than for other migrant groups – migrants’ families may accompany them, processing times have a statutory limit, and recipients are allowed to seek new work if they are made redundant. Blue Card holders, unlike any other third-country nationals, may carry over their years of residence if they move to a second EU Member State under the same permit category. The EU LTR status of Blue Card holders is also superior to that of ordinary EU long-term residents, allowing longer absences in the qualifying period and after receipt of the EU LTR permit.

To gain approval from the Council and Parliament, however, the Directive granted Member States a number of discretionary and derogative powers. The chief concession was that the Blue Card may not pre-empt or preclude any national schemes for the same category of workers. Moreover, as with other labour migration categories and due to Member States’ competence in that respect, countries are free to restrict admissions (and even reduce them to zero, which obviates the measure). Member States may also impose a labour market test before a Blue Card holder is admitted. Similarly, mobility is subject to the same discretion of the second country. When first proposed by the Commission, in 2007, intra-EU mobility was promoted as “a strong incentive for third-country highly qualified workers to enter the EU labour market” and “play a primary role in relieving the labour shortages in certain areas/sectors”. However, under the terms of the adopted Directive, Member States may impose labour market tests or volumes of admission on aspirant mobile Blue Card holders.

Given the limited take-up of the Blue Card Directive, the Commission was asked to review the Blue Card and submit a new proposal for a revised Directive in 2016.

### *The Single Permit Directive (2011)*

The Single Permit, or Framework, Directive<sup>15</sup> was launched alongside the draft Blue Card Directive in 2007. This was the first Directive to be adopted under the Lisbon Treaty and, therefore, in accordance with the “Community method” and its full parliamentary co-decision powers.<sup>16</sup> The proposal met with opposition from Member States in the Council and aroused heated debate in Parliament which – partly because the Directive’s sectoral approach – voted in 2010 to reject the proposal. Following

subsequent negotiations between the Council and the Parliament, a significantly altered Directive was adopted in December 2011.

With reference to Article 79(2) of the Lisbon Treaty, the objectives of the Tampere European Council and the Stockholm Programme, the Directive sets out “a single application procedure for issuing a single permit for third-country nationals to reside for the purpose of work in the territory of a member state”. It also lays down “a common set of rights of third-country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted”. Explicitly steering clear of any bearing upon “the admission, including the volumes of admission, of third country nationals for the purposes of work”, the Directive’s first subject matter relates exclusively to provisions whereby TCNs (or their employers) enter into a single application procedure which, should a Member State grant admission, yields a “combined title” that brings residence and work permits together “within a single administrative act”.

The Single Permit Directive aims to further simplify procedures, improve efficiency and harmonise national rules in order to facilitate the control of migration and ensures the legality of migrants’ stays in the EU. Again, the Directive reflects the pledges of the Tampere and Stockholm Programmes to ensure the fair treatment of TCNs and that they enjoy rights comparable with those of Member State nationals. Article 12 of the Directive states that third country workers who have been granted single permits should enjoy equal treatment rights comparable to those of EU citizens (e.g. working conditions, freedom of association, access to social security and tax benefits), though not on a par with those afforded under the Blue Card and LTR Directives, since several derogations are provided. In essence, and as stated in its preamble, the Single Permit Directive specifically, although not exclusively, spells out rights for third-country workers “who are not yet long-term residents”. As the preamble also states, in “the absence of horizontal legislation”, it does so in order to “further a coherent immigration policy and [narrow] the rights gap” between TCNs and EU citizens.

As the Single Permit Directive takes a sectoral approach, it excludes 12 categories of TCNs, of which some, though not all, are covered by more favourable terms in previous Directives. Member States negotiated a reduced scope and binding force. As Member States secured ample room for manoeuvre for interpretation, involving national law and restricting the rights of TCNs (Brinkmann, 2012; Groenendijk, 2013;

Peers, 2012), the harmonising effect of the Directive was limited (Pascouau and McLoughlin, 2012).

### *The Seasonal Workers Directive (2014)*

After nearly four years of negotiation, the Seasonal Workers Directive<sup>17</sup> was adopted in February 2014. It specifies the terms of entry and residence and the rights of TCNs who apply for seasonal work in the EU for a maximum of between 5 and 9 months within any 12-month period. Although the Directive leaves it entirely up to Member States, in line with the Treaty, to determine their intakes of seasonal labour, the Seasonal Workers Directive, like the Blue Card Directive, aims at ensuring that certain categories are able to enter the EU under favourable conditions. Sectors mentioned in the Directive (Member States are entitled to define the sectors in which the Directive would apply) are tourism, agriculture and horticulture, all labour intensive and where temporary foreign workers are at risk for abuse. The Directive provides for equal treatment of those seasonal workers with nationals in a number of areas including working conditions and social security, which also reduces the risk of unfair competition among EU Member States.

The Seasonal Workers Directive is referred to in the GAMM (discussed above), which calls for better migration management in the Mediterranean area and for more legal migration channels to the European Union. The Directive is promoted as fostering circular migration and seeking specifically to support development, curb irregular immigration and prevent employers' exploitation of TCNs through a set of "fair and transparent rules for admission and stay". The Directive includes "safeguards to prevent overstaying or temporary stay from becoming permanent", and sits well with the 2009 Employers Sanctions Directive.<sup>18</sup>

Apart from the Treaty competence in accordance with Article 79(2), the Directive's extensive preamble cites a number of EU migration policy aims and commitments.<sup>19</sup>

The Directive has no provisions for intra-EU mobility, an omission which reduced potential opposition from Member States and facilitated adoption (Lazarowicz, 2014).<sup>20</sup> It does not grant family reunification rights and it limits equal treatment in a number of areas, restrictions that NGOs lobbied against during the negotiation period (Joint NGO Statement, 2011). Although the Directive's non-recognition of certain

rights is related to the temporary nature of seasonal work, it nevertheless underscores the stratifying effects of the sectoral approach.<sup>21</sup>

Compared with the initial draft, the final version provides less harmonisation of the administrative formalities of admission, which Member States still determine.

### *ICT Directive (2014)*

One of the most complex and difficult Directives to negotiate was the one governing intra-corporate transferees (ICTs), adopted in 2014.<sup>22</sup> ICTs (managers, specialists and trainee employees) are defined as temporary workers under the ICT Directive.<sup>23</sup> As ICTs are already mobile employees of companies that operate in different countries, there was a great deal of interest from businesses in facilitating their assignment to different worksites, hitherto governed by national legislation. Legislatively, and in addition to treaty provisions authorising a common migration policy, the ICT Directive drew on the Europe 2020 Strategy and its aims to increase the contribution of innovation and knowledge to economic growth. On the EU side, the intention was to favour ICTs as bearers of competence, skills, knowledge and innovation capacity. Favourable provisions for ICTs were also associated with investment and how they benefitted the knowledge-based economy. It was no secret that countries inside and outside the EU used ICT policies to attract investment from multi-national corporations.

Unlike some other Directives, the ICT Directive does not allow Member States to keep their national practices. If national schemes were kept in place, it would not have been possible to effectively apply the mobility provisions. The qualified majority procedure in use after the Lisbon treaty allowed the Directive to be more ambitious. Since the ICT permit replaces national permits, it is also possible to estimate its likely uptake, as ICTs formerly governed by national arrangements are reclassified to the Directive. At the time the draft Directive was proposed in 2010, the Commission estimated, for the purposes of its impact assessment, that the Directive would apply to between 15 000 and 20 000 new ICTs annually – far less than the total number of ICTs in the Member States where the Directive does not apply: the United Kingdom, Ireland and Denmark.

Two contentious aspects of the proposal related to rights for ICTs and intra-EU mobility.<sup>24</sup> The Council insisted that ICTs should be on a par with posted workers, whereas the Parliament argued for equal

treatment with Member State nationals (Monar, 2013; Kostakopoulou et al., 2014; Peers 2012). The final compromise gave rise to Article 15, which stated that “intra-corporate transferees should benefit from *at least* the same terms and conditions of employment as posted workers whose employer is established on the territory of the Union” (Article 15). Unlike posted workers, however, their salary levels should at all times be on a par with comparable national workers of the Member State where the work is carried out.

In contrast to seasonal workers, ICTs are granted extensive family reunification rights. ICTs and their families benefit from a scheme that entitles them to reside and work in Member States other than the one which issued the ICT permit.

### ***The work plan under the Juncker Commission since 2014***

In 2014, a new Commission took office. The incoming President, Jean-Claude Juncker, established the blueprint for the work of the new Commission which included a “new policy on migration” (Juncker, 2014a). In addition to bolstering the common asylum policy, the document proposed “a new European policy on legal migration [to] address shortages of specific skills and attract talent to better cope with the demographic challenges of the European Union [and] the legal immigration that Europe will sorely need over the next five years”. It also drew up political guidelines that set the objective of making the European Union “at least as attractive as the favourite migration destinations such as Australia, Canada and the United States.” It singled out the Blue Card as having been “unsatisfactory” in its implementation and targeted it for review. The new European Commission included the first-ever Commissioner for Migration and Home Affairs who was tasked with reviewing the Blue Card and making the European Union a more attractive destination for migration based on “existing models” (Juncker, 2014b). The European Agenda on Migration, released in May 2015,<sup>25</sup> spelt out these objectives in a more concrete manner.

Between the nomination of the new Commission and the publication of the Agenda, an unprecedented inflow of asylum seekers had shifted public attention and policy priorities towards management of the asylum crisis and efforts to develop a common response. Nonetheless, the Agenda maintains a longer-term perspective on European human resources and one of its four points is “a new policy on legal migration”. The Agenda reflects the arguments developed over the previous ten years on the demographic background and the need to compete for talent. It

builds on the Commission’s mission statement, judging the Blue Card to be both insufficiently utilised yet the main focus of efforts to make Europe more attractive. It also adds a call to examine “expression of interest” systems so as to test their feasibility and value in an “EU-wide pool of qualified migrants” from which Member States could select candidates for admission based on their own second-level, labour-market-based criteria.

The asylum crisis placed greater pressure on the policy development cycle at the EU level, yet high-level discussions on management of asylum flows and the development of proposals proceeded in parallel and concertation with proposals on labour migration. In April 2016, the Commission followed up the Agenda with a Communication<sup>26</sup> devoted largely to asylum issues but with a section on “a smarter and well-managed legal migration policy”. The Communication continues the emphasis on using the EU Blue Card as the key residence permit for the highly qualified in the European Union. Without committing to a specific policy proposal, it affirms the need for an EU-wide approach to attracting “innovative entrepreneurs”. It calls for a reflection on how to change the entire model of legal migration management in the long term, again citing non-EU countries’ candidate pools and selection criteria. It links co-operation with third countries to the labour migration framework, including training and selection in origin countries, recognition of qualifications and student mobility programmes.

Thus even in a time when policy attention and public concern is focused on the sharp increase in asylum requests and the safeguarding of the EU’s external borders, the Commission remains focused on how EU measures can increase the attractiveness of the EU in the global competition for talent.

### ***Community preference is a principle but not a structured practice***

One recurrent principle in labour migration documents is that of “community preference” (in more recent documents, replaced by “Union preference”). Community or Union preference is the requirement within the single labour market to give EU nationals preference over TCNs (Robin-Olivier, 2016). The concept has a long history. It is rooted in the principle, expressed in the 1968 regulation on free movement, that mobility confers on citizens of other EU Member States the same preference as nationals over third-country nationals. In 2011, the updated free movement regulation, which covers vacancy clearance machinery, referred to the “same priority” for EU nationals as those extended to

nationals “vis-à-vis” third-country nationals.<sup>27</sup> However, the underlying idea is that of “equal” rather than “preferential” treatment. The consequence is that no labour market test can give preference to nationals of any EU Member State over any other. Since this preference is in reference to third-country nationals, the labour market test is sometimes associated with the community preference principle.

There is no general principle enshrined in the treaties requiring Member States to test the labour market prior to the recruitment of a third-country national residing abroad. The inclusion of community preference in labour migration policy documents and legal instruments reflects provisions included in the Accession Treaties and is in fact meant to protect the rights of accession country nationals during periods in which they are subject to transitional measures. As such measures fade and the rights of resident third-country nationals converge more closely with those of EU nationals, the concept of community preference has erroneously become more closely associated with the requirement to conduct labour market tests of locally available labour before hiring third-country nationals from outside the EU labour market.

Community preference in EU migration legislation emerges where Member States are allowed to set limits on migration. They often include EU nationals together with legally resident third-country nationals when considering the labour supply to which preference may be given – as is clearly the case in the Long-Term Residents Directive, for the EU Blue Card and for the Seasonal Workers Directive, but not for the ICT Directive, where no labour market test is allowed. In all Directives, including the ICT Directive, there is however reference to the acts of accession, so that accession-country nationals cannot be treated less favourably, in any case, than third-country nationals.

“Community preference” has however, in some cases, been interpreted as an obligation to seek available labour across the entire EU prior to allowing recruitment of a third-country national from outside the EU. This has been further interpreted as an obligation for labour market tests to use the EURES co-operation network of employment services. This interpretation is not entirely unfounded, as the Council’s 1994 resolution on the admission of third-country nationals for the purposes of employment advocated “[bringing] Community employment preference properly into practice by making full use of the EURES system to improve the transparency of the labour markets and facilitate placement within the European Community”. The resolution laid the groundwork for countries to use the EURES platform as a means to respect

Community Preference principles in their application of labour market tests, and it continues to structure labour market tests in many EU Member States. During the negotiations on the latest EURES Regulation,<sup>28</sup> Member States insisted on maintaining the reference from the updated free movement regulation to the Community Preference principle. The Regulation states that “Member States shall examine with the Commission every possibility of giving priority to citizens of the Union when filling job vacancies, in order to achieve a balance between labour supply and demand within the Union and that Member States may adopt all measures necessary for that purpose”.

### **Why Member States see added value in co-ordinating labour migration at the EU level**

Noteworthy during the long period of development of competences at the EU level was the fact that individual EU Member States did not seek to co-ordinate among themselves. In fact, EU Member States did not co-operate spontaneously in any of the areas covered by the Directives listed above. Rather, they continued independent trial by experience throughout the 1990s and 2000s. Indeed, there has been competition among EU Member States to attract groups of highly qualified migrants. Moreover, the convergence of labour migration policies has been the result not of co-ordination but of increasingly similar objectives – attract and retain the right migrants to meet skills needs – and by EU Member States monitoring, copying and adjusting each others’ policy experiments. In fact, individual EU Member States have operated like OECD countries outside the EU – in isolation from each other.

The discussion so far has shown how guiding policy documents were developed and produced in the 1990s and early 2000s. As a result, countries which joined the European Union in 2004 and in later years did not have much say in setting policy objectives or determining the priorities for developing Directives. Those countries’ labour migration policies in the previous decades had not evolved in the same way and they had the *acquis communautaire* as a requisite for accession, placing most emphasis on fighting irregular migration at the new external border and on bringing their human rights and asylum frameworks into line with EU standards. By 2005, however, most of today’s EU Member States were already members and taking part in the elaboration of documents such as the 2005 Green Paper, the European Pact and the Stockholm Programme.

By handing over competence to the Union, Member States recognised that it was no longer possible for them to act alone on labour migration. In a single European labour market, the labour supply is contingent on changes in the labour force from one EU member State to another. What is more, the mobility of workers within the EU has created complex links between different countries' labour forces. Most third-country nationals do not have the same mobility rights within the EU as EU nationals have, although most do eventually acquire citizenship and become part of the EU labour force with full mobility rights. Through this process of naturalisation, changing admission conditions in one EU Member State affect all the others in ways that go beyond the composition of the labour force. EU Member States in the single Schengen space – although they are not the only ones – watch each other to see whom they admit, and decisions in one can have political implications for others. The 2008 European Pact on Immigration and Asylum, for example, which drew up the general outlines of policy activity, committed Member States to using “only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian or economic reasons”.<sup>29</sup> The recognition that admission and stay policies in one Member State can have effects down the road on other Member States underlies the support for European initiatives in the field, as long as they seek to further shared objectives.

### **The limits of intervention**

The chief constraint on EU intervention in the area of labour migration is that individual Member States themselves decide whom they admit. The Union itself cannot admit anyone as a labour migrant, nor is there such as thing an EU-wide residence permit. Mobility Partnerships do not allow the European Union as a bloc to commit to admitting economic migrants, for example. They allow only bilateral arrangements. Other matters of relevance to labour migration are also within national purviews. In most regulated professions, for example, recognition and certification is issued by an individual country and is not valid in other ones.

Generally speaking, there are wide variations in approaches to labour migration which EU policy must encompass and accommodate. Different approaches stem from parameters where EU policy cannot easily run counter to national practices.

### ***EU labour migration policy builds on existing national policies***

In the field of labour migration, EU makes policy after most countries developed their own national frameworks. The heterogeneity of policies is not in itself inimical to EU policy making. Within the European Union, the diversity of policy settings in individual Member States can be considered a value, as each Member State maintains a broad degree of flexibility in its search for solutions to particular problems, producing policy innovation and responding to national specificities.

Concretely, however, EU labour migration policy operates only insofar as it is implemented in national legislation. EU documents formulate shared objectives. Once consensus is reached on the objectives and they have been translated into final versions of legislation, EU Directives compel Member States to make changes to their domestic legislation to bring it into line with Directives' requirements. As a result, EU policy making usually arrives long after countries have developed their own national frameworks. Despite the trend towards convergence in aims and mechanisms, there is still substantial diversity of policy across Member States at the time of transposition.

A fundamental limit to policy is that the current configuration of national labour migration frameworks in EU Member States stems from different histories and very different conceptions of the role of labour migration. Systems have evolved in response to different demographic, historical, economic, linguistic and geographic situations.

Some countries have long histories of recruitment from abroad, dating back before the EU itself was founded. Countries with guestworker programmes after the Second World War – such as Germany, Belgium and the Netherlands – all had their own governance approaches to migration, although labour movements in post-war Western Europe were to some extent co-ordinated between origin and destination countries (OECD, 2004), including those which later became the founding Member States of the European Union. Member States with guestworker schemes suspended labour immigration in the 1970s until they developed programmes focused on higher qualified labour migrants in recent decades.

In other Member States, especially in Southern Europe, labour migration appeared gradually with no co-ordination from the mid-1970s. High levels of informality undermined administrative methods of labour migration management, so they used regularisation until it was no longer

possible. The Member States which joined the EU in 2004 and 2007, on the other hand, inherited much of their migration frameworks from the security apparatus of their authoritarian post-war governments. In those countries, the European acquis, rather than domestic policy demand, drove many legislative developments in the management of migration.

Other influences on national systems have also contributed to the diversity of migration policy settings. Colonial, linguistic and other special ties with third countries have shaped the development of labour migration systems, and complex networks of bilateral arrangements link many EU Member States to third countries in training and recruitment.

Labour migration systems also reflect the organisational structure of national labour markets. Wide-reaching collective agreements are reflected in the admission system of some Member States, while the capacity of public employment agencies is mirrored in the structure of labour market tests.

Political preferences also affect migration management at the national level, with Member States seeking to strike balances between allowing recruitment from abroad and mechanisms to support and address mobility, extending labour market access to non-economic migrants and emphasising (or not) functional alternatives such as increased labour force participation and upskilling.

All Member States enjoy a broad degree of flexibility in their searches for solutions to problems, producing policy innovation and responding to specific national needs. The European Union maintains a competence for policy making which is both broad and limited at the same time, and the fact that national differences are accommodated during negotiation of Directives means that practices differ widely among Member States. Outside the limits of EU legislation, they are free to experiment. The added value of EU action is, however, watered down if implementation is uneven or fails to respect the spirit of initiatives.

### ***Principal variations in national policy***

To understand how EU policy can add value and achieve what individual Member States would have more difficulty achieving, it is important to understand the diversity and commonality already prevalent in Europe. Labour migration policy is conducted at national level through policy settings which determine eligibility for admission, even if for certain categories admission conditions are harmonised through EU Directives. In addition to education and occupational thresholds,

admission criteria include numerical limits, shortage occupation lists, and labour market tests.

### *Qualifying job offers*

One of the foundations of the European model of labour migration is that economic migration has almost always historically been demand-driven, i.e. required a qualifying job offer. It is thus the job, and not the individual worker, which is approved, although the worker must then meet the criteria for filling the position. The job description – duration, the occupation for which the worker is recruited, the salary offered – become defining elements in regulating labour migration. While the rule in Europe is that labour migrants cannot enter without a contract in hand or at least a job offer, there have been some small-scale experiments with job-seeker permits and some remain in place.

Even with this model of legal migration in place, many migrants come to Europe to seek work without a job offer. Indeed, the 2008 ad hoc immigrant module of the Labour Force Survey found that among migrants who came to Europe for employment, most came without a job offer. This can be interpreted as suggesting that employers are unlikely to use recruitment channels for third-country nationals they have never met (Lemaître, 2014), but may also reflect the legitimate use of other channels by job-seekers – such as family grounds – even when the intention is to seek employment, or the magnitude of irregular migration in the 1990s and 2000s.

### *Numerical limits*

Numerical limits encompass quotas, targets, ceilings, and caps or “volumes of admission”. The only European example in recent years of a numerical target is the United Kingdom’s objective of reducing net migration. However, the United Kingdom, which is not bound by the EU *acquis* in terms of legal migration, set this political objective without specific reference to labour migration. The rationale behind caps – or “volumes of admission” in EU terminology – is to limit distortion of domestic labour market conditions and safeguard local employment. In practice, most European countries’ political choice has not been to set numerical limits on skilled workers admitted, but rather to issue permits to all skilled workers filling positions which are open.<sup>30</sup>

Numerical limits are more frequent in programmes of labour migration for non-professional occupations, such as seasonal work, and

where there are no skills or education criteria. Portugal, Italy, Spain and Greece all set numerical limits. They are Italy's principal means of regulating labour migration, while Spain uses the "collective management of contracts in the country of origin" (published every year by ministerial decree by the Secretariat General of Immigration and Emigration) to grant both seasonal and regular work permits. The collective management system allows Spanish employers to recruit a number of workers in certain occupations. Similarly, the Austrian Federal Minister of Labour, Social Affairs and Consumer Protection additionally sets quotas in the sectors of tourism, agriculture and forestry as a way of regulating the employment of seasonal workers and harvest helpers if the available domestic workforce cannot meet demand. As for Greece, it reformed its volumes of admission system in 2014 to anticipate labour shortages in the coming two years, although there has not yet been any significant output.

Several EU Member States cap work permits at levels that are substantially higher than the actual number of work permits that they would expect to issue – perhaps to send a signal to the public that migration is under control. Until 2014, Hungary set a limit based on demands from the previous year, which left ample room for increase, even though actual numbers have been stable and far below the limit set. Romania also uses a limit that sets aside reserves for highly skilled foreign workers and intra-company transferees.

Ceilings or caps can also be benchmarked against the size of the labour market population to prevent any negative effect on the domestic labour market, while enabling adjustment to the needs of a particular industry or sector. From 1990 to 2013, Austria set a cap on the *total* number of non-EU/EFTA nationals allowed to hold work permits, set at 8% of the total labour supply, with exemptions for a number of categories and those whose employment was in "public interest". Estonia uses a benchmark for inflows based on the size of the population – it has never yet been reached.

Overall, European volumes of admission are flexible enough to be adjusted annually or in exceptional circumstance, especially when they apply to recruitment for highly qualified employment. Yet numerical limits are actual limits on highly skilled migration in only a few rare cases, such as that of Greece. They are much more often caps on employment in less skilled occupations, where concern over protection of the domestic labour market from potential distortion is much greater.

### *Shortage occupation limits*

A number of European countries employ the tool of shortage occupation lists. EU instruments have no effect on how such lists are determined and applied (although they may be used, with some restrictions, in determining eligibility for the EU Blue Card). Lists can be used to allow migration in different ways such as eligibility, exemptions or facilitation. Spain, France, Germany, Spain, the Netherlands and the United Kingdom restrict their lists to jobs that require specific skills and exempt workers from labour market tests.

How effective shortage lists are depends largely on the extent to which labour market tests are an obstacle – because rejection rates are too high or the time spent waiting for answers is too long. Since rejection rates in labour market tests are low, especially in occupations likely to be on a shortage list (OECD, 2011), the main gain is saving time by circumventing the labour market test. The Swedish system allows in-country status changes to the work permits of migrants whose occupations are on the shortage list.

Austria has a category of migrant workers, “skilled workers in shortage occupations”, which includes professionals who have job offers in occupations where there are labour shortages. In Belgium, a “B” work permit can be granted through a fast track procedure if the would-be migrant’s job is on the national labour market list.

Methods of calculating shortage lists vary widely across EU Member States. They are evidence-based, although by no means based exclusively on algorithms (Chaloff, 2014). Countries consult stakeholders and there are opportunities for interest groups to influence lists.

### *Labour market tests*

The main method of determining the approval of issuance of permits to labour migrants is the labour market test (LMT), a check for available supply of labour. Procedures vary widely across Member States and are unaffected by EU legislation, even if how LMTs are established and applied can determine who enters the EU as an economic migrant. Although mandatory advertising requirements appear similar at first glance, they conceal significant differences – some are nominal while others put the burden of proof on employers who have to justify their hiring practices. Nominal labour market tests are those where authorisation is automatic once the advertising period has elapsed, as in

Latvia and Sweden. In other countries, such as Spain, the public employment services can and do send candidates to employers, requiring employers who refuse them to explain themselves. Some public employment services approve requests for foreign workers on their strength of their knowledge of the labour market or by examining lists of the unemployed. That is the practice in Austria, Finland and the Belgian region of Wallonia.

### *High skills*

All EU Member States grant permits to highly skilled or highly qualified migrants. The criteria for determining who is highly skilled – educational qualifications, work experience, wages and job offers – and definitions of “highly skilled” vary considerably between countries, also given the fact that the EU Blue Card scheme left parallel national schemes unaffected. For most Member States, being qualified requires educational credentials and/or experience. The Czech Green Card, for example, which was scrapped in 2014, required a certain level of education and work experience. Foreign qualifications may need to be recognised in order to be considered. A number of EU Member States use salary levels to assess skills, whether as the chief criterion or as an element in their admission decision. Using salary levels to assess the productivity or value of an employee avoids complex recognition procedures when it substitutes proof of qualifications. Setting minimum salary levels for admission may also be a way of protecting local workers from wage competition.

While not all countries use an explicit wage threshold, employers’ requests for labour migrants are generally reviewed for conformity with collective agreements, minimum standards or prevailing salary conditions. As a result, most requests do have a *de facto* legal minimum wage requirement. Skilled labour migration schemes may not make wage requirements explicit, however. In Sweden, the lowest salary in a collective bargaining agreement is taken as the salary floor for work permits. Similarly, Romania will not consider applications where annual salaries are below about EUR 6 500. As for the Slovak Special Purpose Permit and Research and Development Permit, it does not stipulate any wage requirements. Yet applications with very low salaries are likely to be rejected.

### *Points-based systems*

Only a few European countries have experimented with point-based systems (PBSs) to select migrant workers. Since 2008, the United

Kingdom, Denmark, the Netherlands and Austria have made PBSs part of their migration selection channels. While modelled on the long-standing examples of Australia, Canada and New Zealand, no European PBS grants permanent residence. Furthermore, they are very different from each other, either small-scale or used to determine eligibility of workers with a job offer already in hand.

*International students, long-term residence, family reunification and naturalisation*

Countries also vary significantly in their policies towards international students, permanent residence, family reunification and naturalisation.

When it comes to students, there are currently wide differences in the right to work – the number of hours they can work varies, work permit requirements depend on the country and, while some countries require labour market tests, others do not. Measures to help students stay on after graduation vary EU-wide, as do the requisites for the post-graduation job which obtain permits. Not all Member States require students to finish their course within a certain number of years, and the conditions that students must meet to retain their status as students in good standing – such as minimum credit or course-loads – range widely.

Permanent residence status, which predates the Long-Term Residents Directive, exists in all EU Member States. Options for gaining permanent residence through work or study depend on various considerations such as the time spent in the host country (usually five years, although years as a student may count for half or nothing). There may also be different sets of prescribed conditions such as the offer of permanent employment, wages or income, skills levels or language tests. The new Students and Researchers Directive will further harmonise many of the above elements.

Family reunification conditions also vary within the flexible terms of the 2003 Family Reunification Directive which requires residence of up to one year, the prospect of permanent residence, and sufficient income levels, in addition to housing and insurance coverage. In the first year of residence, some Member States also restrict family members' access to the labour market, although the trend has been to ease such restrictions. However, a number of Member States have stiffened requirements regarding the knowledge of the host country language and culture.

Naturalisation criteria also vary widely. There are no fast-track pathways to naturalisation for highly qualified labour migrants, or even for labour migrants, relative to other groups. Residence requirements vary, though, from country to country. In the Czech Republic, Sweden, and France, migrants become eligible for naturalisation five years after obtaining a permanent residence permit. Greece requires seven years, while in Austria, Italy, Slovenia and Spain migrants have to wait up to ten years. Time, however, is not the only factor, as additional requirements, such as income or self-sufficiency requirements and language proficiency, also vary.

Which selection criteria represent a barrier to labour migration depends on the Member State (Table 1.1). What is evident everywhere is that a job offer is a fundamental requisite for labour migrants to Europe. As for skills thresholds, they are in place in a number of countries. The labour market test is a nominal barrier for most skilled workers, while numerical limits do not apply to them. Numerical limits are applied in countries which do not practice skills thresholds, although exemptions are made for skilled workers as defined in each Member State. In a word, the labour migration filter is different from one EU Member State to another.

**Table 1.1. The barriers to labour migration in selected EU Member States**

	Job offer	Skill threshold	Labour market test	Shortage occupation list	Numerical limit
Sweden	Yes	No	Nominal	Yes	No
Spain	Yes	No	Yes	Yes	No
Portugal	Yes	No	Yes	No	Yes, but unapplied
Hungary	Yes	No	Yes	No	Yes, but symbolic
Finland	Yes	No	Yes	Yes	No
Poland	Yes	No	Yes	No	No
Greece	Yes	No	Yes	No	Yes
Italy	Yes	No	Yes	No	Yes
France	Yes	Yes	Yes	Yes	No
Germany	Yes	Yes	Yes	Yes	No
Belgium	Yes	Yes	No	No	No
Netherlands	Yes	Yes	Yes	No	No
Estonia	Yes	No	No	No	Yes
Czech Republic	Yes	Yes	Yes	Yes	No
Austria	Yes	Yes	Yes	Yes	No
Denmark	No, but...	No, but...	Yes	Yes	No
United Kingdom	Yes	Yes	Yes	Yes	Yes
Ireland	Yes	Yes	Yes	Yes	No

## The policy development cycle at the EU level is very long

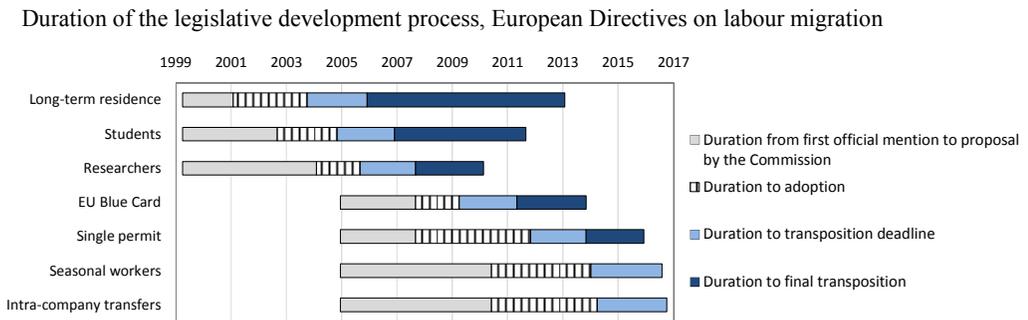
A constraint on the effectiveness of EU policy to address changing circumstances is the very laborious, lengthy legislative process at the European level. Areas for policy activity are first identified by the

Commission and discussed with the co-legislators and other relevant stakeholders. In some cases, these translate into formal instruments. The Long-Term Residence Directive, for example, came explicitly out of the Amsterdam Treaty.

Another batch of Directives can be traced back to explicit mention in the 2005 Green Paper on economic migration, which translated earlier general indications on the management of migration into specific categories of migration. Figure 1.7 shows how long elapses between the time a Directive’s objective is first defined and the date on which the last Member State transposes it into domestic legislation. The policy arc is about a decade. And even the average length of time between the publication of a draft Directive (or proposal) and the transposition deadline is about five years. It is possible to shorten this timeline by accelerating development, consultation and transposition.

Because the legislative procedure is so lengthy, policy makers cannot respond quickly to changing circumstances. Evaluation requires a few years of effective transposition, so evidence-based revision cannot generally be undertaken until at least five years have elapsed since publication. Although a wide degree of flexibility is built into most Directives, it is individual Member States which use this flexibility to adjust their implementation approach at the national level. At the EU level, there are no mechanisms for adjusting criteria. Change entails going through the entire legislative procedure again.

**Figure 1.7. It takes about ten years for European Directives on labour migration to go from being an idea to being applied**



Source: Analysis of EU legislation, implementation reports, and national legislation.

This chapter has looked at the wide diversity of economic, demographic and policy situations in EU Member States. Nevertheless, there are some common challenges and common principles. The outlook is one of declining demographics over the next decade and a shrinking working-age population. The skills outlook points to growing demand for skills at certain points in the skills spectrum – occupations will not require high skills alone, but medium skills, too. As for low-skill occupations, current trends in migration and mobility suggest they will continue to supply new workers. The international recruitment of labour migrants from third countries will be one way of supplying workers as the labour market in Europe tightens.

There has been political will behind efforts to meet the general goals of labour migration governance at the EU level and seek added value. The result has been specific measures rather than a broad framework. At the same time, national systems remain very different. In order to understand how EU-level initiatives can be transformative, the next section examines how the European Union fits into global migration patterns and systems.

## Notes

1. “[In] the Commission’s view, even if free movement only applies to the workers of the Community and their families, the fact cannot be overlooked that there are at present several million non-Community workers in the Community. The Commission intends to submit a memorandum on this subject which should be the subject of a wide-ranging debate with the circles concerned.” Commission of the European Communities, COM(89)568 final.
2. Report from the Ministers responsible for immigration (“Ad Hoc Working Group on Immigration”) to the European Council meeting in Maastricht on immigration and asylum policy, SN 4038/91 (WGI 930) 3 December 1991.
3. The treaty also reserved, for unanimous action by the Council, proposals in the area of “conditions of employment for third-country nationals legally residing in Community territory”.
4. Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the Member States for employment.
5. These provisions are contained in Protocols 21 and 22 to the Treaty.
6. Co-decision and qualified majority was already in place in parts of this field, notably irregular migration and borders.
7. “Without well-functioning border controls, lower levels of irregular migration and an effective return policy, it will not be possible for the EU to offer more opportunities for legal migration and mobility. The legitimacy of any policy framework relies on this”.
8. Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. The United Kingdom, Ireland and Denmark do not take part in this directive.
9. Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of

scientific research. The United Kingdom and Denmark do not take part in this directive.

10. No estimates were made of the number of potential beneficiaries of the Researchers Directive. Doing so would have been difficult given the license it gave countries to set restrictive host institution or host agreement criteria.
11. 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, remunerated and unremunerated training, voluntary service and au pairing, COM(2013) 151 final.
12. As part of GAMM, the European Neighbourhood Policy (ENP) and the bilateral Mobility Partnerships signed with a growing number of non-EU countries are specifically mentioned as means by which the European Union could increase its intake of researchers and students.
13. The inclusion of remunerated trainees responds to the 2005 Policy Plan's roadmap for sectoral directives.
14. 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. The United Kingdom, Ireland and Denmark do not take part in this directive.
15. 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. The United Kingdom, Ireland and Denmark do not take part in this directive.
16. Initially, the directive had its legal basis in the old Article 63, when the Community method did not apply, but since it had not been adopted when the Lisbon Treaty (and the full scope of the Community method) entered into force in December 2009, its legal basis was changed to Article 79.
17. Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. The United Kingdom, Ireland and Denmark do not take part in this directive.
18. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and

measures against employers of illegally staying third-country nationals.

19. E.g. the Hague Programme’s call for measures to meet “fluctuating demands for migrant labour”; the request of the December 2006 European Council to examine measures to stimulate temporary migration; the 2008 European Pact on Immigration’s goal of “proper management of migration flows” in co-operation with third countries; the Stockholm Programme’s recognition of the importance of labour migration in meeting demographic challenges and labour shortages, hence its “important contribution to the Union’s economic development and performance in the long term”.
20. Three Member States voted against the draft Directive – the Netherlands, Poland and the Czech Republic. The Czech Republic argued that, since seasonal workers did not have the right to mobility, they “[did] not influence labour market in other Member States” and did not, therefore, need to be addressed at the EU level. Poland, which uses a simple, wide-ranging seasonal work provision with neighbouring countries, was particularly concerned about the added complexity of compliance.
21. The short stay covered by the Directive means it does not grant access to rights such as family reunification which are acquired through longer periods of residence.
22. 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.
23. The maximum duration of stay is limited to three years for managers and experts and one year for trainee employees.
24. While no country voted against the Directive, three abstained, for reasons related to other points.
25. “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration”, Brussels, 13.5.2015 COM(2015) 240 final.
26. “Communication from the Commission to the European Parliament and the Council: Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe” Brussels, COM(2016) 197 final, 6.4.2016.
27. “The employment services shall grant workers who are nationals of the Member States the same priority as the relevant measures grant to nationals vis-à-vis workers from third countries.”, Art. 14(3) and

“The Member States shall examine with the Commission all the possibilities of giving priority to nationals of Member States when filling employment vacancies in order to achieve a balance between vacancies and applications for employment within the Union. They shall adopt all measures necessary for this purpose.”, Art. 17(2), Regulation (EU) No. 492/2011 on freedom of movement for workers within the Union, 5 April 2011.

28. Regulation (EU) 2016/589, of the European Parliament and of the Council of 13 April 2016 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets, and amending Regulations (EU) No. 492/2011 and (EU) No. 1296/2013, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0589&from=EN>.
29. Adopted by the European Council of 15-16 October 2008.
30. Numerical limits are occasionally applied relative to enterprise size. Ireland selectively applies quotas to the number of intra-company transferees, which cannot exceed 5% of the company's total Irish workforce.

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## Chapter 2

### How attractive is the European Union to skilled migrants?

*This chapter looks at where the European Union stands in the global competition for skills. It examines the EU's share of global migration stocks and flows relative to other OECD destinations. The chapter also looks at survey data on how EU Member States are perceived in relation to other potential destinations, considering how attractive they are and examining the opinions of residents, employers and potential migrants. The perception in EU Member States is that the immigration laws are not restrictive, but foreign talents are not sufficiently attracted to EU Member States. Overall, the European Union has to catch up with other OECD countries. Finally, there appears to be a large pool of talent interested in migrating to EU Member States that is much more extensive than the current flows. Relative to its size, however, the EU continues to play an undersized role in labour migration and in the growing migration of skilled individuals.*

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

## The position of the European Union in migration flows to OECD countries

At first glance, the European Union appears to host proportionately fewer international migrants than other OECD destination countries. In 2010-11, there were about 113 million foreign-born residents in the EU and other OECD countries. Of that number, 49 million lived in an EU Member State. Of those, 37% were born in another EU Member States, which left 31.2 million born outside the European Union (Figure 2.1), although some of these have naturalised and become EU citizens. The country with the highest number of non-EU-born residents was Germany (6.7 million), followed by the United Kingdom (5.2 million), France (5 million), Spain (3.7 million), and Italy (3.1 million).

The number of foreign-born residents in non-EU OECD countries was higher – 63 million in 2010-11. The United States accounted for two-thirds, or 43 million, making it by far the world's largest migrant destination. Canada was home to 7.1 million migrants and Australia 5.3 million. Among other OECD countries, only Israel, Japan, and New Zealand had more than a million migrants in 2010-11. In relative terms, the share of the foreign-born in the total population was particularly high in New Zealand at 30%, Australia at 26% and Canada with 22%. As for the United States, the proportion was 14%.

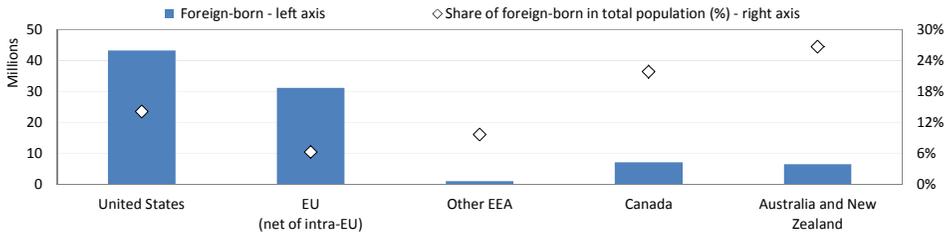
In the European Union, the share of non-EU-born migrants was just 6% of the total population. Even if only the pre-2004 EU Member States (the EU15) are considered, the share of migrants born outside the European Union was 8% – still below levels in other OECD destination countries. Among post-2004 EU members (EU+12), the non-EU born accounted for just 2%.

The picture changes, however, when it comes to immigrants as a share of the working-age or older population (at least 15 years old). In 2010, the total stock of migrants in that age group in the EU27 countries and OECD countries<sup>1</sup> was almost 80 million – 8.4% of the total population. Of those, the EU27 had a migrant population of 30.2 million, with the EU15 countries accounting for 94%. The main destination countries – Germany, the United Kingdom, France, Spain and Italy – hosted three out of four migrants. OECD destination countries outside Europe had an immigrant population of 48.6 million, the vast majority of whom (91%) lived in the United States (70.7%), Canada (11.7%) and Australia (8.6%). Non-EU European countries had an immigrant population of almost 1.1 million, 72% of them in

Switzerland. The immigration rate to the EU27 was, at 7.5%, lower than that to other OECD countries, which include populous, low-migration countries such as Mexico and Turkey.

**Figure 2.1. The European Union has fewer foreign-born residents than the United States and a smaller share than other OECD countries**

Number of foreign-born (all ages) and share of the foreign-born in total populations in 2010-11, excluding intra-EU mobility



Source: OECD Database on Immigrants in OECD Countries (DIOC) 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

When individual destinations are compared, the immigration rate, or foreign-born share of the population of 15 and older, is lower in almost all EU Member States than in the United States, Canada, Australia, New Zealand and Switzerland (Figure 2.2). There are three exceptions among the EU+12 countries. They are Estonia and Latvia, which have a large, though aging, Russian-born population, and Slovenia, where many residents were born in other parts of the former Yugoslavia.

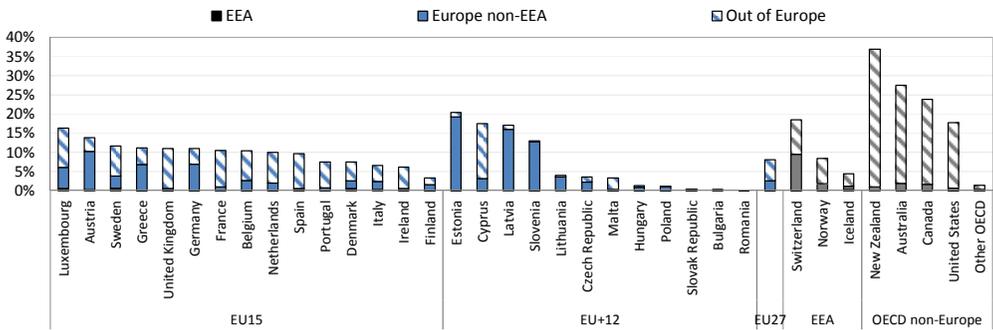
The attractiveness of EU Member States to migrants from outside Europe varies with country of origin. Countries like Spain, France and the United Kingdom appeal to largely non-European migrants, while Austria and Germany have high shares of migrants from European countries that include Russia, southeast Europe and Turkey.

When it comes to regions of origin, the EU appears relatively more attractive to migrants from Africa (Table 2.1). More than one-quarter of migrants living in the EU27 come from Africa, for reasons attributable to geographical proximity and colonial and cultural ties. Morocco and Algeria alone account for almost 53% of African-born in EU Member States. While another quarter come from Asian countries, European nationals from non-EU/EEA countries make up the third-largest group of immigrants in the EU27. Turkey is not a major country of origin for other OECD destinations, but accounts for almost 8% of migrants in the EU27. Non-OECD Asian countries and South and Central America and

the Caribbean (SCAC) also contribute large numbers of migrants, but proportionately fewer than in other OECD destinations. Indeed, more than two-thirds of the migrant stock in non-EU OECD countries originate from SCAC (40.8%) and Asia (29.8%). The SCAC countries’ high share is attributable to Mexican migration to the United States, where it accounts for over one-quarter (28.2%) of the total migrant stock. As for high proportions of Asian immigrants, they may be ascribed to the very high proportions of Asian migrants in Canada and Australia.

**Figure 2.2. The share of immigrants in EU Member States is lower than in competing OECD countries, 2010**

Immigration rates in the EU27 and other OECD countries, by country of destination and region of origin, aged 15+



Source: OECD Database on Immigrants in OECD Countries (DIOC) 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

**Table 2.1. The European Union hosts more migrants from neighbouring European countries than other OECD destinations, and fewer migrants from Asia, 2010**

Immigrant population aged 15+ in EU27 and other OECD countries by detailed origin

Region or country of destination	From Africa	From non-OECD Asia	From Europe Non-EEA (excl. Turkey)	From South and Central America non-OECD	From Turkey	From North America	From Mexico	From other regions	Total
EU15	27.6	25	19.5	13.2	8.2	2.3	0.3	3.9	100.0
EU+12	1.4	13.4	81.3	0.5	0.6	1.6	0.1	1.1	100.0
EU27	26.1	24.4	22.9	12.5	7.8	2.3	0.3	3.7	100.0
Other EEA	14.3	25	35.2	8.9	7	4.9	0.6	4.1	100.0
United States	4.1	28.2	3.2	28.5	0.3	2.4	30.6	2.7	100.0
Canada	9.4	60.1	5.9	14	0.5	5.4	1.6	3.1	100.0
Australia	9.5	56.6	5.5	2.4	1	3.2	0.1	21.7	100.0
Other OECD	9	44.6	18.1	12.7	0.6	8.8	0.2	6	100.0
<b>Total</b>	<b>13.3</b>	<b>30.6</b>	<b>12.1</b>	<b>19.4</b>	<b>3.3</b>	<b>3</b>	<b>14.2</b>	<b>4.1</b>	<b>100.0</b>

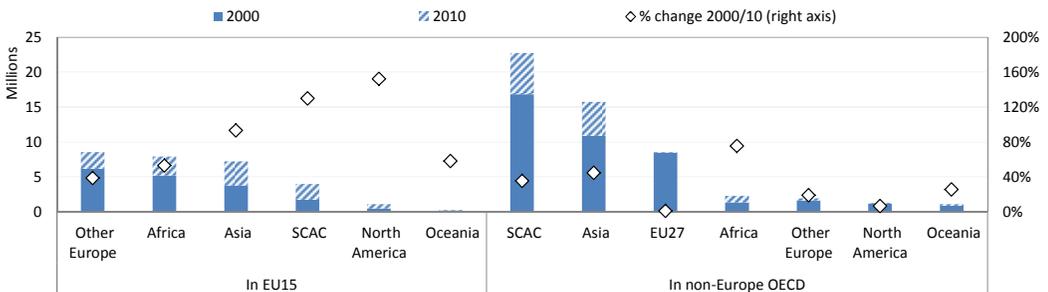
Source: OECD Database on Immigrants in OECD Countries (DIOC) 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

### *The number of migrants in the EU grew faster than in other OECD destinations in the 2000s*

While the EU hosts a smaller share of migrants than other OECD destinations, it has been catching up thanks to its robust immigration rate. During the 2000s, the EU increased its stock of foreign-born residents faster than other OECD destinations (Figure 2.3). About one-third of the increase could be ascribed to citizens born in the European Union.<sup>2</sup> And even discounting that mobility, the migrant stock in the EU15 still rose by 66%, or fully 11.6 million, over the decade. Thirty percent of the rise stemmed from a higher inflow of migrants from Asia (which doubled, adding 3.5 million individuals), 24% from African migration (which rose by 53%, or 2.7 million) and 19% from higher SCAC immigration, which also doubled, adding 2.3 million to foreign-born stocks (Figure 2.3). Conversely, nearly 90% of the increase in the migrant stock in non-European OECD can be attributed to migration from the SCAC countries (up 5.9 million and 35.2%) and Asia (up 4.8 million and 44.3%). The highest relative climb in immigration to other OECD countries came from Africa, with numbers increasing by 75.3%, albeit from a much lower level.

**Figure 2.3. Over the 2000s, increases in the migrant population were more significant in the EU15 than in other OECD countries**

Change in immigrant population aged 15+ in EU15 and non-European OECD countries (in millions and percentage change), by country of origin, 2000-10



Source: OECD Database on Immigrants in OECD Countries (DIOC) 2000/01 and 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

***Despite its younger migrant population, the European Union lags behind in education and employment growth***

Across the OECD, migrant stocks evolved over the 2000s, though at different paces in EU and non-EU OECD destination countries. The following analysis focuses on the EU15, for which complete and comparable data are available for both 2000 and 2010. These countries also host most of the immigrant population in the European Union. Migrants residing in the EU15 were generally more poorly educated than those living in other OECD destinations, although the share of the highly educated rose over the decade (Table 2.2). The European Union has a younger migrant population, with a smaller share over the age of 65. Indeed, among those older than 15, the share of migrants aged 65 and over fell from 11% to 10% in the EU15, while it rose from 13% to 15% in other OECD countries. Not only did migration grow faster in the EU than in non-EU countries (61% compared with 26%), but migrants to the European Union gave a greater boost to the working-age population over the decade. The share of recent migrants among all migrants increased in the EU15 and fell in other OECD countries.

The share of 25-to-64 year-old migrants with low levels of educational attainment in the European Union fell by 14%, which was nevertheless less than in other OECD countries where the decline was 24%. These patterns of change point to the fact that cohorts of low-educated migrants in other OECD countries – many of whom migrated decades ago – were older. The share of highly educated migrants in both EU and non-EU countries climbed by about 25% over the decade, which suggests that non-EU OECD countries maintained and even reinforced their strong lead in that respect.

The share of migrants in employment rose in the 2000s, but more steeply in non-EU countries and from a higher level. The increase was due to multiple factors that included a higher share of labour migrants across countries, a higher degree of selectivity in non-EU countries, and a greater propensity among women and other family migrants to be employed. Nonetheless, the employment rates of immigrants in the EU15 remained persistently below those in other OECD countries, suggesting that the difference is structural and not cyclical.

**Table 2.2. The European Union still lags behind other OECD destination countries in migrant education levels and employment, 2000 and 2010**

Main characteristics of the immigrant population aged 15 and above by year and destination, EU15 and other OECD destinations

	2000		2010		Change		
	EU15	Other OECD	EU15	Other OECD	EU15	Other OECD	
Immigrant population 15+ (thousands)	19 207	45 503	30 981	57 219	61%	26%	
Women	50%	51%	51%	51%	2%	1%	
Duration of stay	<5	16%	19%	18%	13%	11%	-34%
	5-10	19%	15%	20%	14%	5%	-11%
	>10	65%	66%	63%	74%	-4%	12%
Education	Low	48%	36%	41%	27%	-14%	-24%
	Middle	32%	36%	33%	37%	4%	5%
	High	20%	29%	25%	36%	25%	24%
Labour force status	Employed	51%	56%	58%	68%	13%	21%
	Inactive	39%	39%	30%	26%	-23%	-34%

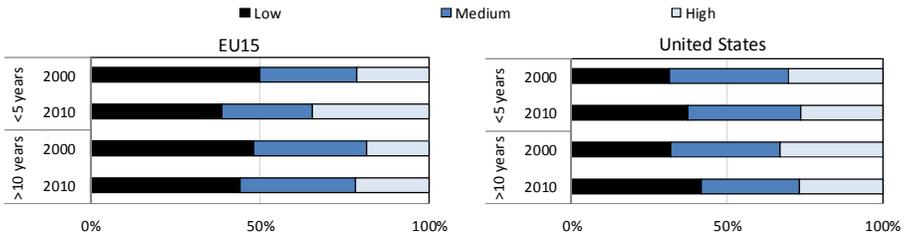
*Note:* Education shares, employment and inactivity rates are computed for the population aged 15-64. Only OECD destinations are included as they appear in earlier DIOC database (2000).

*Source:* OECD Database on Immigrants in OECD Countries (DIOC) 2000/01 and 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

Between 2000 and 2010, the EU closed the gap on the United States in shares of educated migrants (Figure 2.4). While only 21% of recent migrants to EU Member States were highly educated at the beginning of the decade, compared with 27% in the United States, the figures were 34% in the European Union and 33% in the United States by the end of the decade. A larger share of migrants in the United States than in the European Union have medium-education levels, including among recent migrants (36% compared with 27%). The longer-term resident population in the EU (those living there for over ten years) still reflected the lower educational composition of past migration, with 44% of long-term residents in 2010 poorly educated. The figure was higher than in the United States (41%), but as the incoming cohorts age, overall figures will converge.

**Figure 2.4. The highly educated account for a higher share of recent migrants in the European Union than in the United States, 2010**

Distribution of education levels among immigrant populations aged 15+ in the EU15 and the United States, by the duration of stay, 2000 and 2010



Source: OECD Database on Immigrants in OECD Countries (DIOC) 2000/01 and 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

***Although the European Union is attractive, it should appeal to more highly educated migrants***

Overall, migration to the EU27 is more heterogeneous than to other OECD destinations. The EU27 and the United States host almost three-quarters of all resident migrants. The two regions receive a comparable number of migrants, who account for 11% of the total population in the EU27 and 17% in the United States. In the EU27, however, they come from a wider diversity of countries, with the five countries of origin that account for the most migrants making up only 25% of the total stock. The figure is 40% in the United States, where one country, Mexico, represents more than 27% of the total. In Canada, the top five countries of origin comprise 36% of the total, and in Australia and New Zealand 43%. Altogether, the EU boasts a much broader network of ties with different origin countries and far more migration channels than any single OECD country outside the European Union.

The top five non-EU countries that supply the most migrants to the EU27 – China, India, Morocco, Philippines and Viet Nam – all appear at least twice in the top ten countries of origin per destination region. These countries afford insight into where the EU fits into flows from the main countries of origin (Table 2.3).

India, where most migrants were born, had a smaller share of emigrants in the European Union in 2010 (27.9%) than in 2000. While the number of Indians in the European Union increased in the 2000s, the EU's share of Indian expatriates fell by 3.8%. In 2010, a much larger

share lived in the United States (46.3%) and, despite the smaller population, in Canada and Australia (22.4%). Furthermore, the EU27 was home to just 20.5% of highly educated Indians, compared with 57% in the United States.

As for China, which supplies the second-highest number of migrants, the EU was home to 18.9% of them, almost all of whom lived in the EU15. The number of Chinese in the EU15 increased by 62% over the decade and their share of the migrant population by 90% over the decade – from 9.8% of the total in 2000 to 18.4% in 2010. The European Union attracted proportionally fewer well educated Chinese migrants than other OECD destinations – 16.9% of all Chinese migrants, compared with 42.5% in the United States and 40% in Australia and Canada.

**Table 2.3. The European Union has increased its share of migrants from China and the Philippines, but receives fewer highly educated migrants than other OECD destinations**

How the distribution of immigrant populations aged 15+ evolved in the main migrant host regions by country of origin, 2000-10

	Total (2010)				High educated (2010)				EU15 (total)		
	Total	Share of total (%)			Total	Share of total (%)			Total	Share	
	(millions)	EU27	United States	Australia, Canada	(millions)	EU27	United States	Australia, Canada	Change 2000-2010 (%)	2010 (%)	Change 2000-2010 (%)
India	3 539	28%	46%	22%	2 217	21%	57%	22%	81%	28%	-4%
China	3 349	19%	37%	30%	1 574	17%	43%	40%	62%	18%	88%
Philippines	2 869	13%	60%	20%	1 508	9%	65%	26%	49%	13%	75%
Morocco	2 425	89%	3%	2%	396	83%	7%	9%	61%	89%	-6%
Viet Nam	1 915	18%	61%	18%	545	15%	65%	19%	26%	15%	-1%

Source: OECD Database on Immigrants in OECD Countries (DIOC) 2000/01 and 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

The Philippines has a similar distribution of emigrants among OECD countries as China. While the European Union accounts for only a small share of all Philippine migrants (13.4%), it saw a large rise in intake (48.6%) in the first decade of the century, with its share of the total Philippines emigrant population rising by 75%. The European Union does not attract highly educated Filipinos, however, who are overwhelmingly to be found in the United States, Canada and Australia.

Morocco has traditionally seen most of its emigrants head for EU Member States: 89.2% of Moroccan-born residents in the OECD and EU27 countries were living in the latter in 2010. The European Union has become less attractive, however, and its share of Moroccan-born inhabitants slipped by 5.9% over the decade, even as the number of

Moroccan-born increased by 61.1%. Moroccans going to non-EU destinations are much more likely to be highly educated. The United States, Canada and Australia host less than 5% of Moroccan born migrants, but are home to 16% of those who are highly educated.

The European Union hosts a smaller share of Vietnamese-born migrants of whom the highly educated, like those of other nationalities, appear less attracted to the EU than other OECD destinations.

### ***The European Union receives more migrant flows than any single OECD destination***

The European Union has a lower migrant stock than the United States and migrants form a smaller share of its population. Yet inflows are higher than to any OECD destination in absolute terms and are comparable in relative terms to the United States' intake – about 0.3% of the population. In 2013, 1.4 million migrants came from outside the Union to the EU (Figure 2.5) – a number that was on a scale comparable to intra-EU mobility that year. The number of foreigners who arrived in a non-EU OECD country stood at 2.5 million in 2013. More than one in three (36%) international migrants who moved to Europe or other OECD countries chose the European Union in 2013. In absolute numbers, Germany, Spain, and Italy were the chief recipients of non-European migration in 2013. Germany alone welcomed about 380 000, while Spain and Italy took in 200 000 each.

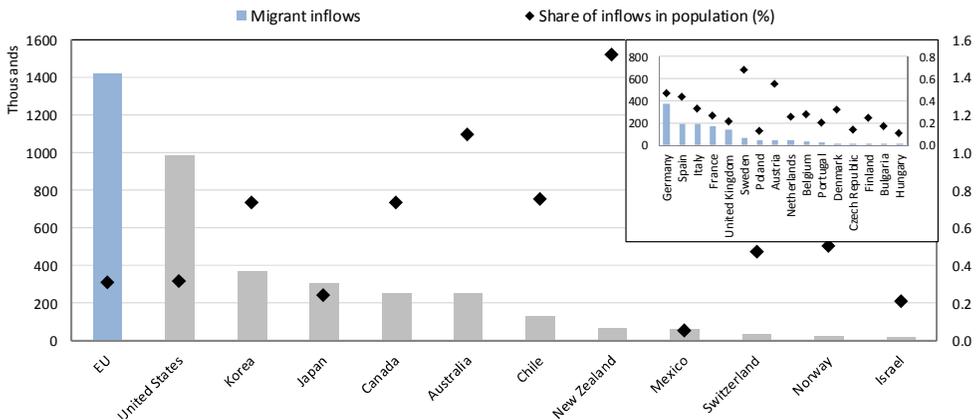
In relative terms, however, non-EU migrant flows account for a small share of the total population in most EU Member States at 0.4%. There are some exceptions, though, and in 2013 a few EU Member States took in non-EU flows that were high in proportion to their populations: 0.7% in Luxembourg and Sweden, and 0.6% in Austria. That being said, the relative magnitude of migrant flows was still greater in a number of other OECD destinations than in Europe – particularly in New Zealand (1.5%), Australia (1.1%), Chile (0.8%), Canada (0.7%), and Korea (0.7%). Inflows relative to population in all those countries exceeded even the top EU destinations.

Permanent-type migration to OECD countries can be tracked over time by comparing permanent residence permits in non-European OECD countries with renewable permits that lead to permanent residence in Europe (Lemaitre et al., 2007). Numbers are more volatile over time in EU Member States than in non-EU OECD countries (Figure 2.6). Indeed, the issuance of permanent-residence permits in non-EU OECD

countries remains fairly stable over time, since the main issuing countries use caps (e.g. the United States) or targets (Canada, Australia and New Zealand) to govern permanent inflows. Targets apply to most categories of migration: labour migrants, family members of non-citizens, and resettled refugees. The EU OECD countries, on the other hand, are more responsive to demand. While a number of EU Member States cap their labour migrant intakes, the caps themselves vary in response to changing economic circumstances and political priorities. No numerical limits apply to family migrants. The EU's responsiveness means that policies can be alternately open or restrictive. It was restrictive in the wake of the 2008 economic and financial downturn, with permanent-type migration to the European Union falling some 30% from its 2007 pre-crisis peak to about 1 million in 2013. In non-EU OECD countries, a spike in 2006 due to the absorption of the migrant backlog in the United States was the only variation in a decade of stability.

**Figure 2.5. The European Union as a whole receives more migrants than other OECD destinations, but not relative to its population, 2013**

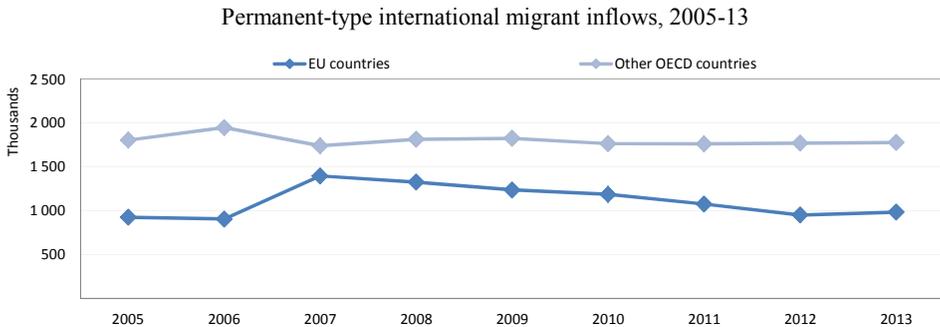
International migrant inflows and inflows as a share of total population



*Note:* Greece, Croatia, Ireland, and Romania are not included.

*Source:* OECD International Migration Database, “Inflows of foreign population by nationality”, <https://stats.oecd.org/Index.aspx?DataSetCode=MIG>.

**Figure 2.6. There is more annual variation in permanent-type migration to EU OECD countries than to other OECD destinations**



Source: OECD International Migration Database (2015).

Volatility in the EU's migrant intake springs largely from work-related flows. They have been extremely variable in the EU over the past decade, reflecting both shifting demand and policy changes. Work-related permanent-type inflows to EU OECD countries have been higher than those in non-EU OECD countries, even though they fell between 2010 and 2013 (Table 2.4). For the EU OECD countries for which harmonised data is available, work-related permanent-type migration fell from 430 000 in 2010 to 291 000 in 2013. In 2013, the figure for non-EU OECD countries was 261 000. The fall reflects the sharp decline in work-related permits in Italy and, to a lesser extent in Spain and the United Kingdom. Elsewhere in the European Union, work permit issuances have stayed in the same broad range from one year to the next. Another reason for variations in EU admissions are permits issued for other, often exceptional purposes – permits granted as part of a continuous regularisation mechanism or similar administrative procedures, residence granted on the basis of ethnicity (descendants of a national group), and permits issued under extraordinary regularisation.

The same trend is evident in Eurostat data on permits for remunerated employment, which afford a similar view of labour migration. In 2014, the number of initial work permits issued in the European Union was 223 000, less than half its level in 2008 (Table 2.5). Italy and the United Kingdom issued the largest number of work permits in the European Union up to 2012.<sup>3</sup> Several factors are at play in the fall in permits issued. The economic circumstances – a slack labour market – slowed demand in a number of Member States (Ireland, Portugal, Spain, and the Czech Republic). Italy largely closed down its available work

permits. As for the United Kingdom, in 2010 it committed to reducing net migration, focusing particularly on tightening up the labour migration channel. The bulk of EU Member States restrict entry to the most qualified workers through the use of thresholds (see Chapter 1). Inflows of qualified workers were less subject to variation.

**Table 2.4. Work is the category which explains much of the variation in permanent-type flows to EU OECD countries**

Permanent type permits issued in EU and non-EU OECD countries, 2010-13, in thousands

Category	EU-OECD countries				Other OECD countries			
	2010	2011	2012	2013	2010	2011	2012	2013
Work	431.1	387.6	302.2	290.8	242.1	236.0	246.8	261.2
Accompanying family of workers	61.2	52.4	44.1	49.8	271.4	238.4	251.0	251.6
Family	463.5	452.2	429.5	428.2	918.7	906.9	915.5	910.9
Humanitarian	68.2	81.1	83.9	124.0	199.7	233.0	209.9	186.2
Other	127.3	80.5	60.8	66.0	131.9	147.1	147.5	167.9
Total	1 151.3	1 053.9	920.5	958.8	1 763.9	1 761.5	1 770.7	1 777.8

*Note:* EU-OECD countries included are the EU15 (except Greece) and the Czech Republic.

*Source:* OECD International Migration Database (2015).

**Table 2.5. A few EU Member States consistently issue the most longer-term work permits**

Work permits (12 months or over) in the main permit-issuing EU Member States, 2008-14

Country	2008	2009	2010	2011	2012	2013	2014
United Kingdom	139.7	116.7	121.4	108.2	60.4	54.4	59.7
Spain	76.4	96.3	69.7	81.0	58.8	45.1	38.2
Italy	157.5	121.7	196.8	63.6	30.6	50.7	24.7
France	17.3	17.6	15.1	14.4	12.4	14.8	15.6
Germany	17.8	4.0	4.6	5.7	10.2	11.4	12.9
Czech Republic	7.3	1.6	9.1	2.4	15.1	15.6	8.8
Denmark	7.4	11.1	12.2	7.4	6.8	8.3	8.2
Sweden	4.5	6.9	6.9	9.9	9.2	7.8	7.8
Portugal	24.7	17.7	10.7	7.0	5.7	6.1	6.1
Lithuania	2.3	0.9	0.4	0.8	1.4	2.1	4.3
Other	57.0	35.1	20.9	25.4	18.8	21.6	36.6
Total	511.9	429.5	467.6	325.7	229.3	237.9	223.1

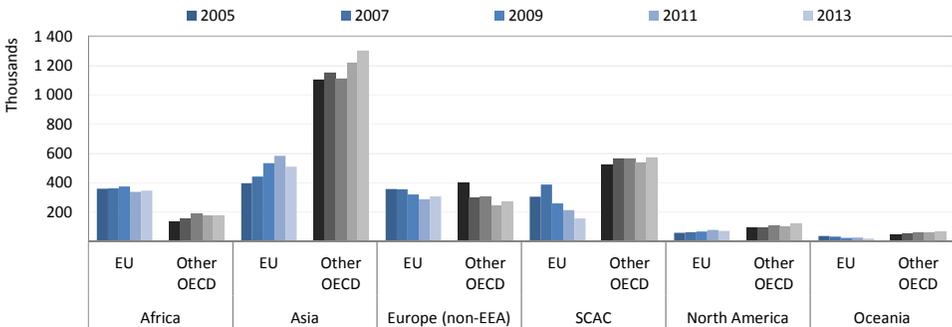
*Source:* Eurostat, “First permits issued for remunerated activities by reason, length of validity and citizenship”, [http://ec.europa.eu/eurostat/web/products-datasets/-/migr\\_resocq](http://ec.europa.eu/eurostat/web/products-datasets/-/migr_resocq).

***Inflows from Africa are more likely to head for the European Union than other OECD destinations***

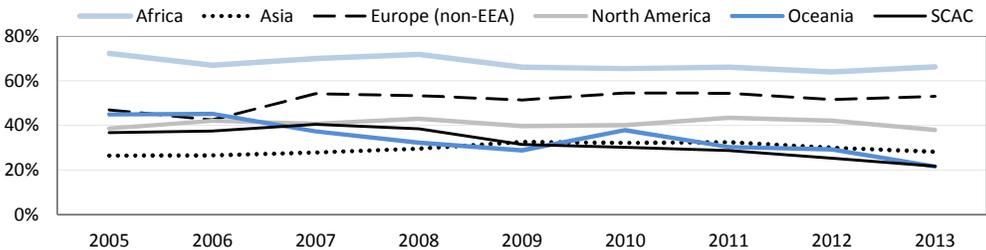
The regions that have supplied the most migrants to EU OECD countries in recent years have been Asia (Figure 2.7, Panel A), followed by Africa and non-EU Europe. Outflows from Africa have been steady, with more migrants making for the EU Member States than the non-EU OECD area. The number of immigrants from Asia to the EU rose steadily from 2005 to 2011 before slipping back in 2013, with flows lower those to other OECD countries. Migration from South and Central America and the Caribbean rose in the late 2000s, but there has since been a decline in flows to EU Member States – primarily in southern Europe.

**Figure 2.7. The regions of origin of migrants to the European Union are different from those to other OECD countries**

Panel A. Immigration to the EU and other OECD destinations, by region of origin, 2005-13



Panel B. Share of migrants to OECD destinations that go to the EU, by region of origin, 2005-13



Source: OECD International Migration Database, “Inflows of foreign population by nationality”, <https://stats.oecd.org/Index.aspx?DataSetCode=MIG>.

Most African migrants to the OECD head for the European Union (Figure 2.7, Panel B), the destination for two-thirds of them in 2013. Half of the migrants from neighbouring European countries – Southeast Europe, Turkey, Russia and Ukraine, primarily – went to the European Union. Of those who emigrated to other OECD destinations, about half headed for EFTA countries. The European Union attracts less than one-third of migrants from Asia – who comprise the largest group of international migrants – and the share has declined in recent years. Flows from OECD countries to North America and Oceania are generally inter-regional flows – towards each other – rather than to EU destinations.

Patterns in regions of origin are mirrored in the destinations which migrants from the main countries of origin in each region choose. In African outflows in 2013, Morocco saw 92.1% of its migrants head for EU OECD countries, Algeria 86.8% and Nigeria 55.1%. The EU was the main destination for migrants from Turkey (83.1%), Ukraine (78.2%) and the Russian Federation (75.8%). Only 22.9% of migrants from China, which accounts for one in ten migrants to OECD countries, took up residence in the European Union in 2013. As for India, the figure was higher – 34.3% – while for the Philippines it was just 13.6%.

### ***Labour migrants to the European Union come from all over the world***

The European Union is not dependent on any single nationality for its work permits (Table 2.6). The top 12 nationalities of recipients of longer-term work permits account for little more than half the total inflow, and the leading nationality, India, comprises just over one in ten of the total. The main non-OECD countries of origin of holders of EU work permits in the European Union valid for one year or more have been India, China, Morocco, the Russian Federation, and the Philippines. All nationalities have seen declines, but particularly those who had arrived for employment in Southern European countries, and those from Morocco, Brazil, the Philippines and Ukraine.

**Table 2.6. Labour migration to the European Union is not dominated by any single country**

Work permits (12 months or over) in the main issuing EU Member States, 2008-14

Country of origin	2008	2009	2010	2011	2012	2013	2014
India	46.5	43.1	50.6	38.7	21.7	24.2	25.2
United States	29.5	24.9	28.9	27.6	20.6	20.8	23.5
China	29.6	32.7	26.5	17.3	14.0	13.8	14.4
Ukraine	33.5	28.7	40.4	13.6	16.2	20.6	14.1
Morocco	38.0	23.6	28.5	17.0	10.0	12.3	9.1
Australia	22.0	16.7	16.9	15.5	9.1	8.3	9.1
Philippines	19.5	17.8	19.8	15.8	8.6	6.5	6.5
Pakistan	5.3	8.8	11.2	7.2	4.7	7.1	6.5
Canada	8.5	6.9	7.5	7.1	5.1	5.3	5.9
Brazil	24.4	20.2	14.3	10.0	7.4	6.0	5.8
Japan	6.2	5.4	5.2	5.6	4.4	4.2	5.3
Bangladesh	11.2	6.1	11.3	5.9	3.2	7.4	4.2
Other	237.7	194.7	206.4	144.3	104.2	101.3	93.7
Total	511.9	429.5	467.6	325.7	229.3	237.9	223.1

Source: Eurostat, “First permits issued for remunerated activities by reason, length of validity and citizenship”, [http://ec.europa.eu/eurostat/web/products-datasets/-/migr\\_resoc](http://ec.europa.eu/eurostat/web/products-datasets/-/migr_resoc).

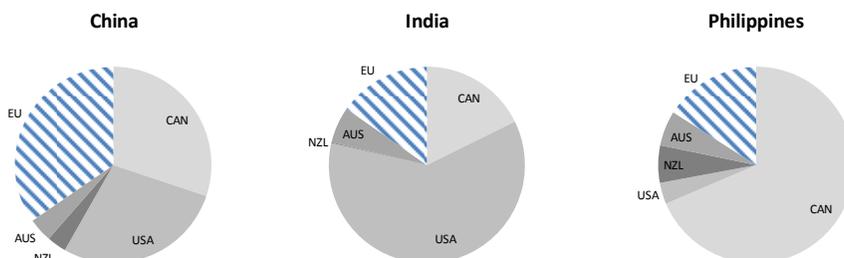
The heterogeneous origins of EU migrants are in sharp contrast to other OECD countries, where labour migration tends to be dominated by a few, mostly Asian, countries. In the United States, for example, India, China and the Philippines account for about half of all permanent employment-related visas. In Canada, Australia and New Zealand, too, the bulk of employment migration is from precisely those three Asian countries. The same is true for temporary skilled workers. In the United States, Indians make up between one-half and two-thirds of the annual intake of H-1B Visa holders (temporary skilled workers), and Chinese migrants around 10%. In Australia, China and India alone comprise between one-fourth and one-third of temporary skilled work permits.

The European Union does, however, take in a share of economic migrants from the countries which are at the top of the origin list for labour migration to other OECD countries. Figure 2.8 compares work permits in the European Union with H-1B Visas for temporary skilled workers in the United States, temporary skilled workers in Australia, Essential Skills Visas in New Zealand, and temporary migration for employment in Canada. The comparison does not take into account the skills make-up of migration to the EU and, indeed, many of the work permits in the EU were issued for employment in less skilled occupations. However, the available statistics do not allow for a more detailed analysis. The comparison reveals that, in 2012, the latest year

for which detailed comparisons across destinations are available, the EU Member States granted work permits to more Chinese migrants than in the United States' intake of temporary skilled workers or Canada's intake of temporary workers. The number of Indians admitted to EU Member States with work permits was smaller than the number who received H-1B Visas or who entered Canada as temporary economic migrants. More nationals from the Philippines received work permits in the European Union than in the United States, New Zealand or Australia, although far fewer than in Canada (largely due to Canada's live-in caretaker programme). However, in proportion to the size of the European Union and the large number of skilled labour migrants from China, India and the Philippines, the EU appears to be lagging behind when it comes to attracting skilled labour migrants.<sup>4</sup>

**Figure 2.8. The European Union takes in a share of the flow of workers who constitute the main groups of labour migrants in other OECD countries**

Labour and economic migration to selected OECD countries and the EU, by country of origin, share in 2012



*Note:* The data are for the year 2012, fiscal year 2012/13 (Australia) or fiscal year 2011/12 (New Zealand). The permits or visas considered are: New Zealand: Essential Skills and Skilled Migrants; United States: H-1-B Visas; Australia: Subclass 457, visas granted; Canada: the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP); Europe: Eurostat permits for remunerated activity.

***Migrants to the EU are younger and less well educated than those in other OECD destinations***

The European Union attracts a different profile of migrant relative from other OECD destinations, especially when defined by educational attainment and labour status (Table 2.7). While the share of women is similar in EU and non-EU OECD destinations – slightly more than 51% – this proportion is greater in the EU12 at 55%. Migrants to the

EU27 are slightly younger, while 65-year-olds account for 11.3%, less than the non-European OECD countries' 14.7%. In the EU15, migrants are even younger, with less than 10% of over-65s, most of whom live in the long-standing migration destinations of Germany, France and the United Kingdom. Other EU Member States host just one-third of the EU's older migrants.

As noted above, the migrant population in the European Union has been increasing more rapidly than in other destination countries. More EU migrants are therefore recent arrivals. The shares of immigrants resident in the European Union for less than five years and between five and ten years are 17.6% and 19%, respectively, against 12.5% and 13.7% in OECD countries outside Europe.

**Table 2.7. Migrants in the European Union are younger and more likely to have arrived recently**

Main characteristics of immigrant population aged 15+ in EU27 and other OECD countries, by destination, 2010

Region of destination	Immigrant population aged 15+ (thousands)	Women	Age		Education			Duration of stay			Labour force status	
			15-24	65+	Low	Medium	High	<5	5-10	>10	Employed	Inactive
EU15	30 981.5	51%	13%	10%	41%	33%	25%	18%	20%	63%	58%	30%
EU+12	1 751.0	55%	7%	35%	19%	53%	29%	12%	7%	81%	64%	27%
EU27	32 732.5	51%	12%	11%	41%	34%	25%	18%	19%	63%	58%	30%
Europe non-EU	13 900.5	51%	12%	13%	31%	36%	33%	17%	12%	71%	71%	23%
Other OECD	57 219.8	51%	12%	15%	27%	37%	36%	13%	14%	74%	68%	26%
Total	117 028.9	52%	12%	14%	32%	37%	32%	16%	15%	69%	65%	27%

*Note:* Education shares, employment and inactivity rates are computed for the population aged 15-to-64 years old.

*Source:* OECD Database on Immigrants in OECD Countries (DIOC) 2000/01 and 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

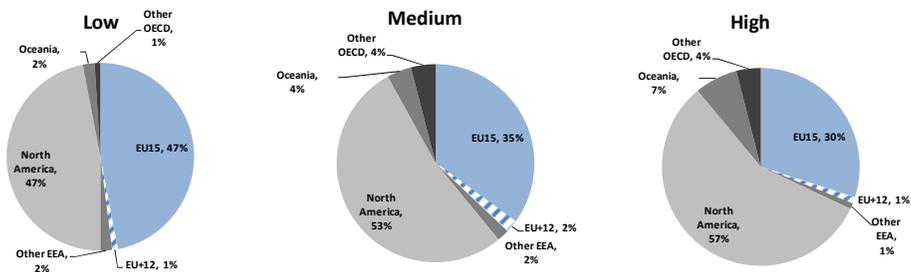
Migrants to the European Union are not only younger, they are generally less well educated, too. Indeed, a much larger share of the migrants to EU Member States than to OECD countries outside Europe have low levels of educational attainment – the proportions are 40% and 27%, respectively (Table 2.7). As the share of medium-educated (37%) migrants is similar in both destination regions, the share of highly educated immigrants is much higher in non-Europe OECD (36%) than in the European Union (25%).

If analysis considers migrant destinations, the European Union appears decidedly less appealing to highly educated third-country

migrants. Figure 2.9 depicts three groups aged 25-to-64 years old in EU and OECD countries according to level of education. Each group is about the same size, roughly 20 million. Overall, 39% reside in the EU. Thus, any figure over 39% is an over-representation of that group. The European Union hosts 33% of the total stock of highly educated third-country migrants (most in the EU15) and North America 57%. Furthermore, the majority of low-educated migrants live in Europe (56%), mostly in the EU15 (47%). Figures for the medium-educated are closer to the expected distribution, although the EU still receives proportionately fewer than other OECD destinations.

**Figure 2.9. The higher the education level, the less likely migrants are to live in the European Union, 2010**

Distribution of low, medium and high-educated non-EU-origin immigrant populations, aged 25-64, by destination



Source: OECD Database on Immigrants in OECD Countries (DIOC) 2000/01 and 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

Regardless of region of origin, the same pattern holds true, with the EU hosting relatively fewer highly educated migrants (Table 2.8). Higher proportions of African migrants (almost one-half) in North America and Oceania than in the EU15 (23%) also tend to be highly educated. About half of Asian migrants in other OECD destinations are highly educated, compared with less than one-third in the European Union. SCAC migrants are a notable exception. On average, they are less well educated in North America than in the EU15, a consequence of looser selectivity in the United States, where part of the large SCAC-born population entered outside selective legal channels.

**Table 2.8. Among Asian and African migrants, a much smaller share are highly educated in the European Union than in other OECD destinations, 2010**

Share of highly educated non-EU immigrant populations aged 25-64, by destination and origin

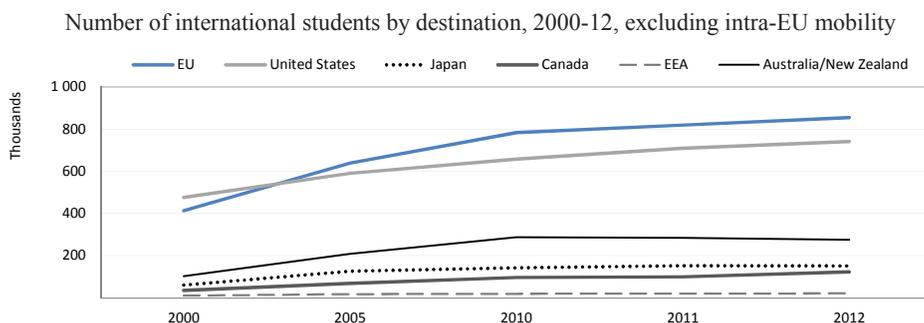
Region of Destination	Region of origin					
	Europe Non EU	North America	SCAC	Asia	Oceania	Africa
EU15	16%	48%	25%	32%	52%	23%
EU+12	24%	42%	44%	30%	27%	44%
North America	50%	50%	16%	52%	39%	49%
Oceania	29%	60%	46%	49%	27%	47%
Total	25%	48%	17%	39%	32%	28%

Source: OECD Database on Immigrants in OECD Countries (DIOC) 2000/01 and 2010/11, <http://www.oecd.org/els/mig/dioc.htm>.

## The European Union is the single leading destination for international students

The EU is attractive to international students, and growing more so over time. Taken as a whole, it has overtaken the United States as the destination of choice (Figure 2.10). In 2012, there were 855 000 third-country national students in EU Member States. Almost one in three, however, was studying in the United Kingdom. France with 200 000 and Germany with 128 000 were the next largest destinations. Of the 1.4 million international students in other OECD countries, most were hosted by the United States. The European Union more than doubled its international student population over the 12 years between 2000 and 2012, outstripped only by Australia and New Zealand, where enrolment tripled.

**Figure 2.10. The European Union has overtaken the United States as the prime destination for international students**



Source: UNESCO Institute for Statistics, “Global Flow of Tertiary-Level Students”, interactive webpage, <http://www.uis.unesco.org/EDUCATION/Pages/international-student-flow-viz.aspx>.

The increase by 107% in the number of non-EU students in the EU between 2000 and 2012 was driven by a number of Member States. Figures more than doubled in the United Kingdom, France, and Spain. In Italy, the increase was six-fold. After 2005, however, the number of students declined in Germany. In the EU+12 members, enrolments started from a low baseline, but the relative increase was even higher than in the EU15 countries. The Czech Republic saw a 700% increase over the decade to 2012, and Lithuania, Poland, and Estonia also saw the number of foreign-born students rise remarkably between 2000 and 2012. Similar increases were not seen in other OECD countries.

Most students in both the EU and other OECD countries originate from Asia. By far the largest number of international students in OECD and EU Member States come from China – 590 000 in 2012, up from just 110 000 in 2000. The share and absolute numbers of Chinese students in the EU have grown in concert. In 2000, just 17% of Chinese students were in EU Member States. By 2012, the figure was close to 25%. That being said, the European Union has not seen its share of Chinese students increase since the mid-2000s. Indeed there has been a fall.

India supplied the second largest group of international students in 2012, with 170 000. The EU saw its share of the market for the Indian students increase from 13% in 2000 to about 25% in 2012. Most studied in the United Kingdom and Ireland. Korea is the third largest non-EU country of origin for international students, of which the European Union has a small market share of about 10%. The European Union was the destination of 43% of international students from Viet Nam in 2000, though that number had fallen to about 30% by 2012. Europe continues to attract the overwhelming majority of students from the Maghreb and a clear majority of those from neighbouring countries such as the Russian Federation, Turkey, and Ukraine. The EU's market share of Morocco and Turkey, however, has been declining. Countries where national scholarship programmes have prompted growth in numbers of international students, such as Brazil and Saudi Arabia, have largely overlooked EU destinations.

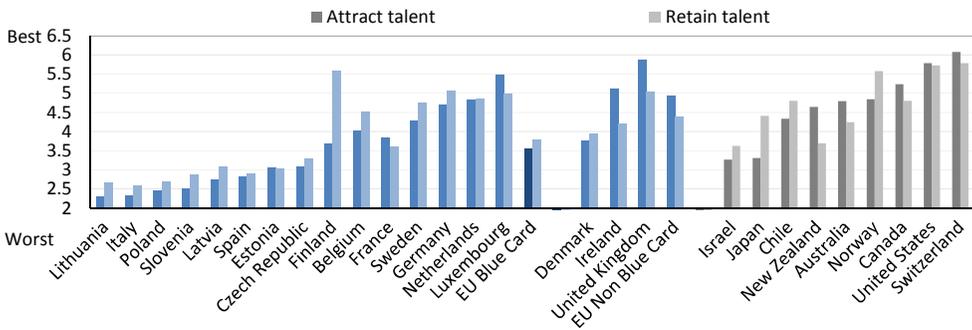
## **Surveys of entrepreneurs and executives show a mixed profile of attractiveness**

Surveys of entrepreneurs and business leaders reveal perceptions of, if not the reality behind, the attractiveness of migrant destinations. The World Economic Forum's Executive Opinion Survey (WEF, 2014a) finds

that EU Member States are seen, on average, as being less attractive for “the best and brightest from around the world” than non-EU countries and EU Member States outside the common migration policy-making area (Figure 2.11).<sup>5</sup> While the question is not directly related to legislative barriers, Member States covered by the relevant Directives tend to fare worse on this survey. Their average attractiveness score was 3.8 out of 10, compared with 4.9 for other EU Member States, and over 5 in Canada and the United States. Nonetheless, several EU Member States ranked well above the average, with Germany, the Netherlands and Luxembourg registering scores close to those of non-EU countries. As for perceptions of the EU’s retention capacity, they resembled those of attractiveness, with European countries generally better at retaining talent and non-European countries faring slightly worse.

**Figure 2.11. Executives in EU Member States perceive greater difficulty in attracting and retaining talent than many other OECD destinations**

Capacity of selected countries to attract or retain talent, 2013-14

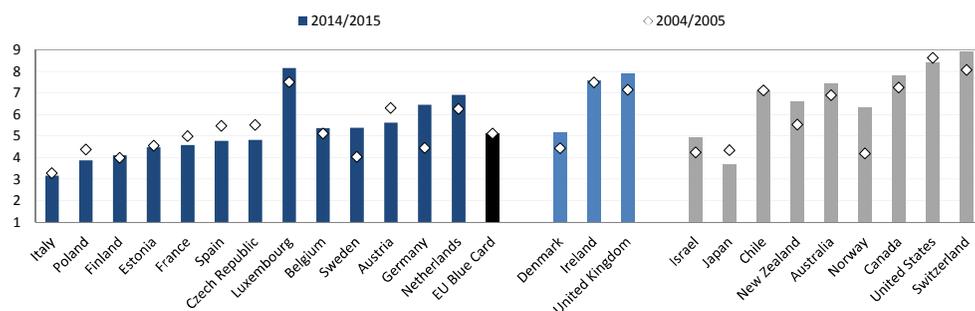


Source: WEF (2014b), *Global Competitiveness Report 2014-2015*, World Economic Forum, Geneva.

Business surveys also express a more global assessment of regions’ attractiveness to foreign talent. The *IMD World Competitiveness Yearbook* surveys leaders of internationally oriented businesses (Figure 2.12). Although it does not take migration policy into account, it does factor in income and tax, business culture, language, job opportunities and working conditions. While a number of major business destinations in the European Union are internationally competitive, the EU is less attractive than the major competing non-EU destinations on average. Moreover, the survey shows that, while a number of countries’ attractiveness assessment improved in the decade to 2014, many EU Member States appear to be perceived as less attractive than before.

**Figure 2.12. Business leaders perceive many European destinations to be less attractive to highly skilled foreigners**

Ranking on a scale of 0 to 10 by executives of responses to the question, “Are high-skilled people attracted to your country's business environment?”



Source: IMD World Competitiveness Yearbook, 2015.

## Many EU residents perceive their countries as good places for migrants

More general surveys may show whether resident populations think their countries are good places for migrants. Gallup World Survey findings (from 2007-2013) reveal a wide range of responses, with some countries seen as very unattractive and others very attractive (Figure 2.13). A further finding was that countries with the most negative outlook in 2007 were much more positive in 2012, even though the economic circumstances in those countries worsened over the survey period. Nonetheless, the main non-EU OECD destinations scored very well in residents' perceptions of their countries, which they felt were good destinations. However, the EU average perception, even in the EU15 Member States, was below that of the traditional settlement destinations.

**Figure 2.13. EU Member States vary significantly in terms of whether they think that their country is a good place for migrants from other countries**

Share of the population who think that their city or area of residence is a good place for migrants from other countries to live, 2007 and 2012, and unweighted averages



not all respondents will migrate, the sample yields an estimate of interest in the European Union relative to other destinations and gives an idea of the profiles of people who would prefer the European Union to other OECD destinations.

The survey asked respondents to indicate the country to which they were interested in migrating. The European Union as a whole was not among the possible responses, as only individual countries could be indicated. Most aspiring migrants were interested in EU/EEA and other OECD countries as permanent destinations (60%), temporary destinations (66%) and as places to study (75%).<sup>7</sup> Among the would-be permanent migrants, the United States was the leading destination – 23% of respondents intending to migrate permanently wished to move there. This proportion was even higher among those wishing to move temporarily to work (26%) or to study (33%).

However, the share of individuals choosing one of the EU/EEA countries (excluding those wishing to move within the EU/EEA) is similar to the number interested in the United States at 23% (Table 2.9). The percentage corresponds to an estimated 11 million migrants who wish to move in the near future (one year). Within the European Union, the five most populous countries accounted for more than three-quarters of potential migrants: the United Kingdom, France, Germany, Spain, and Italy. It is noteworthy that Germany is the destination of interest for far fewer respondents than France.

Altogether, Canada, Australia and New Zealand are the desired destination of 10% of potentially permanent migrants. Their smaller populations make them relatively much more attractive. Indeed, the estimated number of would-be permanent migrants to the three countries is equivalent to their population, while for the United States the proportion is about 40% and, for the European Union, about 25%.

The survey also asked whether aspiring permanent migrants had taken concrete action to prepare their move and, if so, whether their choice of country translated into a real attempt to migrate. Overall, about one-third claimed to have taken concrete action. There was a higher likelihood of such action having been taken to migrate to Germany, to the United Kingdom, to smaller destinations in the European Union and to Canada, and a lower likelihood among those who identified Spain as their destination of choice.

**Table 2.9. There is a large pool of potential migrants interested in coming to Europe, 2011**

Share of the potential migrant population by desired destination who would like to move permanently

Potential migrants who wish to move... to...	...over lifetime (%)	Of those, share who wish to move in the next 12 months (%)	Of those, the share who have taken concrete actions* (%)
<b>EU/EEA**</b>	24%	23%	38%
United Kingdom	6%	5%	43%
France	4%	6%	38%
Germany	4%	3%	49%
Spain	3%	3%	25%
Italy	2%	2%	31%
Other EU28	3%	4%	45%
Other EEA	2%	1%	12%
<b>Non-Europe OECD</b>	35%	36%	36%
United States	22%	23%	34%
Canada	6%	6%	45%
Australia/New Zealand	5%	3%	40%
Other OECD	3%	3%	36%
<b>Non-OECD</b>	26%	34%	36%
<b>Don't know/refused</b>	11%	6%	26%
<b>Missing</b>	4%	-	-
<b>Total**</b>	100%	100%	36%
<b>Estimated number (millions of adults)***</b>	590.5	48.2	0.2

*Note:* Figures on permanent migration intentions generally relate to the year 2011 except for a few countries for which they relate to 2012, 2013 or 2014 because data for 2011 were not available. Figures on temporary migration intentions relate to the year 2010.

(\*) Computed on those who said they were planning to move permanently in the next 12 months. (\*\*) Figures exclude intra-EU/EEA mobility. (\*\*\*) Extrapolated figures using sampling weights.

*Source:* Gallup World Surveys 2011-2014; Gubert and Senne (2016).

The Gallup Survey also asked about temporary intentions of migrating for work and study (Table 2.10). EU Member States were destinations of choice for about one in four would-be temporary labour migrants – a share that was lower than those who chose the United States. The European Union is also the wished-for destination of fewer aspiring international students than the United States. Within the European Union, the United Kingdom stands out as the leading destination of interest for students, while France and Germany compete for both temporary workers and students with similar shares – in contrast to France's more attractive position as a permanent destination.

**Table 2.10. The European Union is a less popular destination for temporary workers and students**

Individuals who would like to move temporarily, by motive and share of global total, 2011-14

Destination	To work	To study
<b>EU/EEA*</b>	<b>22.8</b>	<b>25.2</b>
United Kingdom	6.9	9.6
France	3.9	4.5
Germany	3.6	4.2
Spain	3.0	3.2
Italy	2.4	1.8
Other EU28	2.1	1.4
Other EEA	0.9	0.5
Other EU28	2.1	1.5
Other EEA	0.9	0.5
<b>Non-Europe OECD</b>	<b>42.3</b>	<b>48.5</b>
United States	26.1	32.6
Canada	5.1	4.9
Australia/New Zealand	3.8	3.4
Other OECD	7.3	7.6
<b>Non-OECD</b>	<b>22.8</b>	<b>14.8</b>
<b>Don't know/refused</b>	<b>11.6</b>	<b>11.4</b>
<b>Missing</b>	<b>0.5</b>	<b>0.1</b>
<b>Total*</b>	<b>100</b>	<b>100</b>
<b>Estimated number (millions of adults)**</b>	<b>1 114</b>	<b>855</b>

*Note:* Figures on permanent migration intentions generally relate to the year 2011 except for a few countries for which they relate to 2012, 2013 or 2014 because data for 2011 were not available. Figures on temporary migration intentions relate to year 2010.

(\* ) Figures exclude intra-EU/EEA mobility. (\*\* ) Extrapolated figures using sampling weights.

*Source:* Gallup World Surveys 2011-2014; Gubert and Senne (2016).

Far more respondents express an interest in temporary than in permanent migration. Converting responses into a numeric estimate of intentions yields 1.1 billion adults worldwide. The sheer size of that number, plus the absence of any way of measuring whether such intentions are realistic, makes it impossible to estimate the number of potential temporary migrants.

Nevertheless, figures on both permanent and temporary migration intentions offer an indication of the relative attractiveness of the EU by potential migrants' country of origin and characteristics (Table 2.11). The European Union is more attractive to potential migrants from nearby regions, especially in non-EU/EEA European countries (where 54.2% of migrants indicate the EU/EEA as their destination), the Middle East and

North Africa (32.9%) and sub-Saharan Africa (25.5%). Almost as many sub-Saharan Africans name the United States as their desired destination, even if the migration channel to the United States is still relatively small. And in the Middle East and North Africa, there is actually greater interest in Canada than in the United States, with 11.2% citing Canada as their destination of choice. Interest in Europe, by contrast, is lower than might be expected in light of how migrants are actually distributed.

**Table 2.11. Other OECD destinations attract potential migrants even if they are far away, but the European Union is the most attractive for potential migrants in nearby regions**

Distribution of potential migrants (who would be ready to leave in the next 12 months) across desired regions of destination, by country of origin, 2011

Region of destination	Region of origin						
	EU/EEA*	Other Europe	MENA	Sub-Saharan Africa	Latin America and the Caribbean	Asia	All*
<b>EU/EEA</b>	-	54%	33%	26%	19%	14%	23%
Top 5	-	32%	26%	22%	17%	9%	19%
Other EU28	-	20%	6%	3%	1%	4%	4%
Other EEA	-	2%	1%	1%	2%	0%	1%
<b>Non-Europe OECD</b>	47%	24%	25%	31%	50%	42%	36%
United States	15%	14%	8%	23%	42%	26%	23%
Canada	5%	4%	11%	6%	5%	6%	6%
Australia/New Zealand	20%	1%	3%	1%	1%	5%	3%
Other OECD	7%	5%	4%	1%	3%	5%	3%
<b>Non-OECD</b>	38%	15%	38%	37%	23%	41%	34%
<b>Don't know/refused</b>	15%	7%	4%	7%	8%	4%	6%
<b>Total</b>	100%	100%	100%	100%	100%	100%	100%
Nb. of observations	211	343	953	2 545	649	376	5 105
Population (thousands)**	3 206	2 402	6 655	19 697	8 145	7 676	48 182

*Note:* Figures on permanent migration intentions generally relate to year 2011 except for a few countries for which they relate to years 2012, 2013 or 2014 because of missing data in 2011.

(\*) Figures exclude intra-EU/EEA mobility. (\*\*) Extrapolated figures using sampling weights.

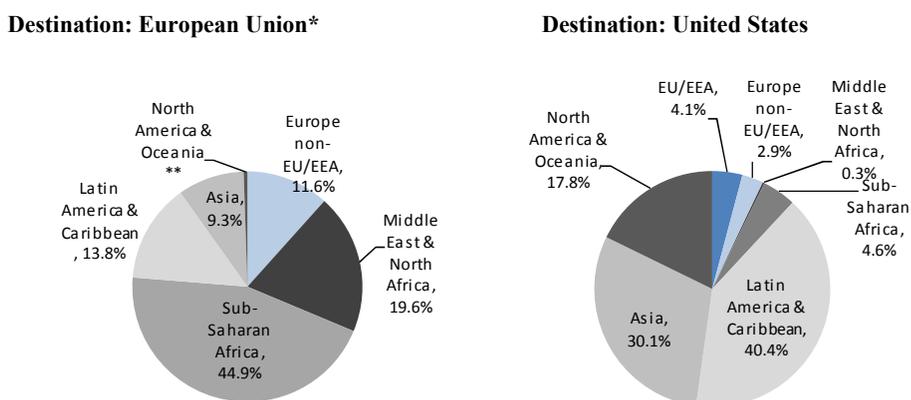
*Source:* Authors' analysis from Gallup World Surveys 2011-2014.

There are a comparable numbers of respondents interested in migrating to the United States and to the European Union. However, the European Union is substantially less attractive to migrants from Asia, with only 13.6% of those intending to migrate citing a EU Member State as their preferred destination (Figure 2.14), compared to the 42% who would choose the United States. As a consequence, the group of migrants who prefer the United States comprises a much larger number of Asians. Unsurprisingly, since respondents in Latin America and the Caribbean have cultural and historical ties and well-established migration channels to the United States, they make up a large share of

the migrants interested in moving to the United States. Among those wishing to go to the European Union, sub-Saharan Africans comprise 44.9%, Middle Eastern and North-African nationals 19.6%, would-be migrants from Latin America and the Caribbean 13.8%, and Asians 9.3%.

**Figure 2.14. The number of Asians interested in migrating to the United States is much larger than the number interested in migrating to the European Union**

Composition by origin of potential migrants (who would be ready to go in the next 12 months), shares of weighted total, 2011



*Note:* Extrapolated using sampling weights.

(\*) Figures exclude intra-EU/EEA mobility. (\*\*) denotes unreliable because of small number of observations.

*Source:* Gallup World Surveys 2011-2014; Gubert and Senne (2016).

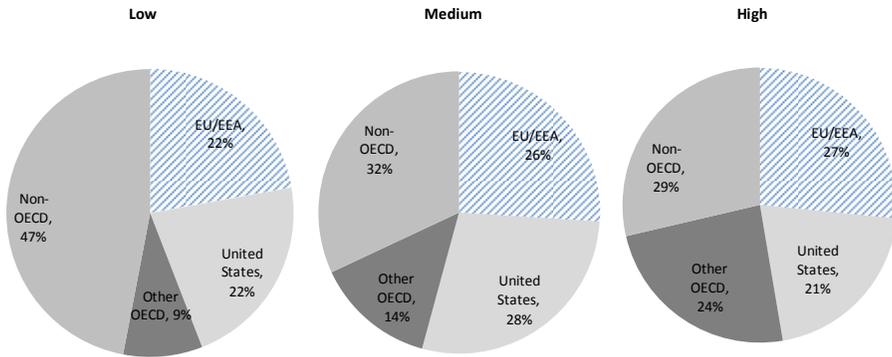
More than merely country of origin distinguishes the potential migrants who cite an EU Member State as their preferred destination. For example, 60% of the respondents who would like to migrate in the next 12 months are men. The tilt in gender balance is even more pronounced among potential migrants to EU Member States (63%), although it is driven by those who favour Italy and Spain, three-quarters of whom are men.<sup>8</sup>

Country preferences also differ sharply according to the level of education (Figure 2.15). Overall, the group of potential migrants principally comprises people who are educated to medium and low levels of attainment (55% and 32%, respectively). The low-educated tend to express a preference for non-OECD destinations, chiefly in the Gulf

Region, which reflects frequent migration patterns of less well educated workers from Asian and North African countries. As for the migrants educated to a medium level, 26% express a preference for EU/EEA countries, 28% for the United States, and 14% for other OECD destinations. Among the highly educated, EU/EEA countries exert the greatest appeal with 27% of preferences, compared with the United States’ 21%, and 24% for other OECD countries.

**Figure 2.15. EU Member States rank top of the destinations for highly educated potential migrants**

Preferred destinations of potential migrants (who would leave in the next 12 months), by education level, 2011



*Note:* Extrapolated using sampling weights. Figures exclude intra-EU/EEA mobility.

*Source:* Gallup World Surveys 2011 2014; Gubert and Senne (2016).

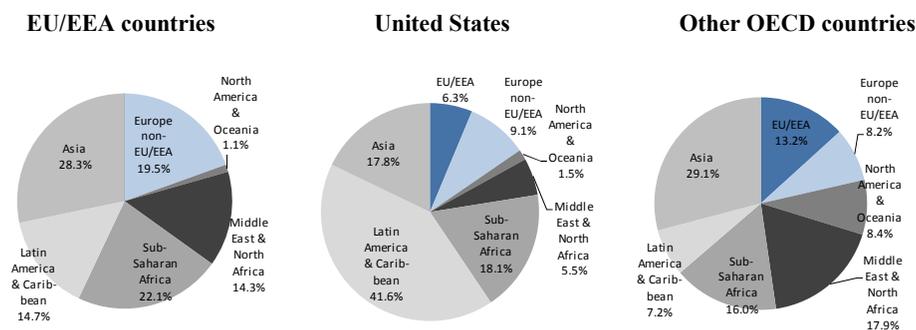
Among the most highly educated respondents to the Gallup World Surveys, the EU is the stated preference. Among potential migrants outside the European Union, the EU is the preferred destination for 29.5% of the total, more than the United States (21.5%), other OECD countries (23.3%) and non-OECD non-EU/EEA countries (25.7%). The strong appeal of Canada and Australia explains the high share of respondents expressing an interest in OECD countries other than those in Europe or the United States.

Highly educated migrants with an interest in Europe are primarily from Asia (28.3%) and sub-Saharan Africa (22.1%). However, Europe can point to an interest across the globe – with the exception of other English-speaking OECD countries (Figure 2.16). Those expressing a preference for Europe include highly educated migrants from Latin

America and the Caribbean (14.7%) and the Middle East and North Africa (14.3%). The United States – even if its inflow of highly educated migrants tends to be from Asia – nevertheless holds appeal for a sizeable share of highly educated potential migrants from Latin America and the Caribbean (41.6%). A smaller number of highly educated SCAC respondents aspire to emigrate to other OECD countries, whereas the share among those from the Middle East and North Africa is significant at 17.9%.

**Figure 2.16. The European Union is an attractive destination for highly educated potential migrants**

Composition of the highly educated expressing a migration preference, by origin and destination, 2011



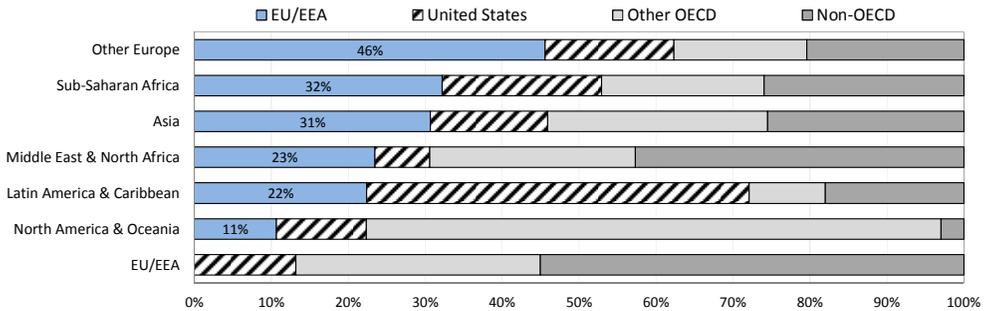
*Note:* Extrapolated using sampling weights. Figures exclude intra-EU/EEA mobility.

*Source:* Gallup World Surveys 2011-2014; Gubert and Senne (2016).

Europe is also the preferred destination for highly educated migrants from other neighbouring European countries and for those from sub-Saharan Africa (Figure 2.17). It also competes well for the interest of those from Asia, of whom 30.7% would like to head for Europe. Surprisingly, despite proximity and historical ties, highly educated migrants in the Middle East and North Africa are more likely to express a preference for destinations other than Europe. Only 23.5% of the highly educated from Middle East and North Africa reported wanting to go to Europe, while 35.9% of low- and medium-educated potential migrants from the region listed a European country as their preferred destination. This may reflect the fact that higher education opens more opportunities to migrate to other OECD destinations beyond traditional channels.

**Figure 2.17. The European Union is the preferred destination of highly educated European and sub-Saharan potential migrants**

Region or country preferred by group of potential migrants, high-educated only, by region of origin, 2011



*Note:* Extrapolated using sampling weights. Figures exclude intra-EU/EEA mobility.

*Source:* Gallup World Surveys 2011-2014; Gubert and Senne (2016).

The observations above are borne out by a destination choice model (Table 2.12). The regions of origin where potential migrants are more likely to express a preference for the EU/EEA are Europe, the Middle East and North Africa, and Sub-Saharan Africa. One striking finding to emerge from the model is that migrants who express a preference for Europe are more likely to be inactive in the labour market, neither employed nor looking for work. In addition, migrants who prefer a European destination are more likely to be single. There is a clear preference among the better educated migrants for non-EU/EEA OECD destinations. The analysis shows neither gender differences by destination nor age differences between the European Union and the United States.

Taken together, the evidence from the survey of migration intentions suggests that the European Union has not been left behind. Potential migrants with a high level of education are interested in migrating to the EU permanently, in numbers similar to other destinations. That, however, suggests that the European Union is punching below its demographic and economic weight in the competition for talent. Positive signs are evident in the interest around the globe for Europe – not only in neighbouring and traditional origin countries. Europe has work to do, however, if it is to improve its appeal in the competition with other OECD countries and even to non-OECD countries for highly educated migrants

**Table 2.12. The European Union is more attractive to single, inactive less well educated potential migrants**

Regression results of a multinomial logit model of destination choice

	Probability of choosing as desired destination:			
	EU/EEA	United States	Other OECD countries	Non-OECD countries
<b>Male</b>	0.001 (0.014)	0.013 (0.013)	-0.015 (0.01)	0.001 (0.015)
<b>Age</b>	-0.001 (0.001)	0.001 (0.001)	0.001** (0.000)	-0.001*** (0.000)
<b>Marital status [ref.: Single]</b>				
Married	-0.046*** (0.016)	0.002 (0.015)	-0.025** (0.012)	0.070*** (0.018)
Other	-0.055* (0.029)	-0.021 (0.025)	-0.026 (0.020)	0.102*** (0.033)
<b>Education level [ref.: Low]</b>				
Medium	-0.006 (0.016)	0.044*** (0.014)	0.044*** (0.011)	-0.081*** (0.017)
High	-0.027 (0.022)	0.034* (0.019)	0.062*** (0.016)	-0.070*** (0.025)
<b>Employment status [ref.: Employed]</b>				
Under/Unemployed	0.001 (0.017)	0.001 (0.015)	-0.019 (0.012)	0.017 (0.019)
Inactive	0.046*** (0.017)	-0.009 (0.015)	-0.007 (0.012)	-0.030* (0.018)
<b>Network abroad</b>	0.011 (0.015)	-0.013 (0.014)	-0.012 (0.011)	0.014 (0.016)
<b>Region of origin [ref. Asia]</b>				
EU/EEA	-	0.873 (24.919)	0.545 (14.544)	1.428 (46.249)
Other Europe	0.418*** (0.038)	-0.115** (0.045)	-0.02 (0.028)	-0.282*** (0.053)
North America/Oceania	-2.848 (0.995)	0.883 (125.73)	0.541 (73.385)	1.398 (233.35)
MENA	0.108*** (0.031)	-0.114*** (0.028)	0.018 (0.018)	-0.012 (0.032)
Sub-Saharan Africa	0.091*** (0.029)	-0.005 (0.024)	-0.057*** (0.018)	-0.029 (0.029)
Latin America and the Caribbean	-0.034 (0.034)	0.153*** (0.026)	-0.062*** (0.022)	-0.124*** (0.034)
<b>Number of observations</b>		4 244		

Note: The dependent variable is the desired region of destination among individuals intending to migrate in the next 12 months.

\*  $p < 0.10$ , \*\*  $p < 0.05$ , \*\*\*  $p < 0.01$ .

Source: Gubert and Senne (2016).

### *Visits to the EU Immigration Portal show wide-ranging interest in the EU*

Evidence from traffic on the EU Immigration Portal – which attracted more than 50 000 unique visitors in 2015 to its site ([ec.europa.eu/immigration](http://ec.europa.eu/immigration)) – confirms that there is interest in migrating to the European Union from a wide variety of origin countries (Table 2.13). The website provides migration information on individual

EU Member States. The top ten countries from outside the European Union for visitors to the website in 2015 accounted for only 35% of all visits, and the leading country – the United States – supplied just 8.5%. There was also variation in the countries of origin of visitors interested in the three most popular countries – Germany, the United Kingdom and France. Language ties influenced the countries in which visitors were interested. Brazilian visitors focused on Portugal, for example. Those from the Russian Federation went mainly to the Czech Republic web page. Visitor patterns underline the multifaceted attraction of the EU for different countries of origin.

**Table 2.13. There is interest in migrating to Europe in many countries**

Visits to the EU Immigration Portal [ec.europa.eu/immigration](http://ec.europa.eu/immigration) (from outside the EU), 2015

Top ten countries from where the portal was visited	Share of total number of visits	Top three countries of interest
United States	8.5%	United Kingdom, Germany, France
Brazil	5.8%	Portugal, Sweden, Germany
India	5.3%	Germany, Poland, Belgium
Canada	2.5%	United Kingdom, France, Germany
Mexico	2.4%	United Kingdom, Ireland, Spain
Pakistan	2.3%	Ireland, Germany, Italy
Turkey	2.2%	United Kingdom, Germany, Netherlands
Ukraine	2.2%	Poland, Hungary, Germany
Russian Federation	2.1%	Germany, Czech Republic, Spain
Egypt	1.9%	Germany, United Kingdom, Sweden
All countries	100.0%	Germany, United Kingdom, France

*Note:* The analysis was restricted to the visits motivated by the search for information on migration for work, study or research.

*Source:* OECD analysis of reports on traffic to the EU Immigration Portal, January-September 2015.

This chapter has examined where the European Union stands in global migration flows and perceptions of entrepreneurs, residents and potential migrants. Individual EU Member States are positioned differently, with some well integrated into flows and comparable to non-EU OECD countries as attractive destination countries. Others lag behind, which accounts in part for the shortfall in appeal of the EU as a whole. The next chapter examines how and where EU-level action can bring added value to efforts to make the EU attractive and to ensure that it plays its full part in the international mobility of skills.

## Notes

1. Here and in the following analysis where the DIOC database is used, Korea is not included among OECD countries.
2. The total stock of migrants grew by 16.9 million (64.2%) in the EU15 alone, compared with 12.2 million (+29.7%) in non-European OECD countries. Intra-European mobility was especially significant from the countries which joined the EU during the 2000s.
3. More than half of the work permits issued in the EU in 2014 were valid for less than a year, and are not shown in the table. Poland alone issued 200 000 short-term permits, chiefly as part of its temporary work programme with Ukraine and other neighbouring countries.
4. Intra-OECD mobility is also important, but the EU attracts less than one-third of all labour migrants from Japan and the United States.
5. The exact text of the survey question is “Does your country attract talented people from abroad? [1 = not at all; 7 = attracts the best and brightest from around the world]”.
6. Among these, about two-fifths have taken concrete steps to do so, a number close to the actual global migration flows.
7. Non-OECD/EU destinations of interest are primarily Saudi Arabia, the United Arab Emirates, South Africa and Russia, as many aspirant migrants are from countries which have well developed, plausible and familiar labour migration channels to those countries.
8. This reflects the gender composition of potential migrants in the main African origin countries, as well as the way migration routes to these countries have operated in the past, involving dangerous irregular migration channels and informal work in construction and other manual jobs for the pioneers.

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## *Chapter 3*

### **Where does the European Union bring added value in labour migration?**

*This chapter looks at looks at practices and policy areas where the EU can bring added value to labour migration. The first section considers EU-level measures to make EU Member States more attractive to migrants, especially by improving and supporting labour migration channels. The chapter then goes on to consider EU-level action to improve mobility, particularly among long-term migrant residents. The question of the recognition of foreign qualifications is the subject of the following section. The chapter then goes on to consider EU-level action in matching the right candidates with the right jobs, focusing on the political aspects of labour market tests and their coverage. International co-operation comes next, a policy area where the EU can bring clear strong, added value. Finally, the chapter looks at how EU-level action can prevent competition between Member States for migrant workers from leading to a collapse in standards and how it can foster innovative practices, information sharing, the equal treatment of workers, and simpler administrative procedures.*

## What is added value in labour migration initiatives at the EU level?

The legislative mandate for EU action is subject to the principle of subsidiarity – measures should be taken at the EU level when they can achieve more in *scale* and *scope* than at the national level. Indeed, the European Union should not legislate when an issue can be more effectively dealt with at the national or sub-national level. It should do so only when EU-level action can add value by meeting objectives that Member States are unable to achieve satisfactorily.

For measures where “bigger is better” and economies of scale can be made, there is a case for EU-level intervention. It is likely to be more effective than action by individual Member States. When the scope of measures is wide, it needs to be shown that measures are best taken at the EU level.

However, there remain some areas pertaining to labour migration which are not subject to decisions at the EU level. They include the regulation of professions, setting volumes of admission for third-country national labour migrants from outside the European Union, and determining the criteria for naturalisation, all of which are in national purviews. Even if a case could be made for the added value that EU co-operation would bring to those policy areas, the Union cannot intervene directly under the existing legal bases.

## Attractiveness to migrants

Making the European Union attractive to migrants entails increasing the pool of candidates, which, in turn, requires enticing them to make the effort to meet migration selection criteria and come to the EU, be it through a job or another migration pathway such as studies, training or an exchange programme.

### *Added value in scope*

Chapter 2, which examined the distribution of migrants and their migration intentions, found that what makes different EU Member State profiles attractive to different kinds of migrants varies widely. There are some factors – such as geographical proximity, historical and colonial ties, and shared languages – which exert a strong influence on past and present migration intentions. They are largely fixed, however, and cannot be affected by policy changes. Many other attractiveness factors, though, depend on policy settings and supporting infrastructure.

The foremost such factor is the very existence of labour migration channels. As the right to set volumes of admission rests with the individual Member States, the European Union does not have the means to definitively “open” any single Member State to labour migration. Similarly, the issuance of permits rests with national authorities, and the EU can issue no labour migration permits that would be valid in all Member States. The European Union can add value in three main domains:

- the *structuring* of existing channels
- the *creation* of additional channels and
- the *support* for the functioning of the channels.

All three domains are related, as effective support (raising awareness, broadening pools of candidates, improving the sharing of information) requires convergence between the channels (transparency and similarity of criteria and standards for procedures and practices).

There are existing provisions for economic migration in all EU Member States, but not all have developed identical channels or policies to cater to all categories of labour migrants. Efforts so far first focused on the convergence of standards and processes in existing channels in order to make them functional and then to ensure that channels are in place to cover the main categories of labour migrants. In that sense, the Union’s task is to build gateways for migration, although the final decision as to how widely the gate opens lies with the Member States.

### ***Added value in terms of scale***

Scale is another way in which EU-level action can add value. Most of the comparative data on attractiveness considered in Chapter 2 were based on indicators for individual Member States rather than for the European Union as a whole. The question is whether the Union as an entity could be a destination which is more attractive than the sum of its parts.

Employment opportunities are a key factor in appeal. The EU labour market as a whole is more attractive than any single national labour market. Evidence suggests that a larger labour market is more attractive than a smaller one (Manning and Petrongolo, 2011), as it offers more opportunities, better matches with qualifications, and the prospect of earning higher wages. Economies of scale or positive spill-overs

(e.g. word of mouth) can help job seekers to find employment sooner. Furthermore, certain jobs might be so rare and specialised that they can only be found in large markets, where qualified workers must seek them out (Helsley and Strange, 1990).

Analysis of labour migration in individual countries has also shown that local or regional labour markets within countries – even those which are attractive and have a surplus of eligible candidates – struggle to compete for labour migrants with more populous destinations in the same country. Similarly, some Member States may profit more from belonging to the EU labour market than other Member States. Evidence from other OECD countries bears this up, including findings in Norway and New Zealand (OECD, 2014ab) and Canada and Australia (OECD, forthcoming). The effect of being part of a larger labour market is to increase overall interest, although such interest is not necessarily equally distributed. Exploiting the scale of the EU in an added-value approach thus needs to avoid the pitfall of redirecting migrants from smaller local labour markets to larger ones.

A larger labour market allows workers affected by adverse employment shocks in one part of the market to find work in another part – as was seen during the European employment crisis, when the mobility of EU workers increased and absorbed as much as one-quarter of the asymmetric labour market shock within a year (Jauer et al., 2014). The current legislative framework for labour migration in the European Union binds new labour migrants to the Member State where they are employed, at least in the initial phase, and does not allow them to move freely in order to take up employment in other EU destinations without repeating the admission procedure. The added value for underserved destinations of increasing the pool of candidates also lies in harnessing the attractiveness of larger Member States to enhance less prominent destinations' ability to compete for those skills.

The larger EU-wide labour market may be more attractive, but its attractiveness is bound up with the effectiveness of mobility provisions. Without prospects of mobility for third-country nationals, the greater attractiveness – and the enhanced ability to respond to shocks – cannot be brought to fruition.

## **Increasing mobility**

The free movement of workers is an underlying and longstanding principle of European integration. Indeed, freedom of movement is one

of the fundamental rights of European citizens. It does not extend to third-country nationals (unless they enjoy a derived right as a family member of a mobile EU national), however, and their ability to change countries to take up work is subject to the restrictions imposed in individual Member States.

The Commission has set itself the goal of aligning the rights of resident third-country nationals (TCNs) as closely as possible with those of EU nationals. Beyond the principle of equal treatment, there are good grounds for bringing TCNs specific mobility rights into line with those of EU nationals. First, Member States' labour markets are interconnected through the single market. Changes in national and regional labour markets have ripple effects, although national labour markets within the European Union are less closely connected than regions within individual countries or similarly large OECD labour markets – job-seeking mobility in the EU, for example, has historically been lower than in the United States (Baddeley et al., 2000). Labour mobility has increased in recent years, driven by enlargement (over 50% of mobile workers are from post-2004 Member States) and by the economic crisis, which widened gaps in employment levels between Southern European countries and other parts of the Union. Nonetheless, mobility remains far below levels in the United States – annual cross-border mobility in the European Union was 0.2% of the EU population in 2013, compared with 2.3% for interstate mobility in the United States.

The lower mobility of EU workers compared with their peers in the United States – and within EU Member States – are related to well-known factors: language differences, relocation costs, the recognition of qualifications, a patchwork of regulated professions, complex transfer of social rights. Policy to improve mobility and the work towards a single labour market is addressing those factors. The barriers relevant for EU citizens, however, do not necessarily apply equally to third-country nationals. There is evidence that workers who have migrated once are more likely to do so again, and that they are more willing to move in response to labour market opportunities than the native-born (Poeschel, 2016). Indeed, third-country nationals in the EU are open to migration for a number of reasons:

- They are more likely to be unemployed and seeking employment, so job opportunities in another country might appear more attractive.

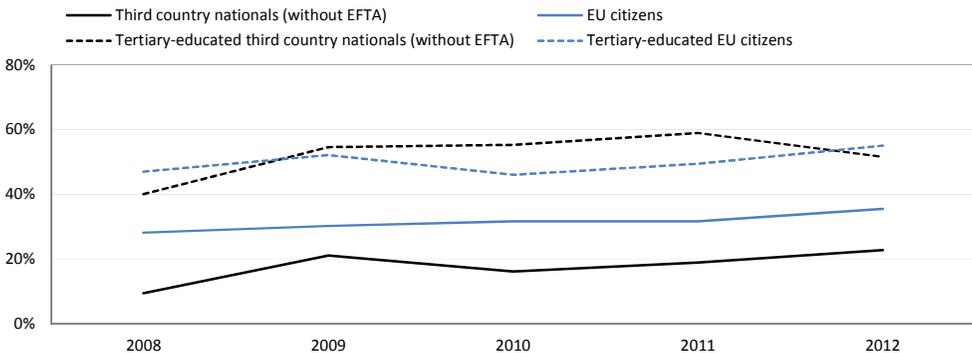
- They are younger – their average age is 33, compared with 41 among EU nationals.
- When they arrive as adults, they do not generally have qualifications obtained in the country of residence, which would tie them to that country.

On the other hand, however, they are slightly more likely to be married and much more likely to have children living with them – 40% live with their children compared to 31% among EU nationals. Both characteristics are barriers to mobility.

Poeschel (2016) uses the EU Labour Force Survey to compare the mobility of TCNs to the relatively limited baseline mobility of EU nationals (Figure 3.1). While the method underestimates mobility in all categories, TCNs are about half as likely to be mobile within the EU as EU nationals. Highly educated individuals are more likely to be mobile than other migrants – a pattern also found in EU national populations, where the tertiary-educated are generally more mobile than the workforce at large.

**Figure 3.1. While EU nationals are twice as likely to be mobile as third-country nationals, the highly educated in both groups have similar mobility rates**

Share of third-country nationals and EU citizens observed to be mobile between EU Member States, percentage, 2008-12



*Note:* Mobility that involves Finland, Ireland, Malta and the Netherlands is only partially observed. Several EU Member States do not apply the legal migration *acquis* and the mobility provisions therein.

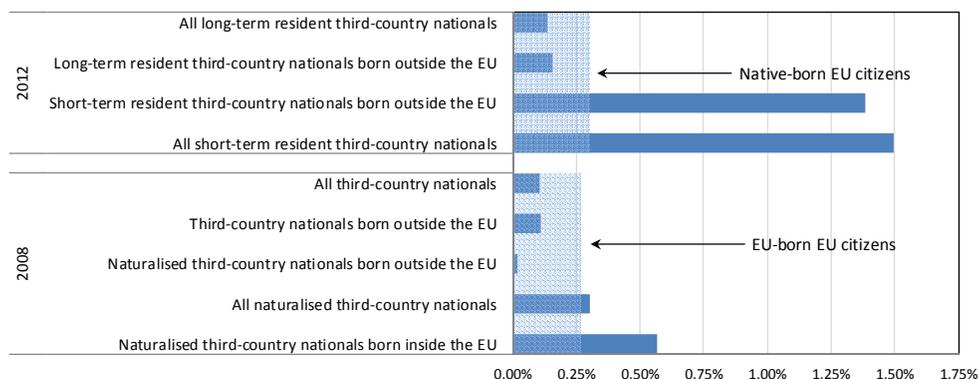
*Source:* OECD Secretariat calculations based on the EU Labour Force Survey (Eurostat) in Poeschel (2016).

The greater mobility of educated third-country nationals is in line with the fact that the highly educated seek jobs in larger labour markets and that labour migration schemes across EU Member States are much more open to educated migrants with job offers that match their qualifications.

However, it generally appears that the longer third-country nationals stay in the EU, the less mobile they become (Figure 3.2). Poeschel (2016) finds that migrants who meet the criteria for EU long-term residence are less mobile than recent arrivals. Long-term migrants' annual mobility rates in 2012 were less than half the average EU national rate and much higher among short-term migrants (those with less than five years residence). Poeschel uses a separate source to examine the effect of naturalisation on mobility, and finds that naturalised foreigners born outside the EU had mobility rates far below those of EU nationals.

**Figure 3.2. Naturalisation and long-term residence are associated with lower mobility among residents born outside the European Union**

Rates of mobility in 2008 and 2012, percentage, by nationality, duration of stay, place of birth



Note: EU-born EU citizens (2008) include those who have naturalised.

Source: OECD Secretariat calculations based on the EU 2008 Labour Force Survey (Eurostat) and its Ad Hoc Module in Poeschel (2016).

As naturalisation grants full mobility, it appears surprising that foreign-born naturalised citizens should be so much less mobile. The conditions for naturalisation in most EU Member States do, however, stipulate a degree of settlement and rootedness (e.g. command of the national language, civic knowledge, income requirements, and family

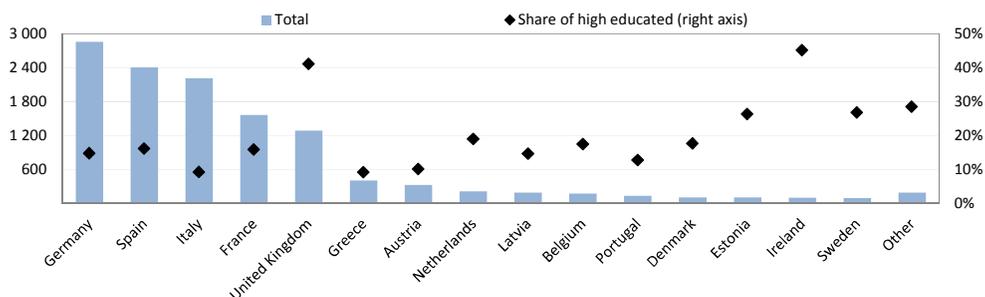
ties). Indeed, migrants who apply and meet requirements to naturalise are by selection among the most rooted of all migrants, either over time or through country-specific ties.

Granting full, unconditional mobility without requiring that migrants meet national criteria for integration is likely to boost mobility much more. Using the accession of countries to the EU as an example of the effect of granting mobility without imposing conditions, Poeschel (2016) looks at nationals of new EU Member States already living outside their country of nationality prior to 2012, and their mobility towards EU Member States which dropped transitional restrictions on labour market access in 2011 (Austria, Belgium, Denmark and Germany). It is no surprise that the lower-income accession countries would have higher mobility rates, but what this finding shows is that the new EU citizens who had already moved to another EU Member State became much more mobile when remaining restrictions on their mobility were dropped. He finds that their mobility rate doubled. Indeed, they were more likely (by between 0.3% and 0.6% more likely) to be mobile as labour markets opened up than suggested by previous comparisons with third-country nationals. Granting full labour market access thus has a significant effect on mobility, even if the final mobility rate is still low in absolute terms (under 0.7% annually in 2012). There are thus gains to be made in mobility by expanding rights.

Migrants with high levels of educational attainment appear more mobile than other third-country nationals. The distribution of highly educated migrants among long-term residents is not uniform across EU Member States (Figure 3.3). The highest shares are to be found in the United Kingdom and Ireland, countries which are not bound by EU legal migration policy. They host 27% of all highly educated, long-term resident TCNs in the European Union, but only 8% of the medium- and low-educated. Germany, France and Spain are homes to half of all highly educated long-term residents in the European Union.

**Figure 3.3. Countries with more long-term residents often have a lower share of the highly educated among them**

Eligible long-term resident third-country nationals, 2012 (in thousands) and shares of the highly educated



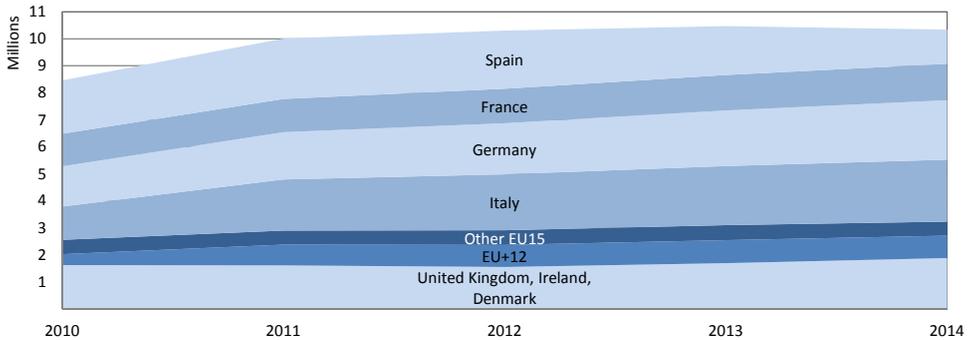
Source: OECD Secretariat calculations based on the EU Labour Force Survey (Eurostat) in Poeschel (2016).

Permit data point to permanent third-country-national residents in the European Union numbering over 10 million (Figure 3.4). At least 70% of them hold national permanent residence permits. The number of EU Long-Term Resident (EU LTR) permits rose from 1.2 million in 2008 to 2.9 million in 2014. However, almost all of the increase was driven by just one country, Italy, where the number doubled. In other EU Member States, the increase was just 28% over the same period. The increase in the uptake of EU LTR permits in Italy stemmed both from a policy decision to use the EU LTR as the default permanent residence permit and the fact that a large cohort of foreigners arrived in the early to mid-2000s and acquired the requisite five-year stay in the late 2000s and early 2010s.

The figure of 10 million is based on submissions to Eurostat as well as a number of national permanent residence categories in France, Germany and Austria not covered by Eurostat. It is still a lower-bound estimate of the number of permanent residence permit holders in the European Union, since a number of Member States, including Portugal, Finland and Sweden, do not publish figures on their stock of permanent residents. The numbers are significant, though, as Sweden issued more than 50 000 national long-term residence permits in 2014 and Portugal has averaged an issuance of about 30 000 in recent years. Finland currently (in 2016) has 48 300 active permanent residence permits in its register, compared with fewer than 300 EU LTR Permits.

**Figure 3.4. Permanent residents in the European Union, by country of residence, 2010-14**

Permanently resident third-country nationals in the EU, by country of residence



Source: Eurostat, with corrections by the statistics offices of France, the United Kingdom, Germany and Austria.

The estimate of 10 million is slightly lower than the EU Labour Force Survey's estimate of 12.3 million third-country nationals with more than five years of residence (Poeschel, 2016). Taken together, the two separate estimates indicate that there is a large number of long-term resident third-country nationals, much more than the 2.8 million who hold EU LTR Permits.

One obstacle to mobility is the transitional nature of most permits, which form a pathway from temporary to permanent residence and naturalisation. Indeed, the residence requirements for permanent residence are, in many Member States, very similar to those of naturalisation, as are language requirements. There is incentive for foreigners to accrue enough time to qualify first for long-term residence, then naturalisation, and to invest in the country-specific human capital necessary to ensure the conditions for each step are met.

Naturalisation is the last step in the traditional migration pathway, and one which definitively closes the gap between the rights of EU nationals and third-country nationals. If permanent residence is a brief stop on the path to naturalisation, it may be more worthwhile to encourage and support naturalisation rather than emphasise mobility for long-term permanent residents. One indicator of how fast foreigners transition to naturalisation is the naturalisation rate. It is usually calculated relative to the foreign population, in the manner of the integration indicators produced by Eurostat (2011) and the OECD

(2012), which show wide ranges in rates of naturalisation in the European Union.

Comparing naturalisation with the stock of permanent residents yields another indicator (Table 3.1). Comparison is particularly relevant where permanent residence is the usual precursor to naturalisation, or an explicit requirement. In most Member States, the rate is below 10%, with some exceptions,<sup>1</sup> suggesting that the permanent resident stock in most Member States shown in Table 3.1 will not diminish quickly through naturalisation and that, in some instances, permanent residence competes with naturalisation as the “final” status achieved by third-country nationals after many years of residence.

**Table 3.1. Naturalisation rates relative to permanent resident stocks are variable**

Ratio of naturalisation relative to the stock of permanent residents, 2010-14

	2010	2011	2012	2013	2014
Austria	2.0%	2.1%	2.2%	2.6%	2.9%
Belgium	27.5%	26.2%	37.8%	36.3%	19.0%
Czech Republic	2.9%	3.5%	1.4%	1.5%	2.9%
Denmark	129.0%	448.5%	121.6%	33.0%	96.1%
France	11.9%	9.3%	7.6%	7.4%	7.8%
Germany	6.8%	6.1%	5.9%	5.5%	4.9%
Hungary	14.6%	50.0%	64.8%	40.4%	85.4%
Ireland	76.3%	139.2%	433.9%	0.0%	913.4%
Italy	5.4%	3.0%	3.2%	4.6%	5.7%
Lithuania	0.8%	1.6%	1.0%	0.0%	0.0%
Luxembourg	233.0%	81.3%	72.0%	49.5%	127.3%
Netherlands	27.9%	34.8%	31.6%	37.4%	-
Poland	6.0%	5.1%	7.8%	6.0%	7.0%
Romania	0.0%	0.0%	0.0%	25.4%	0.0%
Slovak Republic	5.4%	2.4%	2.5%	2.6%	2.0%
Slovenia	4.8%	4.3%	1.9%	2.7%	2.4%
Spain	6.2%	5.1%	5.4%	14.5%	7.4%
United Kingdom	12.2%	11.2%	12.7%	12.4%	6.8%
Total of above countries	9.6%	8.1%	8.5%	10.0%	7.6%

*Source:* OECD International Migration Database for naturalisation, excluding the naturalisation of EU nationals. Eurostat for permanent residence, with corrections using national permit data for France, the United Kingdom, Germany and Austria.

Naturalisation is not an area where the European Union can intervene directly, as it is within the national competence of Member States. The added value of EU action lies in facilitating the mobility of third-country nationals who are long-term residents and may not wish to, or be able to, naturalise.

## Increasing retention

Migrants appears to be more mobile early in their stays than later on, when they become long-term residents. A high share of migrants do not remain in the country of initial destination. Across OECD countries, an estimated 20%-50% of migrants leave the country to which they migrated within the first five years. European countries have been less successful at retaining migrants than the United States, Canada and New Zealand (OECD, 2008b). The EU-level added value in this area is to retain talents for the EU as a whole, ensuring that newly acquired skills don't subsequently drain out of Europe.

Retention has become a particularly important issue, as two-step migration becomes the main approach of labour migration. The transition from an initially temporary stay to permanent residence, which once represented the difference between the European model and that of non-European OECD countries, has become the main form of labour migration across the OECD. Most of today's economic migrants in the United States, Canada and Australia have prior experience as workers and students, and no longer arrive directly from abroad into permanent residence status. It has been shown that, individually, EU Member States are at a disadvantage in retaining skilled migrants, as non-European destinations exert a strong pull, even on secondary migration. Bringing the European Union as a whole into the two-step model would be a clear added value achievable only by EU-level measure. There several ways to achieve that goal.

One of the key means of improving retention is by opening up mobility pathways and allowing the experience and qualifications earned in one EU Member State to more easily transfer to another Member State through mobility than to a third country. The simplest means to make staying easier is to allow applicants to file for permits from within another EU Member State rather than having to return to their country of origin.<sup>2</sup> Improving intra-EU recognition of third-country nationals' is also supports mobility (see below).

The second way to retain migrants more effectively is to increase entitlements accruing from presence in one Member State. The two-step model prevails at the national level in EU Member States, with migrant workers required to keep their jobs during the temporary phase of their stay. Years spent in study count (albeit often partially) towards permanent residence and naturalisation, but are not transferable to a second Member State. EU-level measures can require Member States to

factor periods of temporary residence into the total number of years accrued by a migrant seeking an EU LTR permit.

Additional EU-level added value is support for TCNs who apply for residence in a second Member State because their entitlement to residence in their first host Member State is expiring. It could entail both the entitlement to reside in other Member States to seek employment and the possibility to apply for a residence permit in the territory of that Member State in case employment is offered. Such EU-level added value is particularly relevant to international students (who may struggle to find a suitable job in the country of graduation) and to labour migrants who may have lost their jobs due to changing economic circumstances in the country of employment. For these migrant categories, only EU-level action can create an EU-wide job-search provision.

### **Improving matching systems**

The high employer demand for skills in the EU and the enormous interest in migration from potential migrants in countries of origin suggest that there is scope for an improved mechanism for matching skills with demand. There is an economy of scale to be gained from creating a larger potential migration pool, especially when specialised skills or competences are sought.

The EU already provides support in matching job seekers with vacancies under its explicit mandate to improving the functioning of the EU labour market and foster mobility. However, it has no special remit for targeting non-resident TCNs, although some existing measures, such as the job mobility platform (EURES), allow passive participation from outside the EU.

Where migrant candidates are vetted and selected in their countries of origin, there is clear added value in having pre-selected candidates grouped in a pool which would be accessible to employers and other gatekeepers in multiple Member States. Such a measure could be developed at the EU level. The same approach could be extended to initiatives such as job fairs (Ramasamy Kone, 2016). More active recruitment channels also allow for application of codes of conduct on ethical recruitment to be applied at the EU level.

## Avoiding duplication in the recognition of foreign qualifications

Labour migration often implies complex administrative procedures. At the very least, it involves verifying migrants' identity documents and validating employment offers. Moreover, depending on the criteria required by the migration channel used, migrants may be required to prove their qualifications, professional experience and skills. Most EU Member States require legally approved proof of qualifications and, if translation is demanded, that it too should be legally endorsed. Complying with all these procedures requires time and money. Efforts to improve the portability of acquired recognition can be done at the EU level and would represent added value.

The recognition of qualifications is a widely acknowledged barrier to the achievement of a single market and there have long been legislative attempts at developing a mutual recognition framework. As early as 1957, the Treaty of Rome set forth a mandate to “issue Directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.” It was originally intended to facilitate the mobility of EU workers, where it was considered an individual's right, connected to the person requesting the recognition rather than the qualification itself.

At present, there is no automatic recognition of academic or professional qualifications, even within the EU, and each Member State applies its own rules. There is a framework that guarantees the right to request recognition as well as the conditions for this process. For regulated professions, too, Member States draw up their own rules. The current legislative framework extends equal treatment in recognition procedures to third-country nationals in their Member State of residence.<sup>3</sup>

Some measures have been taken to facilitate the recognition of degrees in Europe. One example is the European Diploma Supplement, a format designed to make EU degrees more easily readable and comparable in other countries. Another example is the European Professional Card, an information-sharing instrument that supports recognition in a number of regulated professions.

Qualifications obtained abroad are individually recognised by each Member State. The 2005 Recognition Directive (2005/36/EC), contained an equivalency provision to make qualifications transferable after three years of post-recognition professional experience.<sup>4</sup> This provision is also extended to third-country national workers through equal treatment

provisions in legal migration Directives, although it is a potential brake on mobility as it requires three years of work in the Member State that first recognises the credentials of the worker, who still has to go through national recognition procedures in the second Member State. Such recognition provisions do not extend to non-regulated professions and academic qualifications, which are evaluated by national recognition bodies – European Network of Information Centres in the European Region (ENICs) and National Academic Recognition Information Centres in the European Union (NARICs) – which have the final say. Just as one Member State may not automatically recognise a degree from another EU Member State, so the recognition of a third-country degree in one EU Member State cannot be transferred to another (although the three-year professional experience clause does facilitate this). There is clear scope for the added value of EU-level measures in improving recognition practices through standardised forms, information exchange and support for ENICs and NARICs.

Recognition of qualifications is not just about facilitating mobility and the single market. For third-country nationals, the convergence of recognition procedures would be the added value, as it accelerates the recognition process. For national governments, the added value would be better information sharing on foreign degrees, as the exchange of information between ENICs/NARICs helps broaden the database, improve compliance and risk management, and saves processing time. For potential employers, transparent qualifications and more information about candidates would be boons.

### **Attractiveness for employers**

Employers are the labour migration gatekeepers in EU Member States, without whom most of today's work permits would never be issued. It is they who have jobs to offer to freshly graduated international students and to candidates outside the EU. It is also they who are the primary in-country beneficiaries of greater access to skills. The previous chapter shows how employers have not been in the forefront of the push for regulation in EU policy-making in this area, especially as their prime concern has been to protect hard-won national schemes. Such an attitude also reflects a widespread approach to EU regulations, where business representatives seek to keep them to a minimum. However, when they see an opportunity to open up national policy, they offer greater support. In Germany, for example, the business community saw the EU Blue Card as a way of facilitating recruitment from abroad. Business interest

in the Intra-Corporate Transferee (ICT) Directive was high, too, as it addressed mobility and standardisation (issues of importance to multinational enterprises) and held the promise of simpler regulations and staff mobility.

The added value of Union-level intervention for employers is not merely in using EU legislation to overrule national restrictions or reduce regulations. It also extends to other areas.

- The number of candidates, and the likelihood they opt for Europe, can be increased. When employers offer a better package of permit conditions and associated rights, candidates are more likely to apply for and accept job offers. In addition, a pre-selected pool of candidates would bring economies of scale to job search. To increase the size of the pool, the EU should bring into play factors that enhance the attractiveness of the European Union. The EU has a greater international footprint and higher visibility than many individual countries, and boasts the capacity for outreach on a greater scale through its information provision capacity.
- The EU can contribute to service standards such as statutory ceilings on processing times and the standardisation of procedures, forms, and information sharing. Faster procedures are more likely to be used by employers. General measures to improve mobility – e.g. the EU format for CVs, “Europass” – increase the legibility of candidates’ foreign qualifications. The EU’s efforts to improve systems for recognising qualifications and processing documents from countries of origin also bring benefits of scale and scope. Legal provisions allowing, facilitating and accelerating recruitment of third-country nationals residing in other EU Member States are also important for employers.
- Faster, simpler procedures are particularly important for small and medium-sized enterprises (SMEs) (Ramasamy Kone, 2016), as they may be unfamiliar with the procedures of international recruitment and do not benefit from economies of scale. SMEs are also more likely to report that they struggle to find workers abroad and would be more likely to benefit from improved systems for matching qualifications with jobs.
- EU-level measures can help open new channels of access not previously contemplated, so allowing recruitment where it was

not possible before. Even if the final decision on admission rests with national governments, it is still possible to create channels for recruitment. In some countries, Directives have given rise to previously undefined permit categories which were not previously defined, and even to a positive right to a permit for applicants who meet criteria (Chaloff, 2016).<sup>5</sup>

### **A single labour market test for a single labour market**

At present, the EU does not require labour market tests (LMTs) for third-country nationals residing abroad. There is, however, scope for clarifying the nature of labour market tests and ensuring equal treatment.

The labour market test is a component of all EU Member States' migration management systems, although each one designs its own LMT in a different way. The public employment services are almost always consulted or involved in the process although their roles are different from one country to another. The stringency of labour market tests lies in a number of parameters:

- the length of any mandatory advertising period;
- the burden of interviewing candidates and giving reasons for rejecting the unsuccessful ones;
- the level of detail required in the job description; and
- the test's catchment area (how far employers are required to look, or the geographic extent of the labour market taken into consideration when determining availability of labour).

The added value of harmonising the different facets of LMTs (e.g. where jobs are advertised, for how long, and with what degree of active involvement and review) would lie in setting basic standards so that the test is not too arduous. However, there are several arguments against harmonisation.

- Exemptions from the labour market test are myriad and would still be possible.
- Labour market tests entail a degree of discretion which defies harmonisation. Much lies in the detail of the job description itself, in how specialised the occupation is, and in assessment of the employer's good faith.

- How a labour market test is applied, how long it lasts and how thorough it is should by design vary according to economic conditions.

Labour market tests often have a very low refusal rate (OECD, 2013). That should not, in itself, be taken as evidence of the superfluous nature of tests, as LMTs also serve the purposes of requiring vacancies to be made explicit, filtering out marginal and fraudulent requests, and extending processing times. Longer processing time (and related increased costs) may actually be the intent of the LMT, since it is a means favouring the recruitment of local workers. A more stringent LMT also amplifies the effect of exemptions, such as those provided through occupational shortage lists.

Assigning a role to the public employment services (PES) does not produce the same results from one country to another because PESs function in different ways and have different shares of the market when it comes to matching workers with vacancies. EU-wide, the average PES market share was under 10% in 2012, ranging from under 3% in Italy and Spain to over 15% in Finland and Hungary (European Commission, 2015). Younger and older workers, not prime working-age workers, make the most use of the PES to find employment.

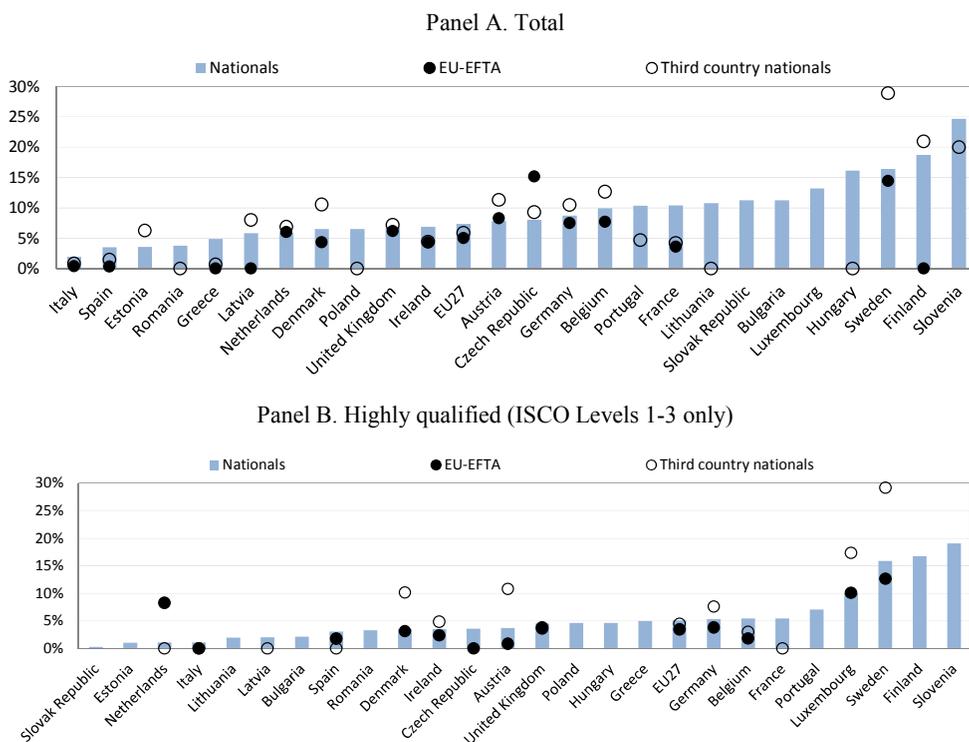
Overall, PES are little used to find work. Of the prime-age workers who found a job in 2012-13, it was through the PES in only 7.4% of cases (Figure 3.5, Panel A). The share was even lower among the highly qualified workers who found jobs – just 3.4% (Figure 3.5, Panel B). Third-country nationals were generally less likely to have found work through the PES – only 5.9% did so. TCNs who found highly qualified jobs were more likely to have used the PES than other groups, but they accounted for only 4.5% of the total.

Although the public employment services are little used to find work, that does not in itself disqualify them from conducting labour market tests, as most LMTs target individuals who are unemployed and may already be registered as job seekers. Indeed, the purpose of the LMT in most countries is not generally to help employers find the best candidate, but to ensure that local workers who are available learn of the vacancy. Equally important is that tests should enable PESs to place more workers by requiring employers to submit vacancies. The political function of the LMT – communicating to the public that adequate safeguards are in place against potentially negative labour market impacts of third-country migration – indicates that there is a role for the PES. Nonetheless, their

small market shares would suggest that they should not be relied upon exclusively to reach out to the unemployed, especially those who are not enrolled as job seekers at their local PES office.

**Figure 3.5. Few people find jobs through the public employment services, especially skilled workers, 2013**

Percentage of workers aged 25-49 who found work through the public employment services in EU Member States, by nationality



Source: Eurostat, Labour Force Survey (2013).

The above considerations on LMTs single out two parameters where EU intervention could add value: the nationalities of workers who may be considered as potential job candidates, and the geographical coverage of the search for candidates. In practice, variations in LMTs are most apparent when it comes to the second parameter – how widely employers must cast their net in Europe before they may seek and hire candidates from third countries (Table 3.2). There are also substantial differences in national regulations as which groups of candidates may be targeted to fill vacancies.

**Table 3.2. Few Member States impose an EU-wide labour market test, and some exclude third-country nationals**

Features of labour market tests in EU Member States

	What target group must be tested for availability?	What basin of reference is used?	Is EURES required?	Does the regulation explicitly specify that non-Nationals must be considered?
Austria	Registered unemployed	National	No	"Eligible non-Austrian worker"
Belgium	Registered unemployed	Regional	No	No
Czech Republic	Job-seekers	National	No	Can be filled by "EU national"
Estonia	Not specified, but agency registers unemployed	Not specified	No	No
Finland	Not specified	Not specified	No	No
France	Not specified	Not specified	No	No
Germany	Job-seekers	National	No	No
Greece	Unemployed	Regional	No	All "legal residing in Greece"
Hungary	Job-seekers	National	No	EEA nationals
Ireland	Job-seekers	National + EURES	Yes	No
Italy	Job-seekers	National	No	No
Latvia	Job-seekers	Local	No	No
Lithuania	Job-seekers	Local	No	No
Luxembourg	Job-seekers	Local	No	No
Netherlands	Job-seekers	Within EEA	No	Must advertise for available EEA workers
Poland	Job-seekers, registered unemployed	Local	No	No, only reference to Polish nationals
Portugal	Job-seekers	Local	No	No
Romania	Registered unemployed	Local	No	"EU, EEA, Swiss, or long-term resident Third Country National"
Slovak Republic	Job-seekers	National + EURES	Yes	No
Slovenia	Job-seekers	National	No	No
Spain	Job-seekers, registered unemployed	National	No	No
Sweden	Job-seekers	National + EURES	Yes	No
United Kingdom	Job-seekers	National	No	Advertising requirement for "EEA workers"

*Note:* Job-seekers may be employed.

*Source:* OECD survey of legislation and government officials, 2014-2015 in Chaloff (2016).

The argument for an EU-wide labour market test falls into two non-exclusive domains:

- who should be included when examining “available labour” in labour market tests,
- the geographical coverage of the labour market test.

Who should be included in the labour market test takes into account the equal labour market rights of nationals, EU nationals (including EEA and Swiss nationals), and third-country nationals with legal and unrestricted access to the labour market in accordance with EU instruments. In the European Union, EU nationals enjoy an unambiguous right to equal treatment when being considered for a job. The equal treatment of third-country nationals with certain statuses has been affirmed but not explicitly incorporated into the labour market tests of a number of countries.

The political and communication-related function of the LMTs should also be considered. Labour migration is predicated on the assumption that skills cannot be found efficiently and effectively within the labour market of reference. Equal treatment under the labour market test is a clear obligation, but EU measures can bring added value by clarifying how to apply equal treatment.

Equal treatment goes beyond the principle of “Community Preference”, now “Union Preference” (see Chapter 1 and Robin-Olivier, 2016). While Union Preference is satisfied when third-country nationals do not receive preferential treatment over EU nationals of countries subject to transitional period, it has been interpreted as requiring vacancies to be offered first to EU nationals before being opened to third-country nationals abroad. In legal terms, the Union Preference principle requires neither a labour market nor that EU nationals should be given priority over third-country nationals. It is only in cases where priority is given to EU nationals that all EU nationals must be treated equally and therefore nationals of EU accession countries should not be given a less favourable treatment than third-country nationals in terms of access to the labour market.

The EU could bring clear added value if it could ensure that labour market tests gave equal consideration to all EU/EEA nationals and to third-country nationals with full access to the labour market. Further, the principle of prioritising recruitment in the EU over recruitment from third countries could add value to EU regulation in labour migration. Granting such priority would provide clearer guidance as to who is considered “available labour” in labour market tests and bolster the significance of exemptions. It would also support the political function of the LMT by emphasising the inclusion of third-country nationals under equal treatment while giving priority to all resident available labour.

### ***Geographical coverage of the labour market test***

Although a labour market test could cover the entire EU labour market or only a fraction of it, a review of existing LMTs shows that most have no more than local or national scope. Where a labour market test does go beyond national boundaries, it is generally because it is compelled to do so by a mandatory listing on the EURES platform. Just as there is no requirement for vacancies to be advertised throughout the EU, there is no general requirement for EU Member States to apply labour market tests across the European Union.

The case for expanding the geographical scope of the labour market test to the entire EU is not self-evident. Indeed, evidence on the mobility of job seekers argues against a uniform LMT requiring employers to actively seek candidates far from their local labour market. Less skilled workers, in particular, appear not to be highly mobile.<sup>6</sup>

That being said, the functioning of the single labour market is based on integrated local labour markets and well developed mobility pathways, and differences in wages are much greater between EU Member States than they are between regions within them. Even where local workers may be unwilling to travel long distances within their own country to apply for vacancies, workers who live far away may be tempted by wage differences and factors related to working and living conditions and opportunities in each Member State. Intra-EU mobility patterns that have emerged in recent years have been driven by such wedges. There is a relationship between internal migration, mobility and migration from third countries. For example, Mocetti and Porello (2010) find that highly-educated natives flow into areas with international migration, but that the internal mobility of low-educated natives is reduced. Farchy (2016) looks at mobility and international migration and finds that a 10% increase in the population share of nationals in new EU Member States is associated with a 1.6% increase in the population share of third-country migrants and an increase of 1.7% in the population share of migrants from EU15 and EFTA countries. Farchy's finding suggests that mobile individuals – from both within the EU and outside the EU – respond to strong labour demand.<sup>7</sup>

Ensuring that the coverage of vacancy requirements is EU-wide may contribute to the mobility of EU nationals within the single market and would be coherent with the principle of the single labour market. Mobility is associated with lower levels of third-country labour migration. Indeed, while Farchy finds that migrants tend to move toward the same areas as mobile EU nationals, there are nevertheless some displacement effects. Furthermore, when third country *labour* migrants alone are considered, the displacement effects identified are greater, independent of education level.<sup>8</sup> A 10% increase in the population share of new Member State migrants is associated with an almost equivalent fall in the population share of third-country labour migrants.<sup>9</sup> Mobility is thus associated with lower migration of TCNs.

It is difficult to extrapolate from findings on mobility and migration to assume that an EU-wide labour market test would drive mobility. In all likelihood, the effect of an EU-wide publication of vacancies on the

mobility of third-country nationals would be limited. Even those with long-term residence permits, or other permits that grant unrestricted labour market access, do not enjoy the same labour market access outside their national labour market. Equal treatment at present extends only to those third-country nationals legally resident within the country. Highly educated third-country nationals are already more mobile within Europe – partly because they face fewer barriers and partly because they are more likely to move to take up skilled employment opportunities. Yet the highly educated are less likely to be registered as unemployed with the public employment services to use them to find work. An EU-wide PES publication requirement may not bring added value to the mobility of third-country nationals.

More broadly, then, the added value of an EU-wide labour market test lies in reinforcing the single market through measures directly related not to labour migration but to mobility. Foremost among such measures is the reinforcement of the capacity to match job seekers with vacancies at the EU level, whether through existing platforms (such as the EURES network and job mobility portal) or through new ones. Such measures would allow an EU-wide labour market test to draw in available workers more effectively. Until such conditions are met, however, the return on imposing an EU labour market test may not be worth the effort.

### **Co-operation with third countries**

The development of an EU external relations policy is a result of the recognition that the EU has a “place at the table” (Juppé, 2011) only as a whole single entity, drawing on a widening battery of instruments. The creation of an EU external relations competence lies in the efficiencies of scale and scope it offers and the acknowledged value added it brings to relations with third countries. It is able, on the one hand, to use greater leverage in bargaining and, on the other, to work according to shared principles. The European Union has been delegated to negotiate readmission agreements with a number of third countries, for example, on the grounds that its diplomatic leverage is more likely to secure a framework agreement and that a single agreement will allow resources to be better shared and used for return. The EU has a diplomatic presence in more than 140 countries, more than many of its smaller Member States. And even where Member States have a diplomatic presence, the EU delegation can amplify its effect (Bátora, 2015). Nonetheless, the

European External Action Service is a recent creation and still developing.

As for labour migration, the European Union brings added value by multiplying the leverage of individual Member States in negotiating framework agreements. The EU is a major provider of aid to developing countries that includes programmes specifically oriented towards reinforcing capacity to manage legal labour migration.

In negotiations on labour migration, third countries are interested primarily in the EU opening channels of migration in exchange for development co-operation in areas like training, selection and compliance (OECD, 2008a). As the European Union does not have its own labour migration permit quota, it does not have the ability to hold out the promise of admission, but instead can support framework agreements by funding components thereof or working with member states to co-ordinate or pool bilateral offers. One example of this is the 2015 Valletta Action Plan, which includes the promotion of legal channels and commitments from the European Union to fund scholarships and from Member States to launch pilot projects to pool offers for legal migration. The Action Plan embraces much of the good practice developed over the past decade in bilateral co-operation on legal migration, but also identifies specific new areas for co-operation, such as identifying professions where participating States commit to pilots for facilitating recognition of skills and qualifications, or training African entrepreneurs in European countries.

The European Union can, however, negotiate visa facilitation agreements, which are also of great interest to partner countries.<sup>10</sup> The link between readmission agreements and visa facilitation mirrors the link between readmission agreements and labour migration, which has long been the model for bilateral agreements between EU Member States acting bilaterally and third countries. The two elements are also central to “Mobility Partnerships”, discussed in the preceding chapter. They are examples of the umbrella approach to migration issues with neighbouring countries (Balleix, 2016).

While bilateral agreements between individual EU Member States and third countries can give rise to labour migration capacity building, the success of such initiatives is tied to demand in the destination country. In contrast, EU backing for capacity building can support labour migration to EU Member States which are not party to any bilateral agreements. One common problem with training programmes tailored to

specific destination countries is that they may be so long that the initial demand has faded by the time programmes are over. Linking training with skills requirements and certification standards in multiple EU destinations can mitigate that risk and improve the likelihood of work placements for participants in other EU Member States which have opened their labour markets for workers with these skills. Training programmes should aim to meet similar standards in more than one destination; support should be contingent on courses providing certificates in multiple national frameworks or at least provide guidance on portability and mutual recognition procedures. Just as many EU funding measures require transnational partnerships, so could capacity building require an output of certification valid in more than one Member State framework.

Similarly, the European Union can support EU-specific human-capital investments which are broader than those oriented towards any single EU Member State. Support for learning languages spoken in the European Union is one area and capacity building in labour migration management is another. A third important area is support for the convergence of higher-education programmes in line with the harmonisation of EU systems set out in the Bologna Process.

The EU funds a number of programmes enabling TCNs to come to EU Member States as part of cultural, training or educational programmes. The programmes boast added value in comparison to those of individual Member States, as they involve researchers and students without binding them to a specific destination country and allow them to take advantage of mobility provisions for students and researchers.

Projecting the presence of the European Union through cultural and scientific initiatives in third countries raises the profile of Europe as a whole. Making sure that Europe is present in cultural debates and in scientific collaborations and that its results are made visible in origin countries increases the interest of potential migrants in pursuing opportunities for study or employment in the EU rather than in other OECD destinations.

Finally, the presence of EU delegations in countries of migrant origin constitutes a network of potential support for other value-added initiatives which do not yet exist – e.g. establishing a pre-selected pool of candidates for migration and facilitating recognition of foreign qualifications. The latter could be supported not only by providing information on national requirements and procedures but also by helping

candidates and training institutions to understand how to meet training and documentation requirements for multiple EU Member States.

### **Simplification for compliance**

The added value of EU-level action is clearly evident in migration management information platforms like the Schengen Information System and EURODAC (the EU fingerprint database), though these are rather focused on preventing irregular entry and managing asylum applications. Compliance measures in the field of labour migration may also benefit from shared information to improve integrity, reduce risk and build trust among Member States. And the portability of authorisation to work and the ability to accumulate periods of residence can be achieved only through co-operation at the EU level. At present, checks on prior criminal history in the country of origin, or on the existence of family ties, may be performed on a migrant's admission to the first Member State, but are not automatically valid when the holder applies to a second one.<sup>11</sup>

The mutual recognition of permits, too, is possible solely through EU-level co-operation. The 2014 Intra-Corporate Transfer Directive – in its provisions on intra-EU mobility – contains an element of “mutual recognition” in some cases and, building upon the verification of the fulfilment of admission conditions carried out by the first Member State and the mutual trust among Member States. It does not however compel the second one to accept the first's decision that the permit-holder poses no threat to “public policy, public security and public health”. That is up to each country.

### **Leveraging competition and preventing a race to the bottom**

Chapter 1 shows how individual Member States have introduced labour migration programmes in the competition for talent. Innovation and experimentation in the field of labour migration policy fosters development of responses to specific national requirements and the emergence of new models which can be shared with other countries, so increasing the competitiveness of the European Union as a whole. That being said, competition should not become a race to the bottom.

Equal treatment means aligning the rights of third-country nationals with those of EU nationals. In that sense, it has clear implications at the national level: Member States must extend fundamental rights to prevent

abuse and limit the risk of labour market segmentation. Ensuring equal treatment also lessens the risk of unfair competition between EU Member States, e.g. a Member State allowing worse labour conditions and lower salaries for foreign workers than for nationals. Indeed, it safeguards the EU labour market as a whole.

Competition is also about benchmarking. Standard indicators and statistical analysis allow the comparison of performance and trends at the EU level and enable individual Member States to assess their policies against those of their neighbours. Benchmarking labour migration management performance supports Member States by gauging their ability to compete both within the European Union and with other migrant destinations.

### **Summarising factors of attraction and the value of EU intervention**

Table 3.3 summarises how value-added intervention at the EU level can support factors which make a country attractive to talent and how it does so with greater effectiveness than measures taken at the national or sub-national level. The summary table incorporates factors of attractiveness identified in this and previous chapters (Gubert and Senne, 2016; and Weisser, 2016) and measures to enhance it. It indicates areas of intervention which range from specific regulations to broad cultural initiatives. It also indicates the limits to intervention.

The following chapter examines specific measures in the field of labour migration and support that include the attractiveness of the European Union. The sectoral approach evident in the measures – Directives aimed at specific groups – does not mean that broader attempts to bring added value through EU intervention have not been made through initiatives not strictly related to third-country nationals. This chapter has identified the importance of mainstream measures to enhance the functioning of the single market which directly impact the added value of the EU by making Member States attractive to talent from third countries.

**Table 3.3. Summarising the added value in EU-level approaches to labour migration management**

Factors which make a country attractive for migrants	Means to improve these factors	Added value intervention at EU level
Large labour market	Increase scale of labour market.	Leverage large single labour market, create mobility provisions.
Job quality	Ensure minimum standards.	Ensure equal treatment and prevent abusive practices.
Information about the destination	Improve knowledge about the country or region.	Presence in many origin countries, platforms for collaboration.
Historical and cultural ties	Greater presence in origin countries, soft power.	Shared cultural outreach, consular co-operation, convergence of education systems.
Same language	Increase knowledge of the language in the origin country.	Support language instruction, provide information in official languages across countries.
Open legal labour migration channels	Create channels for labour migration, increase access to existing channels.	New channels cannot be created, but can be branded, publicised and supported.
Labour market conditions and job opportunities	Simplify job search employment.	Matching mechanisms.
Accessible administrative procedures	Lower costs, simplify procedures.	Set ceiling on fees and minimum standards for processing times, improve verification procedures and visa sharing information, improve transferability of recognised documents, clarify transparency rules and opportunities for redress.
Experience in the country	Circular migration channels, student and training opportunities.	Support exchange programmes, scholarships.
Provisions for family	Clear, predictable and favourable conditions for family reunification and the status of family members.	Harmonisation of conditions for family reunification and rights of family members.
Access to social benefits	Transparent rules for eligibility.	Equal treatment provisions Multilateral pension agreements and calculation of pension accumulation.
Access to permanent residence	Clear, predictable and favourable conditions for obtaining permanent residence.	Harmonisation of conditions for permanent residence, portability of periods of residence.
Access to naturalisation	Clear, predictable and favourable conditions for acquiring nationality.	No possibility to intervene in criteria, but can support permanent residence and general integration measures to meet national criteria, as well as information.

## Notes

1. Ireland's permanent residence permit is difficult to obtain – it is granted only after eight years of residence. It is therefore seldom a bridge to naturalisation. Luxembourg has naturalised a large number of refugees who did not hold permanent resident permits. Hungary has a programme for foreigners of Hungarian origin.
2. This has already been achieved in some EU legal migration instruments, such as the EU Blue Card, which only allows Member States to require the applicant to be outside of that Member State, rather than outside of the EU.
3. This means that third-country nationals have access to the same recognition procedures under the same conditions as host-country nationals and facilitates the process when they move across Member States. However, the recognition procedure as such remains a national competence and this still does not guarantee that the qualifications would end up getting recognised in the Member State concerned.
4. For the purposes of recognition procedures in a second EU Member State, an EU national can present third-country qualifications if they have been recognised by the first EU Member State and if the individual has practiced the profession for at least three years in the Member State that first recognised his or her qualifications (Article 3[3]).
5. If there are no volumes of admission preventing approval, meeting the criteria for a permit indicated in the relevant EU Directive means that there is a positive right to obtain that permit.
6. According to research in the United Kingdom (Manning and Petrongolo, 2011), the probability of a worker applying for an unskilled vacancy in a ward 5 kilometres away from his or her ward of residency, was just 11%. As for skilled vacancies, a similar reluctance to search for jobs far from home has also been found in the United States. Marinescu and Rathelot (2016) find that workers are 35% less likely to look for jobs more than 16 kilometres from their home postal code, and the probability falls below 10% when the distance exceeds 70 kilometres.

7. When demand-pull factors are accounted for, however, a 10% increase in the population share of migrants from new Member States is associated with a 5% to 6% reduction in the population share of third-country migrants, which suggests that there may be a labour substitution effect between new Member State migrants and those from third countries.
8. Displacement in this context is not of local workers out of employment, but of mobility for employment.
9. Farchy (2016) finds no effect on the employment rate of third-country labour migrants. It is not possible to distinguish between lower inflows of labour migrants and higher outflows to explain the association.
10. EU wide visa and readmission agreements are in place, but on labour migration this has been left – until now – to bilateral agreements by Member States.
11. Concepts of family and how family ties are verified substantially differ across Member States and are not necessarily portable even if registered.

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## Chapter 4

### What have EU labour migration Directives changed and how can they be improved?

*A number of EU Directives governing labour migration have been transposed in the past ten years. Transposition has not been identical in all Member States and the differences have led to a piecemeal approach to policy reflected in national regulations. Nonetheless, the Directives transposed so far have created a foundation for European labour migration policy. This chapter examines how they have changed legislation in EU Member States, how they have brought added value, and how they can be improved. It looks at the labour migration Directives that have been transposed, examining how they have changed the rules for the governance of migration in individual Member States and the extent to which they have produced a better harmonised labour migration policy. The chapter concludes with a discussion of what measures and modifications could help the Directives achieve their general and specific goals.*

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

## Introduction

The Directives transposed to date have laid the foundations of a European labour migration policy. Differences in transposition mean that the piecemeal approach to policy has been reflected in the transposition into the national regulations that govern labour migration. This chapter examines the different Directives and how they have been transposed in different Member States. It is based on questionnaires on permit characteristics in OECD countries compiled with the national authorities in these countries in 2014-15, as well as specially commissioned reports on the transposition approach to the Directives covering 16 Member States.

### **Students Directive: Promote the EU as a world centre of excellence for studies**

#### ***Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service***

The Students Directive sets the rules for international students to enter the EU and study there. Its overall objective is to promote Europe as a world centre of excellence for studies. A draft Directive was first presented in February 2003 and the European Parliament adopted its position by early June 2003. The Council gave its final agreement at the end of March 2004 and the Directive was formally adopted in December 2004. The Directive was adopted under the consultation procedure, which meant the European Parliament was only consulted on the proposal.<sup>1</sup>

The procedure then in place – the European Parliament gave only non-binding advice – contributed to rapid negotiations between Member States and the legislative procedure lasted less than two years. In addition, the issue did not arouse particularly sensitive issues of national interest. The amendments suggested by the European Parliament (EP), beyond changes in wording, focused on greater transparency, protection and certain rights – e.g. limiting processing times to 60 days and requiring Member States to give grounds for refusal of issuance. The EP also suggested including unremunerated researchers. The EP's opinion was not binding at the time, and did not make its way into the final draft.

The Directive does not apply to the United Kingdom, Ireland or Denmark, which accounted for between one-third and one-half of valid

student permits in 2013, although they had only 23.9% of all third-country national students in 2003.

In 2004, all EU Member States already had study permits and most were broadly in line with the Directive. Member States had to make few changes to their legislation as a result. For example, Belgium, Spain, Finland, France, Italy, Lithuania, Sweden and Romania only modified provisions in their existing legislation.

In some cases, however, implementation required more than just renaming an existing student permit. Before Poland transposed the Directive, for example, international students had to apply for general visas or fixed-term residence permits. There was no such thing as a “student permit”. Transposition created a student category of migrant, although the conditions required of foreign students remained similar to those in place prior to the Directive, e.g. health insurance and proof of sufficient resources.

In other Member States, transposition was an opportunity to expand the right to work. For example, Spain conducted labour market tests (LMTs) before granting students work permits. While it still requires foreign students to hold work permits, it lifted the LMT when it implemented the Directive.

The Directive allows Member States to impose a number of conditions for the admission of international students, including proof of admission to the educational institution, adequate financial resources, language proficiency, advance payment of fees. Member States may require, at the time of renewal, that students have made acceptable progress in studies. The Directive establishes the minimum number of hours of employment allowed, but not a maximum. It also introduces intra-EU mobility (a new development).

Applicants who meet the criteria spelt out in the Students Directive must be issued a student permit. The European Court of Justice ruled in 2014<sup>2</sup> that Member States could not deny a student visa if the conditions in the Directive were exhaustively met, even when they were unconvinced that the applicant was a bona fide student. The Directive does, however, allow Member States to deny permits for reasons of security and public order. Similarly, it allows Member States to combat misuse of the student pathway after admission by obliging students to continue to meet admission criteria and to make “acceptable progress” (in their studies), and to respect limits imposed on access to economic activities. The onus of compliance is first on the government review of

eligible institutions, then on the institutions themselves. In fact, measures to curb misuse of the student status primarily target educational institutions rather than individual applicants.

### ***Language requirements***

Language requirements can be a barrier for third-country national students seeking to study in a Member State. The Student Directive stipulates that Member States can require a prospective student to provide evidence of proficiency in the language of the course that s/he intends to follow. Most EU Member States offer instruction primarily in their national language(s). In Italy, for example, national legislation requires international students to have an adequate command of Italian in order to enrol in courses taught in Italian. Students must submit certificates of at least a B2 level or undergo an interview with representatives from a consular or diplomatic mission and an Italian cultural institute (or in some other way deemed appropriate). A number of Member States have chosen not to transpose language requirements into national legislation, although institutions of higher education may still require proof of language proficiency as a condition of admission – e.g. Sweden, Austria, Latvia, Spain and the Netherlands.

### ***Requirement to keep up with studies***

A student permit can be withdrawn or its renewal refused if the holder is judged not to have made acceptable progress. “Acceptable progress” is defined by each Member State and assessed differently across the European Union. Documentation requirements vary, but national practices have not changed as a result of transposition. In Austria, for example, students have to produce: university confirmation of continuation of studies, written proof of the successful course of studies by the university, proof that a minimum number of credits have been attained, and a copy of the current student record. In France, the “seriousness of studies” is also taken into consideration if students change curriculum when renewing their permits. As for Italy, students merely have to prove that they sat a certain number of exams in the academic year, while Romania has no such requirement at all.

### ***Labour market access during studies***

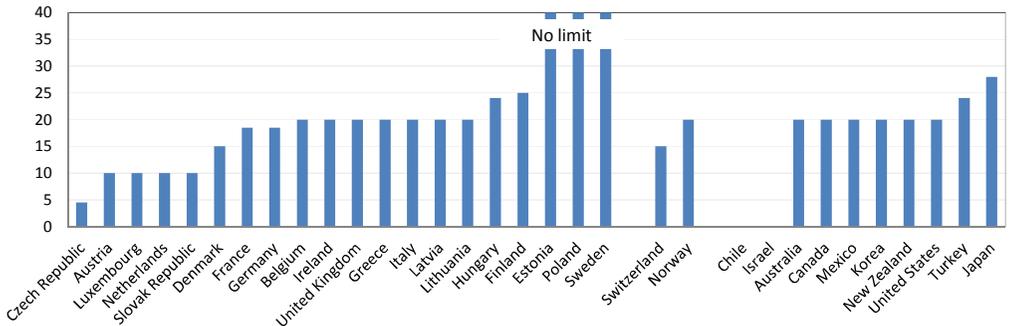
The Students Directive requires Member States to grant students labour market access outside their studies. They must be allowed to work at least ten hours per week, although Member States are entitled to

require labour market tests and restrict access to work during the first year of study.

Most Member States already granted labour market access to students, so transposition changed little (Figure 4.1). Italy and Belgium maintained their maximum of 20 hours work per week, for example. In a few countries, however, students were not allowed to work at all until the Directive was transposed. One example was Lithuania, which now allows them to work 20 hours per week. Spain still requires international students to have a work permit if they want to work outside their studies, although it seized the opportunity during implementation of the Directive to eliminate the labour market test for students (even if this was allowed by the Directive). The Czech Republic requires students who work more than 30 days per annum to hold a work permit, as it did prior to transposition. Poland only allowed students to work during the summer months until 2014, when it moved to allow all-year-round employment, although the change was not linked to implementation of the Directive. Only a few countries keep the working hours at the minimum stipulated by the Directive – Austria, Luxembourg, the Netherlands and the Slovak Republic.

**Figure 4.1. Most EU Member States grant international students the right to work to, although hours vary**

Maximum number of working hours per week allowed (during a semester) in selected EU and OECD countries



*Note:* In Lithuania, authorisation is subject to a LMT. Czech Republic figures indicate exemption from work permit; it is possible to receive a work permit if this “does not interfere with studies”.

*Source:* OECD Secretariat analysis of national regulations, 2015.

Few Member States restricted employment in the first year of study, even before they transposed the Directive. Lithuania did and does, however. It has maintained its ban on students working during the first year of the first-cycle, or integrated, studies.

### ***Different interpretations of the requirement not to “hamper studies”***

The requirement not to “hamper studies” applies to the initial permit application processing time, to renewals. The Students Directive does not prevent countries from requiring students to apply for permits in their home country – it only requires host country authorities to treat initial applications in a way that does not “hamper studies” while taking sufficient time to process the application, without specifying a maximum processing time. Member States interpret in different ways the requirement not to hamper studies. Some use maximum statutory processing times or fast-track processing, while others have provisions for simplifying the administrative procedure.

Member States do not appear to have changed their processing time requirements. Some already had maximum processing times which were left unchanged by the Directive. In Finland, for example, processing time stayed at one month and in Sweden at around two months for complete applications. Fast-track processing is seldom used for students either in general or intra-European applications. Poland, for instance, has not introduced any fast-track procedures for students and delays in processing visa applications can lead to problems of admission. Some Member States, however, used the implementation of the Directive as an opportunity to introduce fast-track procedures for processing student visas. The Netherlands even expanded fast-track procedures which have now become the default procedure, reducing processing times from three months to two weeks. As for Spain, it has specific fast-track agreements with Latin American countries. Lithuania, which applies standard procedures for temporary residence permits (decisions can take up to four months) has an urgent procedure which cuts processing times to two months, but also requires applicants to pay double the usual fee. Lithuania did not introduce its urgent procedure specifically for the Students Directive, and third-country national students may benefit only if they pay the fee.

### ***Intra-EU mobility provisions***

The Directive broke new ground in one area – intra-EU mobility. It requires Member States to create mobility provisions for TCN students who have studied in a first Member State (for no less than two years) and wish to continue or complement their studies with a related course in a second Member State. The mobility provision also applies to participants in a “Community or bilateral exchange programme”. As with initial admission and renewal, the second Member State must admit the student within a period that does not “hamper” the pursuit of studies. The provision should have brought about change in all Member States as none of them had mobility clauses prior to transposition.

Visa exemptions can make a difference, since they allow students to change countries without having to return home or await a new visa in the first country of study. Italy allows international students already holding a student permit in another Member State to continue their studies in Italy without having to apply for a new student visa in their home country. Students can thus stay for short periods without having to report to the authorities. If they plan to stay longer than three months, however, they must apply for a student permit and all the regular conditions apply. Since 2014, the Netherlands has similarly extended the application of national legislation to third-country nationals who reside elsewhere within the Schengen area and wish to study in the Netherlands. However, it did not introduce this visa exemption explicitly within the framework of the Directive, but on a national basis.

Some criteria may delay mobility. One example is the adequate financial resources requirement, which can affect movement from an EU Member State with a low cost of living to one where it is high, since adequate financial resources in one state might not be sufficient in the other.

### ***Little interest in using the Directive to regulate other student categories***

Most countries ignored the possibility of regulating conditions of entry and stay for school pupils, unremunerated trainees and volunteers to whom the Students Directive also applies. Yet most countries do have a legislative framework for people in those categories. Nine Member States<sup>3</sup> have transposed only the provisions relating to students. Bulgaria, for its part, introduced legislation on unremunerated trainees and school pupils, Greece on volunteers, France on unremunerated trainees,

Hungary on school pupils and volunteers, and Latvia on school pupils. The remaining ten transposed all three categories of migrant, but made no fundamental changes to the conditions governing these categories under prior legislation. National permits remain applicable for volunteers and pupils who fail to meet the conditions set forth in the Directive – e.g. volunteers in programmes longer than 12 months, as the Directive allows permits for periods in excess of 12 months only in exceptional circumstances.

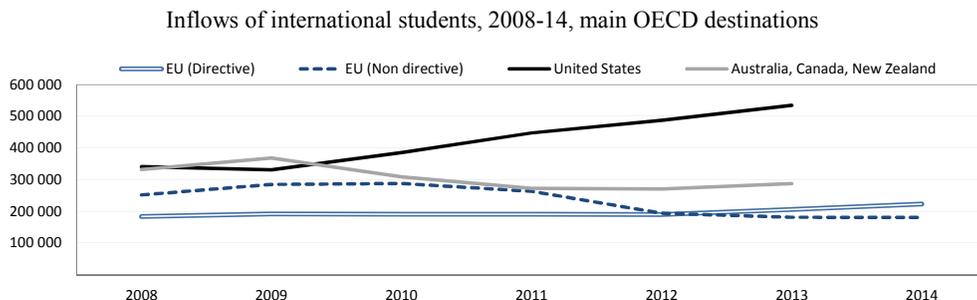
The overall conclusion of the review of transposition approaches is that transposition of the Students Directive failed to change administrative practices to any significant extent. As for intra-EU mobility, different study permit and financial requirements restrict it in practice. Students' right to work still varies across the European Union with regard to the number of hours, work permit requirements, and the application of labour market tests.

### ***Impact on flows***

There has been steady growth in international studies over the past two decades, with total numbers of international students in OECD countries more than doubling from 1.6 million in 2000 to 3.4 million in 2012, although that figure includes a substantial number of mobile students within Europe. Less than ten years ago, the United Kingdom was the main driver of student migration in the European Union – it accounted for half of the non-EU student inflow in 2008. Its share fell to 38% by 2014, as more Member States became involved in international study and the United Kingdom imposed restrictions. Global increases in international studies largely bypassed the European Union in the late 2000s, with the United States experiencing a bigger rise than the EU Member States covered by the Directive. There are signs that inflows to EU Member States are picking up, however.

The paucity of data on inflows of non-European students to all EU Member States in the early 2000s makes a permit-based analysis of the impact of flows difficult to conduct. An analysis of labour force survey data on student arrivals that compares the pre- and post-transition period notes an increase in inflows of international students. However, there was a similar trend in the opt-out countries and transposition seems not to have much of an impact (Colussi, 2016).

**Figure 4.2. Member States to which the Student Directive applies have only recently overtaken non-Directive countries in admissions of non-European students**



*Note:* Excludes intra-European mobility and stays of less than six months in EU Member States.

*Source:* OECD (2016), “Education Database: Enrolment of international students by origin”, OECD Education Statistics (database), <http://dx.doi.org/10.1787/d3abd071-en>.

## The Researchers Directive: A new fast-track permit in many Member States

### *Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research*

The objective of the Researchers Directive is to reduce obstacles to the entry and residence of third-country researchers to the European Union and to grant them mobility rights. The migrant group covered by the Directive is generally defined not by the profile of the recipient researcher, but by the nature of the host institution and the content of the research project. The Directive provides a broad definition of “research”, and defers to national legislation and administrative practice for the definition of “research organisations”.<sup>4</sup> Researchers must hold qualifications that entitle them to follow a doctorate-level programme and match the level required for the project in question. Qualification requirements thus afford a high degree of flexibility that allows public and private bodies to qualify as hosts, and researchers not to have the highest tertiary-education qualifications.

The Researchers Directive was finalised quickly. The Commission presented its proposal in March 2004 and an agreement was reached in the Council by November 2004. Ireland informed the Commission in July 2004 that it intended to participate in the Directive – the only migration-related Directive to which it has adhered. The Directive was

adopted in October 2005 and the Member States had implemented it by October 2007.

The two central components – 1) the specific admission procedure making the host research organisation the main interlocutor during the admission process, and 2) intra-EU mobility for researchers – were not controversial aspects for the Member States. Nor was the idea of a hosting agreement challenged, as Member States welcomed the idea of making third parties liable for migrant’s expenses (Roos, 2013). Moreover, most Member States already admitted researchers only if invited by a sponsoring research organisation (ICMPD, 2011). However, establishing a legal contract in the form of a hosting agreement was a novelty introduced by the Directive.

The European Parliament had no objection to the Directive, either, and issued a non-binding positive opinion in April 2005 after the Council had reached its agreement. The two committees which examined the proposal (the Committee on Industry, Research and Energy and the Committee on Civil Liberties, Justice and Home Affairs) both welcomed the fact that the Member States had refrained from quotas or economic needs tests which would have contradicted the objective of attracting TCN researchers.<sup>5</sup>

Debate in the Council focused mainly on the autonomy granted to research organisations as they assume a decisive role in determining whether a researcher can be admitted to a Member State and is entitled to intra-EU mobility. Austria and Luxembourg succeeded in restricting autonomy by limiting institutional approval to a five-year period. Immigration authorities therefore may audit research organisations every five years and verify their trustworthiness.

### *A new permit in some Member States*

Although Member States hosted researchers even before transposing the Researchers Directive, not all of them had researcher-specific residence permits. In the Netherlands, Poland and Lithuania, researchers had to apply for residence permits under the general schemes in place. Spain, France and Sweden modified their researcher permits to bring them into line with the Directive. As for Italy, it had put in place a researcher permit as a quota exemption under the 1998 law for university professors and paid academic staff and researchers in “universities, teaching institutes and research institutes”.<sup>6</sup> Transposition meant Italy had to separate academics and researchers into two distinct legal

categories. Romania, for its part, had no researcher category and used the Directive as an opportunity to introduce a new type of residence permit for scientific research.

Implementation of the Researchers Directive in Belgium did not lead to the introduction of a new permit, but to the exemption of researchers with a hosting agreement from having to apply for a work permit. They were able to apply for visas directly on producing the host agreement. Researchers without a hosting agreement end up using other (non-research) permits.

Most Member States' national legislations have not literally transposed the definitions included in the Directive (such as “researcher” and “research organisation”). Even when definitions are not clear in the transposition, they may be clarified through operational guidelines and ministerial instructions or circulars. When definitions are not clear and uniform, there is a risk that Member States interpret them restrictively and fail to grant TCN researchers the rights and opportunities to which they are entitled.

### *The hosting agreement requirement*

The Researchers Directive requires that a hosting agreement be signed between the researcher and hosting organisation. Hosting agreements vary between Member States and even within them. Standard official forms are provided, for example, in Belgium, Sweden, France, Spain, Italy, Ireland and Romania, although they are not identical. Belgium's form is defined in legislation. By contrast, there are no standard forms in the Netherlands, Lithuania and Poland, for example. The purpose and scope of hosting agreements can therefore differ across the Member States. While some countries consider the hosting agreement as a specific contract for research purposes, others view it as an employment contract. In Lithuania, for example, the researcher must provide an employment contract signed by the research organisation.

Wage requirements also vary significantly from one Member State to another. Some apply the national minimum wage (e.g. Latvia, Lithuania and the Slovak Republic), while others apply a lower wage requirement – Netherlands sets it at just 70% of the minimum wage. In France, national wage requirements apply to doctorate-level researchers – the rate is 1.5 times the minimum salary, while in Italy, it is twice the level required for entitlement to social benefits. In all countries, the wage requirement is below that required for highly qualified employees, which

may explain why some countries choose to use alternative permits for people employed in research positions, both within and outside universities.

### *Intra-EU mobility for researchers*

EU Member States often fail to make it clear in their legislation that they admit TCN researchers for up to three months if issued with a permit from another member state. Austria, for example, has no special provisions to that effect, which can create uncertainty in the interpretation and application of mobility provisions in all Member States. Although most Member States require a new hosting agreement to be signed should a research job exceed three months, the Netherlands and Poland do not. Poland accepts a hosting agreement signed with a research institution in another EU Member State if it includes plans to conduct research in Poland, too: the foreign researcher applying for a residence permit to conduct research in Poland has only to produce the agreement signed with another EU Member State. In the Netherlands, mobile researchers do not need temporary residence permits (known by the acronym MVV) and no new residence permit is required for stays of more than three months.

### *Registers of approved organisations*

The Researchers Directive specifies that a research organisation wishing to host researchers must be approved by its Member State which shall, in turn, keep a register of approved organisations. Most countries created registers to that end after transposing the Directive, rather than use existing ones – Belgium, Italy, Sweden, Poland and Romania, for example. Lithuania did not introduce an approval registry and the researcher simply enters into a direct employment contract with the research organisation.

Not all countries' registries cover all research organisations, so some researchers are not able to be included. In Spain, for instance, a number of institutions are not obliged to seek approval. They include universities, research centres, public bodies dependent on the state or independent communities and Technology Centres/Centres of Technological Innovation Support. Researchers in these bodies fall outside the scope of the Directive and take up their posts under a different work permit.

Of the Member States which did create registers, some did not extend them to other categories of permit or use the registry for other purposes. Italy, for example, where transposition of the Researchers Directive prompted the creation of a register in April 2008, did not extend it to other potentially related categories, such as professors under the quota exemption. When it introduced fast-track recruitment of highly qualified workers, the register played no role. Italy uses it as an instrument of compliance, since registration requires institutions to abide by the wage requirement (twice the minimum wage for entitlement to social benefit) and to pay return expenses, cover the cost of health insurance, and commit to paying the costs of return if the researcher overstays (if the costs are incurred within six months of the completion of the contract). Only institutions which can meet those requirements are registered.

It is worth examining Irish implementation of the Directive, since Ireland was not bound by the Directive and chose to transpose it. It did so as a “Hosting Agreement Scheme” (HAS), a visible “branded” permit. No other country gave the researcher permit its own name. Ireland’s inflows of researchers were substantial relative to the size of the country: 1 750 in the first six years after transposition, issued mostly to PhD researchers who were not yet independent heads of research teams.<sup>7</sup> In universities, between 10% and 30% of all researchers are employed under HASs. The HAS was designed as a fast-track procedure that provided immediate family reunification.

As for salaries, Ireland sets a threshold<sup>8</sup>. In practice, the HAS allows research institutes to hire single TCNs at lower wages than would be possible under the Critical Skills Employment Permit. However, there is no evidence that the wage difference is what has made the HAS popular among research bodies and universities. The HAS is run directly by the EURAXESS centre for Ireland. Hosting agreements were initially set at a maximum of three years, then raised to five in 2009. From June 2012, researchers were able to apply for unrestricted labour market access without a work permit (Stamp 4 status, which is close to permanent residence) after just two years in Ireland. In addition to a register of eligible institutions (more than 40 in 2013, although the seven universities accounted for four out of five agreements), EURAXESS created an electronic database of hosting agreements, which immigration officials in Ireland and at foreign consulates may consult. The Irish approach is in sharp contrast to most Member States, where agreements are paper documents shown to officials to obtain a visa and a permit.

In Ireland family members may accompany researchers and obtain immediate access to the labour market. While the family members' initial permit does not allow employment, they may receive an Employment/Dependent/Spouse Work Permit on the strength of a job offer (outside the domestic help sector) without a labour market test. About one-quarter of the participants stated they would not have come to Ireland if there had not been a HAS (Euraxess Ireland, 2013). However, the main beneficiaries appear to be the host institutions, as HAS has made formalities much shorter, cheaper and simpler.

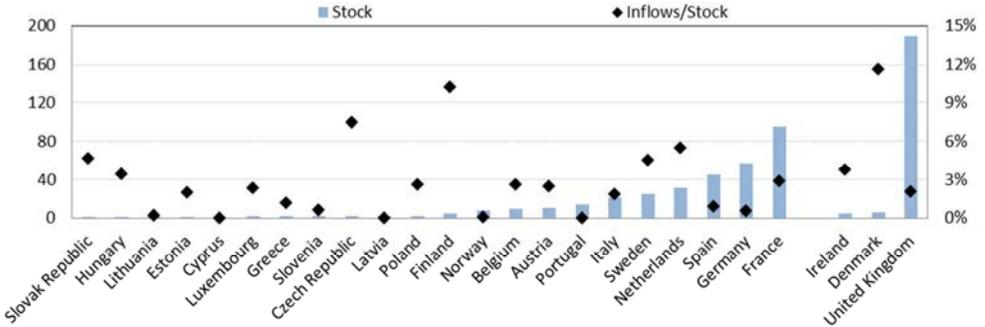
### *Impact on flows*

When countries classify researchers in separate groups, it becomes difficult to compare pre- and post-transition permit statistics. The Directive excludes doctoral students carrying out research as students from its scope, even if these may appear as researchers in other statistics. It is possible, however, to compare the number of researchers in labour force survey data with inflows, then draw up a ratio. Since the number of researchers gives an idea of the size of the research and development pool, a higher ratio would suggest increased turnover or involvement of third-country researchers. This ratio varies widely, however, and Member States that have transposed the Directive do not appear to attract relatively more researchers than those which have not (Colussi, 2016). The European Labour Force Survey also suggests that the stock of third-country researchers in the European Union fell from about 350 000 in 2007 to 300 000 in 2009, then remained stable at about 325 000 from 2010 to 2012. Although it is true that the inflow of third-country researchers, relative to intra-EU mobility, increased in the wake of transposition, the relationship was not significant.

It is possible to look at specific countries to examine whether the Researchers Directive led not only to an increase in the number of researchers in the newly defined researcher category, but to a rise in the overall number. The Netherlands has seen a sharp increase in the uptake of the researcher permit, especially by non-university bodies. The Dutch list of registered research institutes includes at least 30 private enterprises among the 110 registered sponsors. Universities, foundations and firms can use the researcher permit as an alternative to the national permit scheme for skilled migrants when the work is project-related – even when the salary paid to the researcher is below the requirement for other highly qualified schemes. The introduction of the researcher permit has led to the near-disappearance of the unpaid-research permit category.

**Figure 4.3. There is no fixed relationship between the stock of researchers and inflows of new researchers**

Inflows relative to stock (in thousands) of third-country national researchers in Europe, 2012

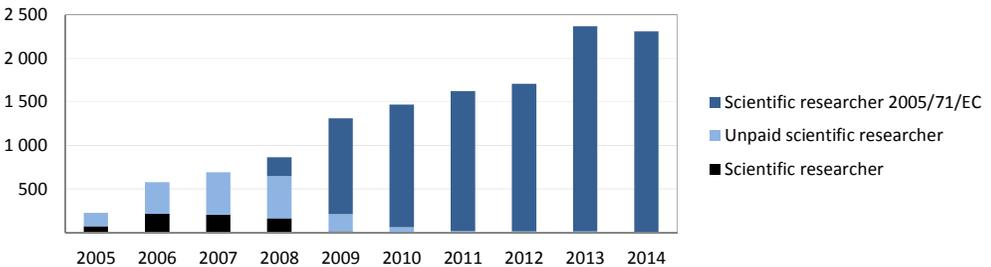


*Note:* The figure reports the ratio between newly arrived researchers from non-EU countries and the stock of non-EU researchers already living in each host country in 2012. Vertical bars denote the number (on the left-hand Y axis in thousands) of non-EU scientists. Denmark and the United Kingdom do not apply the Researchers Directive.

*Source:* Eurostat for the number of first permits issued to researchers. The European Labour Force Survey 2012 was used to estimate the stock of non-EU researchers. Only countries for which the EU LFS allowed analysis are included.

**Figure 4.4. The researcher permit appears to be associated with higher inflows into the Netherlands**

First permits issued annually for labour migrants and students, 2005-14



*Source:* OECD analysis of microdata from Dutch immigration authorities.

The Researchers Directive shifts part of the decision making on admission migration authorities to the research organisations which approve research projects and sign hosting agreements. Overall, the shift has had a positive impact facilitating and increasing the access of TCN researchers to the European Union (ICMPD, 2011). The Directive

clearly favours those institutions which can be recognised. Considering the multitude of actors involved, it would have an even wider impact if it was to define a uniform hosting agreement. Intra-European mobility might be facilitated by a standard hosting contract which the second Member State could easily understand in the event of stays of less than three months (the maximum time for which the second Member State cannot ask for a new hosting agreement). A standard agreement would also be useful for longer stays if and when a second agreement is required. Moreover, it would be possible to improve its effect by transposing the definitions in the Directive literally and linking the registers of approved research organisations to existing compliance or funding registers for research and academic institutions.

### **The Single Permit Directive: Simplifying and harmonising the rules**

*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*

The Single Permit Directive aims to provide “a single application procedure leading to a decision taken with one single administrative act to issue a combined permit encompassing both the right to residence and work permits”. The introduction of the single application procedure is aimed at simplifying the application process by uniting the procedure for granting or renewing both the right to work and the right to reside. A single competent authority is responsible for the procedure (a “one-stop-shop”), although other authorities can be consulted in the process. The applicant enjoys procedural safeguards and a deadline of maximum four months for a decision. The introduction of a single permit, covering the right to work and to residence, relieves third-country nationals of the need to request, carry and show multiple documents. The Directive does not however introduce conditions for admission.

While its overriding purpose is simplification, it also establishes a common set of rights for most legally resident third-country workers. The Directive establishes that third-country workers shall enjoy equal treatment with nationals in relation to a number of economic and social rights, notably as concerns working conditions, including pay and dismissal and health and safety, access to social security, and to goods and services. The Single Permit Directive is of a “framework nature”

covering all those admitted for the purpose of work or applying to be admitted for work, including under national law, unless the categories of third-country nationals are explicitly excluded. The categories excluded are often those regulated under other EU Directives.

At the time the Single Permit Directive was passed, numerous EU Member States already had a single permit and a single application procedure in place and statutory processing times within the limits set by the Directive. Effective processing times for work permits in most EU Member States were below the statutory limits of the Directive, with the notable exception of Italy and Greece, where long processing delays were also in violation of national statutory requirements.

### ***Transposition approaches ranged from minimal to reform-oriented***

Transposition of the Single Permit Directive into national legislation had two main impacts. The first was the direct effect of bringing national permit procedures and rights into line with the Directive, although some Member States kept the pre-existing system. The second effect was that the transposed Directive dovetailed or coincided with broader changes in the national permit system which went beyond the articles and the scope of the Directive.

Typical of the implementation approach was Lithuania, where pre-existing procedures largely corresponded to the requirements of the Directive without having to make radical changes. While it kept the temporary residence permit already in place, it changed its permit issuance procedure. It scrapped the work permit once issued to most workers and, although it continued to apply labour market tests, it restructured them for single permits. Overall, the single permit scheme was a little more flexible and faster than the previous permit procedure. Moreover, for single permit holders Lithuania waived its rule that most TCN workers should leave after two years and reapply for a permit.

In Poland, implementation only produced changes in procedures for applying for work permits, which could previously be obtained only by employers who applied to the employment office for work permit authorisation. Employers still initiate the labour market test and pass the results on to the worker, and applications can still only be made from within Poland to the single office for foreigners. Furthermore, while transposition was expected to speed up the process, a boom in demand was not met with an increase in staff. Waiting times lengthened and in 2015 were as long as nine months in the capital region where most

applications are filed. Maximum permit duration rose from two to three years and the name changed from Temporary Residence Permit to Temporary Residence and Work Permit.

In the Czech Republic, transposition led to a new permit name, the Employee Card, substituting the previous work permit categories.

In other Member States, transposition involved creating a new category of permit. In Austria, the provisions of the Directive were largely subsumed by the changes ushered in by the introduction of the Red-White-Red Card and EU Blue Card schemes at the end of 2011. In practice, the introduction of the Single Permit spelled a change only for third-country artists (who previously received separate work authorisation and residence permits). However, it also established equal rights for disabled workers and prompted a change in the Act on the Employment of Persons with Disabilities (*Behinderteneinstellungsgesetz*), in which it was underlined that TCNs with disabilities had to be guaranteed equal treatment, especially with regard to conditions of dismissal. This amendment was nevertheless also sparked by two prior court rulings,<sup>9</sup> which stressed that foreign disabled workers were entitled to the same protection measures as national disabled workers.

In the Netherlands, transposition coincided with a complex and costly overhaul of the permit framework. The Netherlands chose to exclude a large number of migrant categories from coverage. In fact, it excluded all the groups which it could from coverage – students, job-seekers, and workers who needed only a residence permit under national legislation, such as “knowledge migrants” and members of the families of TCN workers.

As for the Slovak Republic, it took advantage of transposition to tighten up its conditions for issuing work permits, although the Directive itself does not include such admission conditions. The duration of vacancy listing requirements was doubled from 14 to 30 days, and applicants were, for the first time, required to provide legally approved and translated evidence of qualifications.

In Romania, by contrast, transposition led to coverage of additional permit categories. The general framework for permit issuance and rights was based on an Emergency Ordinance from 2002 (Foreigners Regime) which was significantly amended, and Emergency Ordinance 2007 (on employment and secondment of foreigners in Romania), which was repealed and replaced. However, the changes were implemented after the

deadline for transposition and only after infringement proceedings had begun. Nevertheless, Romania added equal treatment clauses and widened the single permit's coverage as much as possible. It enlarged the range of foreign workers who do not need notice of employment issued by the General Inspectorate of Immigration in order to sign a contract. This group now grew to encompass:

- TCNs accessing the labour market in accordance with bilateral treaties,
- TCNs holding long-term residence permits in Romania,
- TCN members of families of Romanian citizens,
- victims of human trafficking,
- the children of permit holders upon turning eighteen,
- the family members of sponsors following the death of the sponsor or after a divorce
- students (for part-time work).

Transposition in Romania saw the Inspectorate General for Immigration introduce a new identification document explicitly called the Single Permit. Although not regulated by the Directive, transposition also gave rise to new conditions for obtaining the Single Permit. Employers had to show that they had no criminal record for offences under the Labour Code or committed with intent against individuals. Another legal requirement of employers was that they should not have been sanctioned in the previous three years for infringements related to the employee register.

In Finland, the Directive's time limit on processing and equal treatment requirement compelled amendments to a number of laws governing public services.

Italy used transposition as an opportunity to make other changes to legislation that the Directive did not actually mention.<sup>10</sup> One important change was to allow the Single Immigration Counter to stop processing applications once the annual cap had been reached. The purpose was to save staff from processing applications for which permits would not be issued due to insufficient quotas. Maximum processing times under the Directive are in fact longer than those allowed under Italian legislation, and transposition actually extended them. In practice, however,

processing times are much longer than either the prior or revised legislation allows.

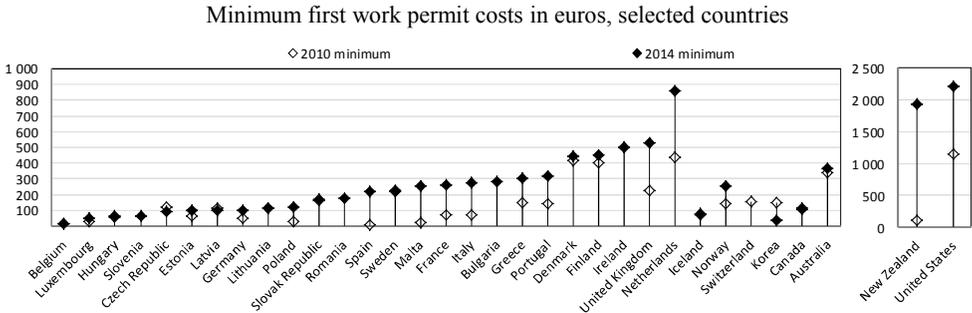
For Luxembourg, transposition was a chance to reduce sector and occupation restrictions to the first year of employment rather than up to three years. Transposition also enabled the country to renew permits for labour-market-tested jobs for up to three years, one year more than the previous limit. Otherwise, Luxembourg's system remained much the same, save that it could now indicate the permission to work in family permits.

### *Transposition often coincided with fee increases*

The Single Permit Directive states that fees may be charged for issuing permits and that “the level of such fees shall be proportionate and may be based on the services actually provided for the processing of applications and the issuance of permits”. The Directive does not specify any ceiling on fees, and countries charge a wide range of fees for the initial work permits covered by the Directive. Jurisprudence related to the issuance of the EU Long-Term Residence permit suggests that permit fees should be “reasonable and fair and they must not discourage third-country nationals who satisfy the conditions laid down by that Directive from exercising the right of residence conferred on them by that Directive”.<sup>11</sup>

There is no single benchmark for work permit fees and individual countries practice different policies. Most raised their fees over the transposition period, although not necessarily for reasons related to transposition (Figure 4.5). Nonetheless, fees are never more than one month's salary, although benchmarks used by European institutions for establishing proportionality are lower, and include for instance the minimum wage, comparisons with the costs for the issue of national ID cards and cards for mobile EU citizens. For the single permits, many permits issued are for one year or even less, so any benchmark should take into account potential returns – migrants' earnings – to the permit. Low-income countries such as Bulgaria and Romania levy fees which, even if high relative to the benchmark, are still below the monthly average wage. More importantly, fees in most EU Member States also remain below the fees charged in many non-EU OECD countries (OECD, 2014a). Fees in the Netherlands, however, are higher than in many non-EU OECD countries.

**Figure 4.5. Fees in many EU Member States were raised with transposition, but are still lower than in non-EU countries, 2010 and 2014**



Source: OECD analysis of national fee tables, 2010 and 2014.

### ***Equal treatment under the Directive***

One key purpose of the Single Permit Directive is to ensure third-country workers enjoy equal treatment with nationals, and this is mainly to prevent the exploitation of third-country nationals, which can also distort the labour market for nationals. Member States may apply restrictions in relation to access to housing and to study grants. Although admission criteria are not covered by the Directive, in practice, some admission criteria for employment may include self-support requirements. Member States may withdraw work permits on the grounds of insufficient income or only renew permits if a person is still in employment, which may limit the value of some of these equal treatment rights. In Austria, for example, residence permit applicants must not only have the means to live and work without resorting to Austrian welfare but must also, at the time of application, provide evidence of a legal title to accommodation that meets local standards and is suitable for the applicant and his/her family. Such a requirement puts a *de facto* limit on demand for – and access to – public housing. It creates a barrier for workers applying from abroad, for whom finding proper accommodation before signing the contract can be very difficult. Yet such requirements are in accordance with the Directive, since it regulates procedures rather than conditions or criteria for admission.

Lastly, the Single Permit Directive does not specify which type of access to employment the third-country national shall be granted, however it requires that the *type* of access to employment granted by the Member State shall be clearly stated on the permit. For instance, the

permit should indicate if employment is allowed only for a specific post or sector, if it is valid for any type of employment. Member States may respect this requirement using different solutions, for example by specifying the article which allows the permit to be issued (as in Lithuania) or by stating “right to work”, as Poland does. Member States indeed often qualify the “right to work” granted to third country national workers. Some tie temporary work rights to a specific employer and position and any change requires a new work permit and – sometimes – a labour market test. In other words, if the authorisation to work is tied to a firm, sector or location, the actual permit must specify so. Otherwise, it is not sufficient proof of the right to work in that particular location and job in the event of a labour inspection. If the permit is not linked to a specific post, the right to work shall be clearly stated so that the permit holder can prove to a prospective employer that the authorisation grants a right to take up new employment. However, the Single Permit has also, in some cases, helped make TCNs’ right to work explicit. In Italy, for example, where generic work and family permits grant free labour market access, transposition led to the right to work being explicitly stated in family permits for the first time.

### **The EU Blue Card: Almost invariably a new permit category**

#### ***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***

Unlike the Students Directive, where all EU Member States had provisions in place prior to transposition, the EU Blue Card Directive created a permit category for which there were few prior national equivalents. Member States had three options for transposing the Directive:

- substitute an existing permit,
- create a new permit category alongside similar existing ones,
- create a new permit for which no functional equivalent existed.

One Member State which substituted its existing permit was Germany, which transposed the EU Blue Card Directive into its national legislation in August 2012. It did so as part of a general revision of the labour migration framework for skilled migrants – a complex framework that focused on highly educated foreigners with a job offer matching

their qualifications. Germany took advantage of transposition to do away with its permanent residence permit for highly paid foreign workers – little used due to its high salary cap – and replace it with the EU Blue Card, a temporary renewable salary-based permit. While the EU Blue Card does not grant permanent residence, recipients in Germany may apply for German permanent residence sooner than foreign workers holding other categories of German work permit.

A second approach was that taken in Luxembourg which, in 2008, had introduced a permit for highly qualified workers. The criteria for qualifying for the permit were not far removed from those of the future Blue Card. It set a salary threshold of three times the minimum social salary for an unskilled worker – close to the eventual Blue Card threshold. Similarly, the permit recognised five years of work experience as equivalent to a higher education degree, just as the Blue Card Directive does. Luxembourg transposed the Blue Card Directive by adjusting its 2008 permit criteria to incorporate elements of the Directive, the main change being that TCN workers no longer had to wait a year before their families could join them.

Portugal, too, had introduced a permit in 2007 for highly skilled workers, though when it transposed the Blue Card Directive, it left the existing permit on its books. The permit mirrored the Blue Card threshold, but added an alternative method of calculating salary thresholds – three times the minimum social benefit amount.

Another approach was that taken by countries which opted for a minimal application of the Directive, as the EU Blue Card was little different from those that they already used for foreign workers in general and highly qualified workers in particular. What distinguished the new Blue Card was principally the name and its mobility provisions. Belgium, which used the minimal transposition approach, implemented the Blue Card alongside its existing “B” Permit, albeit with a higher salary threshold.

Italy had no permit for highly skilled TCN workers, although a patchwork of exceptions to its volumes-of-admission cap allowed employers to recruit highly qualified foreign workers. When Italy introduced volumes of admission in 1998, employers complained that there was no room left for highly qualified workers. The government responded by setting aside provisions from 2002 for nurses and other highly qualified workers – it later actually exempted them. Nonetheless, such workers received a work permit with conditions identical to those

of non-qualified contract workers. To further simplify procedures for highly qualified workers, firms were allowed from 2010 to sign a protocol with the Ministry of Interior for fast-track recruitment, but the permit conditions remained the same as for other categories. Similarly, Bulgaria and Romania, had no permit specifically targeting highly qualified workers.

Lithuania applied a general skills threshold requirement in all permits, although the threshold was more flexible than in the transposed provisions of the Blue Card Directive. The EU Blue Card thus created a distinct permit category. In line with Lithuania's historically restrictive approach to labour migration, a high threshold was set for the EU Blue Card.

In some countries, transposition reflected political practices, such as negotiations between social partners. In Spain, when the Ministry of Labour drafts legislation, it consults the social partners in talks and the trade unions have considerable say in determining the final form of legislation. As transposition occurred at a time of severe economic contraction and spiralling unemployment, the legislative priority was to protect the domestic labour market. As a result, Spain applied narrow eligibility channels for the EU Blue Card Directive. It not only disallowed in-country issuance to TCNs legally present but not in possession of a valid residence permit or national long-stay visa, but outdid the Directive's wage requirements by pegging the salary threshold to the mean wage in the relevant occupation (using internal circulars rather than actual legislation). Since highly-qualified occupations have above-average salaries, the peg made the EU Blue Card more difficult to obtain than if the salary were calculated using the average of all salaries.

Where permits for highly qualified workers were already in place, the Blue Card may eventually supersede them. The Czech Republic transposed the Blue Card in 2011 while maintaining the national Green Card scheme for workers, which it introduced in 2009 and incorporates a skilled workers category – Type A. However, uptake of the Green Card was much lower than expected and, despite differences between the two cards, it scrapped its Green Card in 2014. At the same time, it undertook reform of its general work permit framework as part of the transposition of the Single Permit Directive, leaving the Blue Card as the only scheme for highly qualified workers. Transposition was also an opportunity to put new restrictions on recruitment and extend them to all types of work permit: employers who had been sanctioned in the previous 12 months for failure to declare their employees were banned from recruiting Blue

Card and permit-holding employees, and the salary threshold principle was applied to all permits.

France introduced it alongside two other permits for qualified workers – the General Contract Worker Permit, and the Skills and Talents Permit – without any particular effort to encourage applicants to use the Blue Card. The French EU Blue Card is likely to evolve in the future, though. A 2016 law made the Blue Card a sub-category of a new multi-year permit (the Talent Passport) with more advantageous conditions for highly qualified TCNs than under the current transposition.

A number of Member States already had permits for highly qualified workers which they neither scrapped nor replaced with the EU Blue Card. Finland, for example, transposed the Directive in such a way that it did not impinge on the country's specialist permit. As most qualified incomers spend less than one year in Finland or have salaries below the Blue Card threshold, it left the existing framework in place to cover them. Although the Blue Card Directive was transposed in 2012, it did not figure in the 2020 Migration Strategy published the following year (Finnish Ministry of Interior, 2013).<sup>12</sup>

As for the Netherlands, it kept its complex system for highly qualified migrant workers as the main channel of entry. The framework, which dates back to 2004, is based on an expensive and increasingly cumbersome employer sponsorship process. Once authorised as sponsors, however, employers can recruit individual workers rapidly and simply, as long as they meet a salary threshold.

The Netherlands implemented the Blue Card with a higher salary threshold, more than 25% higher than the highest salary bracket for skilled migrants under the national scheme. Blue Card procedures are also more complex than under the national scheme. Further, post-transposition policy discussion has largely neglected the Blue Card. The social partners' joint council that advises on issues of labour migration, the *Sociaal-Economische Raad* (SER), is extensively consulted by the government and Parliament. It produced two reports on labour migration in 2013 and 2014. Neither mentioned the Blue Card. Nor did the government cabinet's 2014 response to the SER report.

Austria started to consider plans to introduce a national permit that would attract highly qualified foreign workers in 2008, with Blue Card discussions in the background. It implemented the plans in 2011, at the same time that it transposed the Blue Card Directive. The national

scheme, the Red-White-Red Card, encompasses the same highly qualified workers as the Blue Card, but with more flexible criteria under different points-based systems for five different target groups. Most new permits have been issued under the national scheme, which has not substantially changed total inflows. Indeed, to favour its Red-White-Red Card system Austria did not take up some of the Blue Card's optional elements, such as the five-year experience clause. What is more, the Austrian system encourages EU Blue Card holders to switch after one year, or when they first renew the permit, to the more favourable national scheme, which affords total labour market mobility within Austria.

In one instance, transposition took place even though policy makers put little stock in the instrument. Even as the Slovak Republic was transposing the Blue Card, it was making plans to create its own Slovak Card explicitly as a “modification of the Blue Card” (Government of Slovak Republic, 2011). This Slovak Card remained part of government objectives in the area of economic migration through 2014. The Slovak Card was meant to attract and retain skilled migrants and to be more attractive than the EU Blue Card, of which only a handful had been issued. It was, however, never developed, and disappeared from policy plans in 2015.

Spain, which had carried out minimal transposition because of its dire economic situation (see above), re-examined its policy for highly qualified migration in 2012.<sup>13</sup> It felt that the EU Blue Card's definition of highly qualified professionals was too rigid and its wage limits too high, which particularly penalised young graduates – even if Spain itself had chosen these high limits. Furthermore, since the shortage list had dwindled due to the employment crisis, most qualified jobs were subject to the LMT. Negotiating changes to the EU Blue Card transposition would have involved the same process as its introduction, there was little prospect of the Ministry of Labour amending legislation to ease access to the EU Blue Card by using a single national salary threshold, opening it up to the five-year experience provision, or allowing in-country issuance.

Accordingly, the Ministry of Economy, which has fewer constraints when developing new legislation, introduced an economic measure that incorporated a new national permit for highly qualified professionals foster the internationalisation of Spanish companies. The scheme thus had an explicit focus on the needs of businesses.<sup>14</sup> The groups that it targeted included managers and highly qualified staff from large businesses and SMEs in strategic sectors or in projects of general interest – based on firm and job attributes, rather than on those of the worker.

The match between worker and job is assessed on a case-by-case basis, covering tasks, qualifications, salary and experience. An additional category focused on workers' educational backgrounds: graduates of universities and prestigious business schools. Although the national scheme's categories overlapped with those of the EU Blue Card, they were based on criteria – employer, project, and university attended – which are not considered under the Blue Card.

### ***Volumes of admission and exemptions***

There are two main general restrictions on labour migration which can be extended to EU Blue Card applicants: caps (or “volumes of admission”) and the labour market test. Volumes of admission apply on initial admission to the Member State in question but not when third-country nationals already legally resident in that EU Member State change status.<sup>15</sup>

Only a few EU Member States rely on volumes of admission to manage labour migration inflows. They are Italy, Greece, Estonia and Hungary. Although Italy makes the widest use of the instrument, it exempts all skilled workers, including EU Blue Card recipients. Greece also sets two-year volumes of admission for each Greek region according to occupation and skill level. The same procedure is used for other types of labour migrants, with separate volumes determined. A joint ministerial decision, issued in the last quarter of every second year determines the maximum number of highly qualified posts that can be filled by citizens of third countries using the Blue Card. In 2014, it was none, for 2015 and 2016 this has been set at 44.

In Estonia and Hungary, annual volumes of admission have not affected actual issuance of work permits, as they are set too high to be reached. In both countries the EU Blue Card is subject to the same general volumes of admission as other permits.

When it transposed the Directive, Cyprus applied volumes of admission specifically to EU Blue Cards rather than to overall labour migration. It set volumes at zero, obviating any uptake of the permit and leaving highly qualified applicants to use the standard channel of the labour market test.

### ***Labour market tests and exemptions***

The labour market tests that many EU Member States use in their general labour migration schemes vary in degree of strictness, from

nominal to real tests. Even where the LMT is difficult to pass, it generally affects lower paid, less qualified employment where local candidates are more numerous. The prominent role of the public employment services in LMT vacancy requirements and approval (Table 4.A1.1) also makes the LMT less likely to hinder recruitment of the highly qualified, since the PESs handle less qualified in most EU Member States.

No country that had a LMT in place for labour migration schemes introduced a LMT to regulate Blue Cards. A number of countries exempted Blue Card applicants from LMTs for general work permit schemes. Germany exempts all jobs with salaries above the national EU Blue Card limit from the LMT, regardless of whether a Blue Card is issued.

Where the LMT represents a real obstacle to labour migration, its extension to the Blue Card can affect uptake. Austria applies LMTs to both the Blue Card and its other work permit schemes, including the Red-White-Red Card (except for very highly skilled migrants). In France, the LMT is one of the main challenges for labour migrants, and the country applies it to all foreign workers under the general scheme with the exception of those employed in shortage list occupations. It exempts Blue Card applicants from the LMT. Hungary has extended the general LMT to Blue Card applicants, although other factors prevent uptake of the permit. Lithuania, for its part, applies a labour market test to all permit renewals – including first renewals in the first two years Blue Cards permits – unless the Blue Card holder’s salary is above three times the national average.

### **How does the Blue Card compete with national schemes?**

EU Blue Card criteria, which may make it less competitive than national schemes, are:

- the minimum one-year contract duration;
- the relatively high salary threshold;
- and the need to demonstrate qualifications, either academic or professional.

Advantages of the Blue Card, which can be provided only by EU-level legislation, are:

- it affords TCN migrants mobility within the internal market to another EU Member State without their having to exit outside the EU to apply for a new visa and work permit for the next Member State of employment;
- it enables migrants to accrue periods of residence in different Member States to acquire long-term residence status.

In addition, the Blue Card Directive contains elements which could be more favourable relative to national schemes, principally:

- it puts a ceiling on processing times;
- it creates possibilities for migrants to be accompanied by their families (immediate in case of mobility to a second Member State) and grants family members immediate labour market access;
- it allows Blue Card holders to seek work in the event of unemployment.

The EU Blue Card has clearly created a more favourable category of permit in a number of EU Member States which previously had no special category for highly qualified workers.<sup>16</sup> Before they transposed the Blue Card they had only general work permit programmes in place. While the EU Blue Card provides more favourable conditions than the standard work permit in those countries for migrants who meet the Blue Card criteria, those same criteria also clear the way to alternative permits which require demonstrating fewer qualifications.

The Blue Card has struggled to compete with national schemes whose fewer documentation requirements make them simpler to access, as in France, the Netherlands, and Belgium, and in countries where the general framework is very open, such as Sweden.

Member States are not required to maintain competing national schemes. Indeed, the Blue Card has been most successful in Germany and Luxembourg, Member States which have largely replaced national schemes for the highly qualified with the Blue Card.

### ***Faster processing time***

Article 11.1 of the Blue Card Directive sets a 90-day maximum processing time, although that time applies to a “complete application”, which may include documents that take longer to assemble. (The

transposition of the Single Permit Directive also aims to ensure a statutory maximum processing time of 120 days for work permits covered under the Directive). Time taken to recognise qualifications is not counted towards the 90-day deadline. The 90-day limit has not led to shorter times in the transposing countries, as their processing times were already less than 90 days (OECD, 2013). In a number of countries, mandated processing times are shorter for general permits (e.g. 60 days in Italy), while for others the EU Blue Card time is shorter. In Spain, other work permit applications are automatically deemed to have been turned down if no response is issued within 90 days, while the Blue Card application is automatically approved.

Due to its documentation requirements, the EU Blue Card may take more time to evaluate and process than other work permits. This is the case in Sweden, where standard work permit applications are handled in less than a month, and EU Blue Cards generally take longer, although processing time for both has stretched in 2015-16 as staff has been devoted to dealing with the uptick in asylum applications.

National requirements may be lifted, however, for the EU Blue Card, so enabling faster admission. The Netherlands, for example, exempts mobile Blue Card holders from the requirement to obtain an MVV temporary permit for entry.

Lithuania determines processing time limits according to the income level of the applicant. At twice the benchmark salary, processing must take place within 60 days. At three times, it must be completed in 30 days.

A number of countries have gone further than the conditions established by the Directive, implementing fast-track processing for permits which include – but are not limited to – the EU Blue Card.

- Spain, for example, fast-tracks processing for investors, ICTs, highly-qualified executives, holders of MBAs, and Blue Card applicants.
- Italy allows employers who have signed protocols with the Ministry of Interior (similar to approved sponsorship) to skip the standard authorisation procedure.
- Lithuania allows applicants to pay double the standard fee to halve processing time.

- France has a single window for fast-track processing. Though it cannot be used for the standard work permit, it is available for EU Blue Card applicants as well as ICT transferees and applicants for the little-used Skills and Talents Permit.
- Bulgaria has committed to a seven-day turnaround for Blue Card issuance by the Migration Directorate, although the Employment Agency has 15 days to approve the work permit prior to issuance.

It is important to distinguish between initial issuances of permits to third-country national workers arriving from abroad, and those issued to TCNs already in the country under another status (principally, employment or study).

Where a worker holding a job offer from an employer is waiting for his or her initial permit to be issued, it is usually in the interest of both employer and employee that the procedure is as fast and simple as possible so that work can begin immediately. As delays can occur at many points in the process, Blue Card requirements for the recognition of experience and qualifications can slow down the application and drive applicants towards procedures where recognition is not required. Hence, the high share of first-time Blue Cards issued for status change. In Germany, which issues almost nine out of ten Blue Cards, 60% were issued to TCNs already in the country in 2014, the proportion rising to 63% in the first three quarters of 2015. For former students, national degrees obviate the recognition process. For workers already in employment, there is no urgent need to obtain a Blue Card and long processing times are not an obstacle.

### ***Potentially restrictive application of the salary threshold***

The high Blue Card salary threshold is meant to confine eligibility to highly qualified workers, with an above-average productivity premium as the justification for the higher salary. Setting a threshold was a subject of debate during negotiations, with the Commission's initial proposal of three times the minimum wage reduced to 1.5 by the Civil Liberties Committee of the European Parliament, which then agreed to 1.7 in November 2008.<sup>17</sup> In none of the talks was the reference figure clearly defined, nor was the proposed threshold examined to see exactly where it fell in the salary distribution at European or national levels. The Blue Card salary threshold applied, however, was much higher than pre-existing salary thresholds in countries which used explicit thresholds

(Chaloff, 2016). They included Austria, Belgium, Estonia, Finland, Luxembourg, the Netherlands and Spain.

Table 4.1 shows EU Member States' mean salaries per employee estimated by different methods. The first is based on national accounts and simply divides wages by the number of employees. The second column reports the OECD full-time equivalent salary, calculated by taking the ratio of the average numbers of hours worked by employees working at least 30 hours weekly to the total number of average hours worked, then applying it to the national accounts ratio. The third column is based on European Union Statistics on Income and Living Conditions (EU-SILC) and the German Socio-Economic Panel survey (SOEP). It includes total gross annual wages and bonus incomes for employees working more than 35 hours a week. Adjusting for part-time work has a particularly strong effect in countries where it is widespread, as in the Netherlands. EU-SILC tends to produce figures which are close to OECD estimates, albeit with several outliers.

**Table 4.1. Mean salaries are very different according to the reference values used**

Mean annual income in selected EU Member States according to national accounts and survey data, 2013, in euros

	Eurostat National Accounts/Employees	OECD Full-time equivalent	EU-SILC employed more than 35 hours	Blue Card	Ratio b/a	Ratio c/b	Ratio d/c
	(a)	(b)	(c)	(d)			
Austria	34 800	39 100	41 400	56 000	1.12	1.06	1.35
Belgium	38 400	42 400	41 300	51 000	1.1	0.97	1.23
Czech Republic	11 400	11 600	11 100	16 400	1.02	0.96	1.48
Germany	30 800	35 700	39 200	47 600	1.16	1.10	1.21
EST	11 800	12 200	10 100	17 100	1.03	0.83	1.69
Greece	17 000	18 600	18 600	29 100	1.09	1.00	1.56
Spain	25 200	27 000	24 000	33 800	1.07	0.89	1.41
Finland	36 900	39 900	41 500	57 700	1.08	1.04	1.39
France	33 100	35 600	30 300	52 800	1.08	0.85	1.74
Hungary	9 500	10 200	6 800	11 600	1.07	0.67	1.71
Italy	25 700	28 400	28 500	24 800	1.11	1.00	0.87
Luxembourg	54 100	58 500	55 100	69 900	1.08	0.94	1.27
Netherlands	34 900	45 300	52 000	61 500	1.30	1.15	1.18
Poland	10 200	10 500	8 900	15 200	1.03	0.85	1.71
Portugal	15 900	15 900	14 200	15 100	1.00	0.90	1.06
Sweden	39 500	42 800	41 600	60 500	1.08	0.97	1.45
Slovenia	20 900	22 000	20 000	27 600	1.05	0.91	1.38
Slovak Republik	11 400	11 700	8 700	15 000	1.03	0.74	1.72
Denmark	47 900	54 400	56 100		1.14	1.03	
Ireland	40 500	49 700	45 400		1.23	0.91	
United Kingdom	31 800	38 000	35 700		1.19	0.94	

Source: Eurostat; OECD Employment Database, European Union Statistics on Income and Living Conditions (EU-SILC), German Socio-Economic Panel survey (SOEP).

The freedom to use different reference values has translated into barriers which are quite different from one country to another. In practice, most EU Member States have applied a salary threshold nominally close to (or below) the minimum specified in the Blue Card Directive. Romania has very low average salaries and set its threshold at four times that level, while Lithuania made it twice the average. Belgium applies a salary threshold about 30% higher than in its standard “B” work permit – the main reason why the “B” permit is more popular. Finland, likewise, applies a threshold which is 60% higher than the threshold for specialists. As for Estonia, the threshold is higher for the Blue Card than in the national permit (1.24 times the average salary), although specialist workers are generally subject to a higher threshold (twice the national average).

Since salary distributions vary across EU Member States, restrictiveness (the share of employees earning above the threshold) varies much more widely than the difference between the reported mean and the national threshold. For example, according to the OECD Employment Database, only 11% of workers in Italy earn more than the 1.5 threshold, while in Portugal, 28% do. The figures indicate that a salary criterion would have a more restrictive effect in Italy than in Portugal. Nordic countries with compressed wage structures have more narrow distributions, so multiplying the mean by 1.5 would put the threshold in a higher decile of income.

Using EU-SILC survey data, it is possible to evaluate the share of the employed population already earning more than the reference threshold in EU Member States (Figure 4.6). In most of them, less than 15% of the population earns more than the Blue Card threshold. In some, including the Netherlands, Germany and Luxembourg, the figure is closer to 25%, while in Italy and Malta it is above 50%. If the median or mean salary (calculated within SILC observations) is used, the range is less variable.

### **Box 4.1. Using the European Union Statistics on Income and Living Conditions Survey to determine salary distributions**

The EU Statistics on Income and Living Conditions (EU-SILC) is a longitudinal cross-sectional survey conducted in EU Member States and co-ordinated by Eurostat. It contains information on the characteristics of employees, their employment and their income and allows examination of the distribution of salaries. In this analysis, the figure is the gross annual income of the full-time employed (EU-SILC also included part-time workers who work more than 35h per week).

In the EU-SILC survey, the highly educated group is built from Levels 5 and 6 from the 1997 International Standard Classification of Education (ISCED 1997) and includes Level 5B classification criteria (first stage of tertiary education, short practical/technical/occupationally specific programmes leading to professional qualifications). The EU-SILC definition of “highly educated” thus includes individuals who have not completed tertiary education. EU-wide, 72% of the tertiary-educated have 5A and 6 levels, which denote completed tertiary education. Still, in some EU Member States, as much as half of the “tertiary educated” population in EU-SILC can be assumed to belong to the ISCED 5B group. The analyses using higher education levels presented here should therefore be considered as conservative estimates – they suggest that fewer of the “highly educated” meet the threshold than is actually true, as ISCED 5B is associated with lower incomes than ISCED 5A and 6.

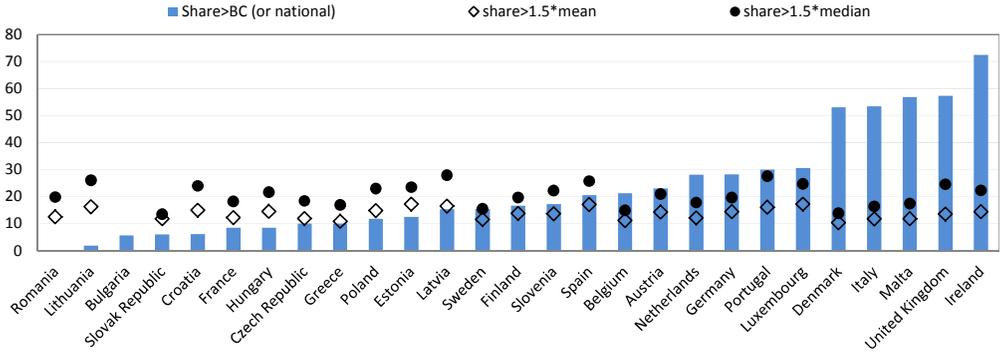
For analysis of specific education and age groups, datasets from 2011 to 2013 were pooled to secure Eurostat reliability thresholds. Otherwise the latest available data – 2013 – were used. Observations with zero income are dropped, even if they work on a full-time basis. The mean and median annual incomes of all observations are produced on that basis, and the 1.5\*mean and 1.5\*median were applied to all groups with different characteristics as standards.

Finally, the Blue Card thresholds and the national thresholds for each country refer to the value set in 2014. As SILC data for Germany were not available, GSOEP survey data were used instead.

**Figure 4.6. Only a small fraction of the total employed population earns more than the EU Blue Card threshold**

Income data 2011-13, thresholds in 2014

Share of the full-time employed whose salary is above 1.5 x mean, 1.5\* x median, and actual threshold (Blue Card and other national schemes)

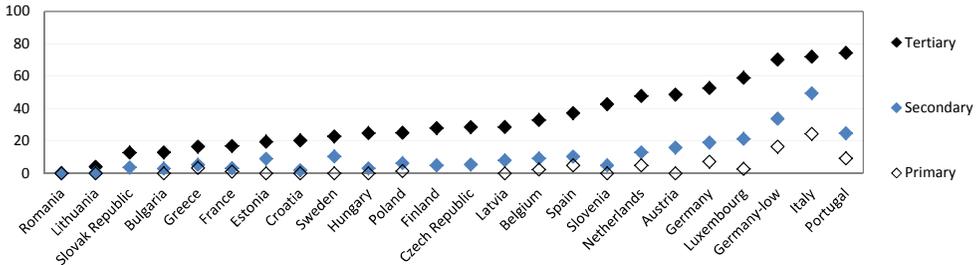


Source: Statistics on Income and Living Conditions, 2010, including gross earnings and annual bonuses and allowances not paid at each pay period. Data for Germany from the German Socio-Economic Panel Survey, 2010, gross earnings only, full time or at least 35 hours weekly employment.

A more exact means of assessing the Blue Card salary threshold is to examine the share of highly educated national workers earning more than the threshold. For statistical reasons, higher education here includes non-university post-secondary studies. They are generally less well remunerated than degree-level qualifications, so the figures underestimate the ease of meeting criterion. Figure 4.7 shows the share of full-time workers earning more than the Blue Card threshold by educational level. Some countries are extremely restrictive even for the highly educated. Such restrictiveness in Lithuania and Romania, for example, is partly attributable to the thresholds being set at multiples of the statutory minimum. In Sweden and Finland, where about 20%-25% of highly educated workers meet the threshold, it reflects wage compression. Only a third of Member States have thresholds which are met by 40% to 50% of highly educated workers, with the figure rising to over 70% in Portugal and Italy. In a few countries – notably Italy and Luxembourg, too, to a lesser degree – a significant fraction of the medium-educated earn enough to meet the national threshold.

**Figure 4.7. The Blue Card threshold is far less restrictive for more highly educated workers, selected EU Member States, 2010**

Share of gross full-time earnings above national the Blue Card threshold, by education level



*Note:* Tertiary-educated refers to ISCED 1997 levels 5b, 5a and 6. DEU-low refers to the lower threshold.

*Source:* Statistics on Income and Living Conditions, 2010, including gross earnings and annual bonuses and allowances not paid at each pay period. Data for Germany from the German Socio-Economic Panel Survey, 2010, gross earnings only, full time or at least 35 hours weekly employment.

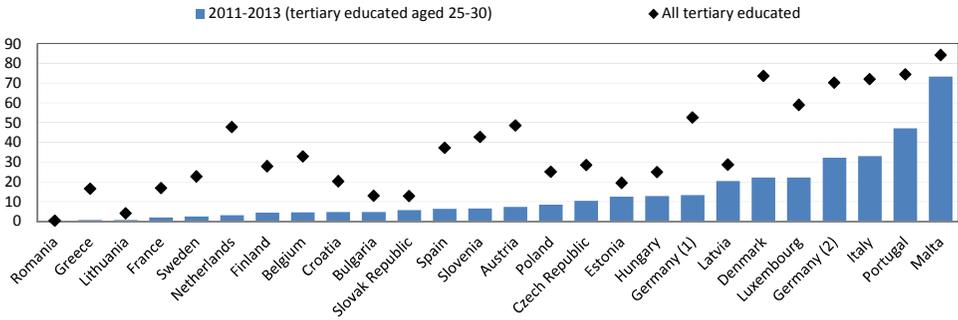
The EU Blue Card salary threshold can be hard for young workers to reach (Figure 4.8). In France, for example, the salary requirement for the Blue Card (EUR 52 750) is set above new graduates' usual starting wage. As newly graduated international students are an important source of labour in France, most end up with the work permit that was in place prior to the EU Blue Card.<sup>18</sup> Figure 4.8 shows how the Blue Card is quite restrictive for earnings of new graduates. In most countries, only a fraction (between 2% and 7%) of highly educated 25-to-29 year-olds earn above the Blue Card threshold, even when a much larger share of the total highly educated population is above the threshold. Italy and Portugal are less restrictive for new graduates because their thresholds are low, while Luxembourg, which issues a relatively large number of Blue Cards, is also favourable thanks to the higher salaries that highly educated young people enjoy. Nonetheless, the overall picture is one of restrictive thresholds.

The analysis above relies on survey data to examine income distributions by age and education. Such detailed information can be used at a national level to set thresholds. Spain applies a threshold relative to the specific occupation as defined by the three-digit International Standard *Classification of Occupations* (ISCO). It translates into a much higher threshold than in other countries, since the average salary of highly qualified occupations (EUR 53 200 for ISCO Group 1

and EUR 35 000 for ISCO Group 2) is much higher than the average salary for all occupations (EUR 22 700 in 2012). Spain, however, also makes the broadest possible use of the lower salary threshold, applying the 1.2 multiple to all ISCO Group 1 and 2 occupations. In both cases, Spain uses survey rather than administrative data to determine salary levels.

**Figure 4.8. It is much harder for young educated people to meet EU Blue Card thresholds, 2010**

Share of gross full-time earnings above national the Blue Card threshold, tertiary educated total and tertiary educated, aged 25 to 29 years old



Note: DEU(1) refers to the shortage list threshold, DEU(2) to the general threshold.

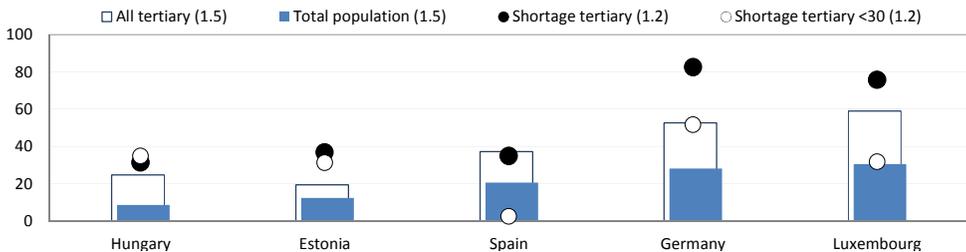
Source: Statistics on Income and Living Conditions, 2010.

In the countries that apply lower salary thresholds, it is much easier to qualify for shortage occupations (Figure 4.9). When salaries are higher within shortage occupations and the threshold is lower, a larger share of the employed qualify. The exception is Spain, where the benchmark moves with the occupation, and is therefore actually harder to reach.

The distribution of income that emerges from EU-SILC survey data looks very different from one EU Member State to another (Chaloff, 2016). In countries where incomes are concentrated (where mean and median are close, and the distribution looks like a steep peak), slight shifts in thresholds translate into greater changes in eligibility. In countries with long, flat tails in the income distribution, shifting the threshold makes less difference.

**Figure 4.9. It is much easier to qualify for shortage list occupations in certain EU Member States**

Share of the highly educated full-time employed earning above the regular and shortage thresholds



*Note:* Tertiary educated refers to ISCED 1997 levels 5b, 5a and 6. Shortage occupations are calculated using only the occupations considered in shortage by each Member State.

*Source:* Statistics on Income and Living Conditions, 2010, including gross earnings and annual bonuses and allowances not paid at each pay period. Data for Germany from the German Socio-Economic Panel Survey, 2010, gross earnings only, full time or at least 35 hours weekly employment.

The most effective way to evaluate whether the salary threshold is restrictive would be to look at the actual salary distribution of recipients of the EU Blue Card (and competing national permits). That is the approach taken by the UK Migration Advisory Committee, for example, in evaluating the Tier 2 salary scheme (2015), and in analyses made by the Dutch national scheme (OECD, 2016). Comparisons allow analysis of whether thresholds exert a strong clustering effect or whether the salaries of actual recipients are well above the threshold. However, most EU Member States do not record the salary information of work permits recipients, making the analysis impossible at the national level, let alone at the European level.

### *Exemptions from the labour market test*

Although Article 8(2) of the Blue Card Directive allows labour market tests, exemptions are applied by Member States (Table 4.2), as in France and Luxembourg. Although Italy required Blue Card applicants to submit to the LMT in its 2012 transposition, it simplified the LMT in 2013 for all work permits, stipulating only that employers consult the public employment service prior to requesting authorisation.

**Table 4.2. Labour market tests applying to national schemes and EU Blue Cards**

	EU Blue Card	National scheme for highly qualified	General national scheme
Austria	Yes (most cases)	Yes (some cases)	Yes
Belgium	Allowed (but not applied)	No	n.a.
Bulgaria	Yes (except shortage occupations from 2016)	n.a.	Yes
Czech Republic	Yes	n.a.	Yes
Estonia	Yes	Yes (some exceptions)	Yes
Finland	No	No	Yes
France	No	Yes	n.a.
Germany	No	No	Yes
Greece	Yes	n.a.	Yes
Hungary	Yes	n.a.	Yes
Italy	Yes (except pre-approved employers)	Yes (except pre-approved employers)	Yes
Latvia	Yes	n.a.	Yes
Lithuania	No if salary > 3 times the average	Yes	n.a.
Luxembourg	No	n.a.	Yes
Netherlands	No	No	Yes
Poland	Yes	n.a.	Yes
Romania	No	n.a.	Yes
Slovak Republic	Yes	n.a.	Yes
Slovenia	Yes	n.a.	Yes
Spain	Yes	No	n.a.
Sweden	Yes	n.a.	Yes

Source: OECD analysis of national legislation, 2015.

Although the labour market test varies according to national practice, few Member States run substantially different ones for Blue Cards than for other work permits. One example is the Czech Republic, which uses separate registers for vacancies under the Blue Card and under its general scheme, although vacancies can be listed in both. Employers must therefore decide, before posting a vacancy, that they are interested in recruiting an EU Blue Card employee, or they must list the vacancy after a candidate requests sponsorship for an EU Blue Card. Each time the EU Blue Card holder wishes to change employment, a new LMT is necessary. There were about 150 vacancies in the Blue Card vacancy register in late January 2016, mostly in information technology and medicine.

The LMT may also be dropped if seen as an obstacle to uptake of the Blue Card. In 2015, as part of efforts to make the Blue Card more attractive, Bulgaria proposed waiving the labour market test for shortage occupations with a higher salary level. The proposal is still under discussion, however.

LMT refusal rates are generally low among highly qualified and high-salary employment (OECD, 2013), so LMTs are more likely to cause delays in procedure than refusals of employer requests.

### ***Exemptions from employer sponsorship schemes***

The employer sponsorship requirement in the Netherlands does not apply to the EU Blue Card scheme, although employers may choose to use it. If they do, the statutory processing times are lower – two weeks instead of the maximum 90 days allowed by law for EU Blue Cards, even if actual times for EU Blue Cards are less than the maximum allowed. In Italy, a sponsorship scheme introduced in 2010 for executives and other highly qualified employees allows employers to sign a protocol with the Ministry of Interior, so skipping the mandatory vacancy listing and approval process. Italy allows the same approach and procedure for EU Blue Card issuance. Sponsorship procedures favour larger enterprises planning to hire large numbers of highly qualified workers.

### ***More favourable family reunification conditions***

One of the main benefits of the EU Blue Card over other schemes is its provisions for accompanying family members. Few Member States allow the families of TCN migrants to accompany them at initial admission, requiring that they wait before making a sponsor application. Processing times for dependents are faster in Belgium for Blue Card holders (four months) than for “B” permit holders (six months), and the accommodation requirements are slightly more relaxed. Lithuania requires at least two years residence and the prospect of permanent residence before families can be reunified under the national scheme; this is not required for the EU Blue Card. In the many countries that restrict family reunification, the Blue Card is an attractive proposition for migrants who wish to bring their dependents with them along soon after arrival (no more than six months, for the first permit). However, some Member States may grant admission to accompanying families in their national permits for the highly qualified (e.g. Spain).

Some Member States, such as Sweden and the Czech Republic – or the Netherlands and Austria for skilled workers – have accompanying family provisions for all labour migrants who meet basic sponsorship criteria, which makes the Blue Card less competitive. The Czech Republic scrapped its Green Card – which denied skilled migrants’ dependents the right to work – in favour of the Blue Card. Austria

exempts the families of Blue Card holders from the basic German language requirement and grants them a national permit (a “Red-White-Red Plus Card”) which can be renewed if their own income levels qualify for the relevant scheme, so they are not dependent on the EU Blue Card holder. The same benefits apply in Austria’s national scheme.

Family members’ full immediate access to the labour market is a further significant benefit of the EU Blue Card, although most countries grant it already under national schemes, and in any case the Family Reunification Directive requires that labour market access be granted after one year to family members.

The Blue Card’s advantageous conditions for family members need to be compared with those under other permits. In Finland, the national scheme remains the most widespread admission channel (for the reasons indicated above) and may ease skilled workers’ family reunification requirements. Indeed, for all family reunification situations, Finland looks at the migrants’ individual situations in applying salary requirements, factoring in the local cost of living and family size. The approach adds more discretion to national schemes, since “reducing the income requirement on a case-by-case basis for workers’ family members is one way of facilitating labour migration to Finland” (Finnish Ministry of Interior, 2013).

### ***More favourable access to permanent residence***

The EU Blue Card also allows countries to cumulate prior residence periods as an EU Blue Card holder in one Member State to qualify for long-term residence (LTR) in another. LTR is a status superior to that conferred by the Blue Card – be it as a national long-term resident, which brings full labour market mobility within the Member State, or EU LTRs, who also enjoy additional provisions for mobility to other Member States.

Few Member States have provisions specific to EU Blue Card holders that facilitate their eligibility for permanent residence. Germany does allow EU Blue Card holders to apply sooner for its national permanent residence. If they make use of this possibility they can no longer use the facilitations of the Blue Card to qualify for the EU Long-Term Residence Permit (e.g. cumulate prior periods of residence as an EU Blue Card holder in other Member States and absences allowed from the EU of up to 12 consecutive and 18 months in total). EU Blue Card holders are eligible to apply for permanent residence after 33 months, or

21 months if they have certified German language skills at the B-1 level of the Common European Framework (CEF). Other permit categories require 60 months of residence, as does the EU Long-Term Residence Permit for former EU Blue Card holders. As a consequence, few of Germany's EU Blue Card holders are likely to end up as EU long-term residents and they lose out on the possibilities of easier mobility to other EU Member States and periods of absence from the European Union of up to 24 months. By the end of 2015, in fact, about one in four German Blue Card recipients had already changed to permanent resident status under the national scheme, most of them taking advantage of the shorter eligibility period.

In Finland, most – but not all – of the national specialists are on temporary permits, and temporary stay periods do not count for eligibility in Finland. By definition, the EU Blue Card is available only to those who stay more than 12 months, with the consequence that its recipients in Finland can access permanent residence sooner than most of those on the national specialist permit. As for Austria, it allows EU Blue Card holders to switch to the more favourable Red-White-Red-Plus Card after 21 months of employment in a 24-month period. The permit allows unrestricted settlement and employment, but cancels out any eventual mobility benefit and takes the holder off the path to the EU LTR permit for former Blue Card holders.

The rights attached to the EU long-term residence for former Blue Card holders are more favourable than those for other permanent or long-term permit holders when it comes to periods of absence allowed (although conditions may be imposed) and mobility to other Member States. This permit, marked “Former EU Blue Card holder”, confers more rights than those usually offered to long-term residents: 24 consecutive months of absence from the EU, not just the Member State in question. The rights are much more flexible than for national permits, even in calculating residence periods for eligibility. Italy, for example, only grants six consecutive months absence and ten months in all for other work permit categories to meet residence requirements. Belgium allows EU Blue Card holders but not national B-permit holders to be absent without resetting the residence eligibility clock.

### ***Longer duration of permit validity***

Article 7(2) of the Blue Card Directive imposes a standard permit duration of between one and four years to be chosen by the Member States, or work contract plus three months. In most Member States, the

Blue Card's length of validity is similar to that of other work permits: less than two years, but up to two years for the first permit in the event of longer contracts. Some Member States, however, issue first work permits only for one year (Table 4.3), so that the Blue Card actually confers more favourable conditions. In Belgium, the duration of the EU Blue Card is longer than the national "B" permit at renewal: following the first renewal, Blue Cards are issued for two, then three, years, while "B" permits must be renewed annually. Bulgaria issues all permits (national and Blue Card) for one year periods, while the length of the Blue Card permit in Lithuania is three years, compared with two years for other work permits. Austria issues Blue Cards for up to two years, but its Red-White-Red Card for one year. As for the Netherlands, the length of the national permits may be up to five years, compared with four years for the Blue Card.

**Table 4.3. Maximum duration of first permits**

	EU Blue Card	National Scheme for highly qualified	General National Scheme
Austria	2 years	1 year	n.a.
Belgium	1 year + 1 month	n.a.	1 year
Bulgaria	1 year	n.a.	1 year
Czech Republic	2 years	2-3 years	n.a.
Estonia	2 years (+3 months)	n.a.	2 years
Finland	2 years	n.a.	1 year
France	1-3 years	n.a.	min 1 year
Germany	4 years	1-3 years	n.a.
Greece	2 years	n.a.	n.a.
Hungary	1-4 years	n.a.	n.a.
Italy	2 years (+3 months)	n.a.	2 year
Latvia	5 years	5 years	5 years
Lithuania	3 years	n.a.	2 years
Luxembourg	2 years	3 years	n.a.
Netherlands	4 years	5 years	3 years (1 year for less skilled)
Poland	2 years	n.a.	3 years
Portugal	1 year	1 year	n.a.
Romania	2 (+3) years	n.a.	n.a.
Slovak Republic	3 years	n.a.	2 years
Slovenia	2 years	n.a.	3 years
Spain	1 year	2 years	1 year
Sweden	2 years	n.a.	2 years

### *Permission to stay in the event of unemployment*

Article 13 of the Blue Card Directive allows holders at least three months of unemployment or two spells of shorter unemployment without losing their status. However, most EU Member States already allow foreign workers with work permits some margin for seeking employment if they are laid off or unemployed through no fault of their own. It is also possible to switch from a Blue Card to another work permit if the new job fails to meet Blue Card criteria, but does meet those of another

permit (and vice versa). Member States with longer job-search periods for unemployed TCN workers – e.g. Italy with 12 months and Spain, for the duration of the permit – apply them to the EU Blue Card as well. Italy allows EU Blue Card holders to quit voluntarily and seek a new job, as long as they register as job seekers. In Belgium, both EU Blue Card and “B” permit holders can let their permit validity run out in unemployment before they have to leave. In France, Blue Card holders can seek work until their permits run out. However, standard work permits offer better conditions. They afford migrants a one-year automatic extension for job seeking – longer than the Blue Card. The Netherlands grants Blue Card holders and knowledge migrants three months to find a new job if they are involuntarily unemployed. As for Lithuania, it grants Blue Card holders only a job-search period.

By contrast, as Member States do not allow Blue Card holders access to non-qualifying employment during job-search periods, unemployed Blue Card holders must find a qualifying job if they wish to work at all under the EU Blue Card.<sup>19</sup> The requirement puts them on a significantly different footing from other work permit holders, for whom the salary, duration and job criteria are less strict. The Blue Card permit does, however, grant holders the normal Schengen mobility to seek work, so unemployed Blue Card holders can look beyond the country of issuance for new qualifying employment opportunities.

### ***Restrictions on changing jobs during permit validity and on renewal***

EU Blue Card conditions must be met until it runs out, although it does allow holders to change jobs at any time for another Blue-Card-eligible position. Although no Member State applies a labour market test on renewal, those which use LMTs require Blue Card holders to take one when change employer. Sweden allows Blue Card holders to switch employer. If they change occupation, however, they must apply for a new Blue Card. Spain grants full labour market access after one year to holders of general work permits and Blue Card holders, even if they move into an occupation which does not qualify for the Blue Card. In that case, however, the worker loses the Blue Card and acquires a standard work permit. Italy, Estonia, Lithuania and Belgium require Blue Card holders to meet Blue Card conditions for the first two years of employment. They must then obtain the authorisation of the local labour office to change employer. In Italy, the conditions governing Blue Card holders are in contrast to the unrestricted labour market access granted to workers who enter under volumes of admission and may change

employer immediately upon arrival. Blue Card holders in Italy may change status to become quota-exempt highly qualified workers.

The Blue Card cannot be issued for periods or contracts of less than one year in length (except upon renewal if the remaining contract is shorter than a year). Any contract of less than one year – even if indefinitely renewable – can be covered only by a national scheme. Overall, the share of limited-term contract employment in the European Union is only about 15% of all contracts – and some last longer than one year. However, the incidence of limited-term contracts is higher for first employment, for young people and for private sector employment. Furthermore, temporary employment accounts for a growing share of new employment. The Blue Card can be obtained later, if and when the employer offers a longer term contract. However, there are fewer incentives for obtaining a Blue Card down the road, as residence under national schemes is cumulated and labour market mobility and family reunification rights are granted.

Conditions for employer and employees change over the duration of Blue Card permits. Generally speaking, Blue Card holders have to contend with reporting procedures that are more restrictive than for other TCN workers with other permits – especially in the time from the first two years to final eligibility for permanent residence (five years), when most countries relax employment restrictions.

The Blue Card salary requirement imposes a compliance burden, as holders lose their Blue Card if their salary drops below the threshold, or if their employer fails to pay the contractually agreed salary. Compliance follows the general approach in the countries of implementation: if proof of past salary is a condition for renewal of all work permits, the same is applied to Blue Cards; if no proof is required, renewal requires only the valid contract.

### ***More complex requirements to demonstrate qualifications***

The EU Blue Card is often more demanding than national schemes, as it requires proof of qualifications, although under the Blue Card Member States are not prevented from facilitating the recognition procedure if they wish and they can even recognise equivalent professional experience, instead of a formal qualification (see below). However, in practice few Member States do so. This obstacle comes on top of the one-year minimum job requirement, which does not apply to national schemes. Rather than introduce specific credential recognition

procedures for the Blue Card, most EU Member States use their existing frameworks, generally built on national academic recognition information centres (NARICs; see Table 4.4).

Many EU Member States' foreign qualification recognition procedures are straightforward and not particularly cumbersome. Belgium is one example. Sworn, legalised and authenticated translations are required only if the degree is not in English or an official language. Regional economic migration offices evaluate the degree, free of charge, within 30 days, but only for the national scheme, and not for Blue Card applicants.

Austria applies the same credentials recognition procedure under both the Blue Card and national schemes. Recognition requires either equivalence through a database or the examination of individual applications. In regulated professions, the procedure can be longer and more expensive but is necessary regardless of permit type.

The initial transposition in Italy required that applicants hold “a degree and related professional qualification” validated by the Ministry of Instruction, University and Research. A copy of the degree had to be notarised, translated and legalised by consular representatives. Also required was a consular Declaration of Value and a notarised, translated and legally approved copy of the university transcript that included the names and descriptions of courses and grades. It was only a year later,<sup>20</sup> with a decree designed to promote the Italy as an attractive destination, that the consular authorities were given responsibility for validating degrees and only regulated professions required further verification. As a result, barriers to the uptake of the Blue Card were significantly eased.

For regulated professions, Italy draws on Directive 2005/36/EC on the Recognition of Professional Qualifications. As for professions not covered by EU Directives, there is a requirement of two years of practice in the previous ten, with bodies in individual Italian regions responsible for recognition. Recognition in regulated professions can be extremely complex, with the competent ministry convening panels of representatives (from professional associations, the Ministry of Foreign Affairs, and local authorities) to decide on recognition. Outside health professions and architecture, where a degree from a specific country and institution has already been recognised in a prior case, it is possible to bypass panel deliberations. Nonetheless, the procedure for regulated professions is a barrier to recruitment.

**Table 4.4. Examples of qualification requirements under Blue Card schemes**

Country	Attestation of evidence of higher education qualifications	Attestation of experience	Regulated professions
Austria	In the event of doubt or if the diploma is not included in the German “Anabin” database, it can be assessed by European National Information Centres (ENICs) and NARICs. Recognition requires: certificate of graduation; proof of the status of the university or other tertiary education institution. All documents have to be submitted in the legally approved original and with a legalised German translation. AMS examines whether the requirements are met. The procedure is identical for the Blue Card and for the Red-White-Red Card.	n.a.	The competent federal authority decides if the degree is comparable to the Austrian degree. The Länder decide whether the migrant can access to the regulated labour market. The process can last up to 4 months and cost about EUR 400, depending on the profession and procedures.
Belgium	Employer needs to submit a copy of the degree/certificate. If necessary it has to be translated by a sworn translator and legalised by the country of origin and then by the competent Belgian embassy or consulate. The regional economic migration offices are responsible for evaluating the documents (free of charge) within 30 days (for receiving the preliminary work permit, after which the application for a Blue Card may be submitted). The requirements are the same for the regular work permit B.	n.a.	Access to regulated professions has been a competence of the regions since 2014. The requirements are different for different professions, and can sometimes be very cumbersome.
Bulgaria	The responsible body is the Bulgarian NARIC. Documents issued by educational institutions should be certified by: the Ministry of Foreign Affairs or consular department in the issuing country. Documents such as declarations, powers of attorney, etc. – after certification by a notary in the foreign country – must be certified for authenticity. In addition a certified translation is required.	Requirements strict but vary. Different documents are accepted (e.g. work record and record of the social security for the same period).	There is no common e system between NARIC and the educational system, and delays can be long.
France	The agency responsible for recognition of foreign qualifications is CIEP (Centre international d'études pédagogiques), the ENIC-NARIC in France. Required documents include: sworn translation of the qualification certificate; sworn translation of proof of the official duration of the studies leading to the qualification(s), or an official translation from the authorities in the country of issue. The applicant must explain reasons for his/her request (looking for a job, enrolling at a training institution, etc.). Experts vet each file submitted.	Previous experience has to be certified by former employers.	Competent authorities and administrative procedures and requirements depend on the qualification and occupation in question.
Italy	The Declaration of Value from the consular authorities is considered sufficient. This significantly lowers the barrier to uptake of the Blue Card.	Professional experience needs to be recognised only for regulated professions.	For professions not covered by Directive 2005/36/EC, there is a requirement of 2 years' practice in the previous 10. Bodies in individual Italian regions are responsible. If the degree has not been previously recognised, the competent Ministry convenes a panel of representatives (from professional associations, the Ministry of Foreign Affairs, and local authorities) to decide. Panels also apply to all health professions and architecture.

Country	Attestation of evidence of higher education qualifications	Attestation of experience	Regulated professions
Lithuania	The Centre for Quality Assessment in Higher Education is the responsible authority. It requires diploma, academic transcript, and other documents proving the qualification. Sworn translations of documents not in Lithuanian, Russian or English must be provided. The documents must be either originals or certified copies. Documents must be legalised or certified with the apostille, unless the documents are issued by EU, USA, Russia, Belarus, Moldova or Ukraine.	Only a theoretical possibility since no professional experience is considered as equivalent to high education according to national law.	Qualification must be recognised by a different competent authority depending on profession, each with its own recognition rules. Requirements: the applicant must submit the necessary documents translated into Lithuanian, in some cases legalised (or certified by an apostille stamp).
Luxembourg	The applicant must present an attestation which certifies that s/he has the professional qualifications required for the activity or sector mentioned in the labour contract. The diplomas have to be translated into French, German or English by an official translator. The legalisation or authentication of documents is required only in the event of doubt as to the validity of documents.	Professional experience is defined as the actual and lawful pursuit of the profession. The applicant has to present a document attesting to the professional qualifications required by the activity or sector specified in the work contract.	Professional experience is defined as the actual and lawful pursuit of the profession. The applicant has to present a document attesting to the professional qualifications required by the activity or sector specified in the work contract.
Netherlands	For recognition of professional qualification, Centres of Expertise for International Credential Evaluation (Nuffic) and the Foundation for Cooperation on Vocational Education, Training and the Labour Market (SBB) issue written statements on the recognition, while the Information Centre for Credential Evaluation (IcDW) acts as a central desk for application. Sworn translations of diplomas and transcripts are required, unless the original documents are in Dutch, English, German, French or Afrikaans.	n.a.	Permission is required to practise in the Netherlands. A specific institution has to be consulted for each of the enlisted professions in order to obtain information about and conditions for recognition.
Portugal	The competent authority is the immigration authority.	The competent authority is the immigration authorities	The competent body varies. The length and difficulty of procedures varies according to the body.
Romania	The competent authority is generally the National Centre for Recognition and Validation of Diplomas (CNRED) under the aegis of the Ministry of Education. However, other authorities may also be competent depending on residence permit. Recognition follows the regular procedure provided by the national legislation. The specialised institution for the recognition of qualifications issued by providers of vocational training abroad (which are not accredited schools or education institution) is the National Authority for Qualification.	n.a.	The competent authority depends on the occupation. Access to a regulated profession is subordinated to the fulfilment of specific conditions provided by special laws.
Spain	The recognition of university-level qualification is generally a long procedure.	Not clarified in legislation.	It requires complex procedures and is very slow. Many approvals take one to two years to be processed.
Sweden	The Swedish Council for Higher Education (UHR) is responsible for the recognition of foreign qualifications. Requires a stamped or otherwise institutionally certified copy and authorised translation of the degree, certificate or diploma and official transcript, as well as proof of application for a residence permit.	Employer decides. The Migration Board assesses if qualifications are grounds for granting a permit.	Issues of recognition of qualifications in regulated professions are assessed by the competent authority.

In the Netherlands, qualifications must be recognised by NUFFIC, the country's credentials recognition authority. The scrutiny procedure does not apply to applicants under the Dutch Knowledge Migrant scheme, although it does to general work permit applicants. In any case, the procedure lasts two to four weeks, depending on whether the standard or express fee is paid and, while it is not a major hurdle, it must be completed before the Blue Card can be requested, otherwise the generally rapid national procedure will be disproportionately lengthened.

In Bulgaria, unless documents have a Hague Convention apostille stamp, recognition requires certification by both the issuing country authorities (the Ministry of Foreign Affairs) and the Bulgarian authorities. A certified translation is required. The national NARIC centre then evaluates the degree for recognition. For regulated professions, other institutions are involved.

Lithuanian procedures make translation and legalisation challenges for those living abroad, since all requests and forms must be filed in Lithuanian. While unregulated professional qualifications are all treated by a single authority, which takes one month and has a high recognition rate, the obstacles lie in submitting documentation. As for regulated professions, the system is more complex, although national work permit applicants have to contend with it, too.

France requires a sworn translation of qualifications and proof of the duration of contracts. The competent body, the International Centre of Pedagogical Studies (CIEP), usually takes three to four months to vet applications. The same procedure is required for other work permits, so the obstacle is no greater for EU Blue Cards. It is noteworthy, however, that the share of graduates from French universities among new work permit holders is higher (above one-third) than in other OECD countries, which may reflect the fact that national degrees require no recognition procedure and are well-known by employers.

In Sweden, once an application is filed with the Migration Board, the applicant can request recognition through the public agency for recognition (UHR). Documents are authenticated by the stamp of the issuing institution and an authorised Swedish translation is required only if the document is not in English, French, Spanish, German or a Nordic language. The procedure takes four months. For certain regulated professions, the Migration Board requires prior recognition, in which case qualifications are assessed by the competent authorities.

Many, but not all, Member States accept English language translations. Hungary, for example, requires the official graduation documents of EU Blue Card applicants to be translated into Hungarian. Similarly, the Slovak Republic stipulates that a foreign skilled worker requesting a Blue Card should provide proof of the higher education or professional qualifications required by the position. That proof should be issued by the Slovak Republic (Centre for Recognition of Diplomas of the Ministry of Education, Science, Research and Sports) or by another EU member state, translated into Slovak and authenticated.

### ***Elastic interpretation of experience in lieu of qualifications***

The EU Blue Card provision for a permit for highly qualified employment without higher education qualification is one of the options that make it potentially more accessible than education-based national schemes for highly qualified foreign workers. Setting a time-limited threshold on experience was a matter of debate during discussions, with the Commission's initial proposal of three years increased to five in response to the position (though non-binding) of the Civil Liberties Committee of the European Parliament.

Not all Member States have taken the option of recognising work experience as well as qualifications. In Belgium, for example, legislators considered it too open to discretion and ruled it out. The Netherlands does not allow this; in contrast, its national scheme is entirely salary based, and is the channel for those without tertiary qualifications. As for Austria, it did not include the experience option, leaving it under the national Red-White-Red scheme for workers in skills shortage occupations.

Member States which consider the option have different recognition procedures in place. France uses certificates from prior employers, while Sweden deems employer evaluations sufficient, although the authorities do check whether qualifications match employers' evaluations. As for Lithuania, it did include experience in its legislation, but as national law does not consider any experience as equivalent to higher education, the question does not arise.

### ***How large is the current pool of potential Blue Card holders?***

How many third-country nationals are currently eligible for EU Blue Cards? While the previous sections have focused on the segment of the overall labour market – including EU citizens – who earn salaries which

are high enough to qualify for the Blue Card, this section looks at the current stock of third-country nationals employed in the European Union in order to glean an idea of how many could qualify for the EU Blue Card.

Using the 2013 EU Labour Force Study and information on income deciles, it is possible to gauge the number of third-country nationals working in different occupations and falling into the top three deciles of national income (Table 4.5). Income is considered to be monthly (take-home) pay from the TCN worker's main job and deciles are based on different national criteria for each country. However, a number of EU Member States do not report this variable, with Sweden (most significantly for such analysis) being one of them.<sup>21</sup> The analysis does not include the education variable in order to maintain reliability, even though as many as one-third of all third-country nationals employed in ISCO Group 1 to 3 occupations do not have higher education. The self-employed, too, are excluded.

Taking the strictest possible constraint – the top income decile and ISCO Groups 1 to 3 – there are about 94 000 potential beneficiaries in the countries that have transposed the Blue Card Directive. They include TCNs of all categories, from family migrants to long-term residents and refugees. Of the total, around 41 000 have arrived in the past six years. Since permanent residence requirements tend to demand stays of at least five years, recent migrants largely exclude long-term residents. As family migrants tend to move slowly into employment, the high-earning workers in recent inflows are less likely to include family migrants. Even less likely to feature among high earners are humanitarian migrants. Although it is impossible to determine their residence statuses, high-earning TCNs are thus likely to comprise more labour migrants than the total population of third-country nationals.

Estimates that take the top two deciles and maintain the occupational restriction bring the stock of 164 000, of which 62 000 are recent migrants. If the top three deciles are included, the number increases to 228 000. If the top four are considered, the estimate is 257 000.

If occupations are widened to include all except elementary ISCO 9 occupations, numbers rise to 110 000 in the top decile and 218 000 for the top two. If the highly educated alone are included, the number falls by about 20% in countries that transposed the Blue Card, but by far more in those that did not.

**Table 4.5. There are hundreds of thousands of potential Blue Card holders in the European Union, 2013**

Estimated number, in thousands, of third-country nationals employed in ISCO occupations 1-3 and in the top four income deciles

	Only ISCO 1-2				Only ISCO 1-3				All professions (ISCO 1-8)			
	10th	9-10	8-10	7-10	10th	9-10	8-10	7-10	10th	9-10	8-10	7-10
Austria	3.3	5.0	5.6	7.0	4.3	6.6	8.0	10.9	4.3	7.2	9.0	13.1
Belgium	4.9	5.9	7.1	8.3	5.2	6.8	8.2	10.0	6.0	8.4	11.7	15.3
Cyprus	0.2	0.3	0.4	0.6	0.2	0.3	0.4	0.6	0.2	0.4	0.5	0.8
Czech Republic	0.8	1.5	1.5	1.9	1.1	1.9	1.9	2.3	1.1	2.3	3.7	4.4
Germany	31.9	56.6	71.1	76.8	36.6	64.8	86.1	95.2	40.3	76.8	107.7	133.0
Estonia	0.1	0.2	0.2	0.2	0.1	0.3	0.4	0.4	0.1	0.3	0.4	0.4
Spain	28.1	38.6	60.7	66.3	34.3	51.6	74.9	94.1	39.7	66.2	114.9	213.7
Finland	0.0	1.2	1.8	1.8	0.0	1.2	1.8	1.8	0.0	1.2	1.8	2.0
France	23.7	48.1	65.0	76.2	30.5	69.3	98.9	121.7	36.1	84.1	144.1	222.1
Greece	0.0	0.0	0.0	0.0	0.0	0.2	0.2	0.2	0.3	0.4	0.8	0.8
Hungary	0.9	1.1	1.3	1.4	0.9	1.2	1.4	1.5	0.9	1.2	1.4	2.0
Italy	2.1	2.1	2.3	2.6	3.1	3.8	6.2	8.4	7.4	23.6	52.5	86.7
Luxembourg	0.5	0.8	1.5	1.8	0.6	0.9	1.5	2.0	0.6	0.9	1.6	2.0
Latvia	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.1	0.0	0.1	0.1	0.1
Netherlands	1.9	4.6	7.8	10.0	1.9	5.1	9.1	12.4	2.1	5.5	10.7	15.6
Portugal	0.7	0.9	1.2	1.3	1.3	1.8	2.8	3.0	1.4	2.3	5.0	8.1
Romania	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.9	1.0	1.0	1.0
Slovak Republic	0.0	0.0	0.3	0.3	0.0	0.0	0.3	0.3	0.0	0.0	0.3	0.3
<b>Total Blue Card countries</b>	<b>99.8</b>	<b>168.0</b>	<b>228.0</b>	<b>257.0</b>	<b>121.0</b>	<b>216.0</b>	<b>303.0</b>	<b>365.0</b>	<b>141.0</b>	<b>282.0</b>	<b>467.0</b>	<b>721.0</b>
Denmark	1.6	2.5	4.2	4.5	1.9	3.3	5.2	5.9	2.3	3.9	6.7	8.3
Ireland	0.7	1.4	4.5	7.2	1.0	2.0	5.4	8.1	1.0	2.0	5.5	8.3
United Kingdom	97.5	142.0	200.9	229.7	106.7	158.2	224.2	260.8	111.8	171.6	250.3	311.7
<b>Total non-Blue Card countries</b>	<b>99.7</b>	<b>146.0</b>	<b>210.0</b>	<b>241.0</b>	<b>110.0</b>	<b>164.0</b>	<b>235.0</b>	<b>275.0</b>	<b>115.0</b>	<b>177.0</b>	<b>263.0</b>	<b>328.0</b>

*Note:* The table excludes a number of countries for which data were not available. Some (Estonia, Greece, Lithuania, Latvia, Slovak Republic) are excluded because estimates were below 1 000 for all columns. These countries are included in the BC total, however.

*Source:* European Union Labour Force Study, 2013.

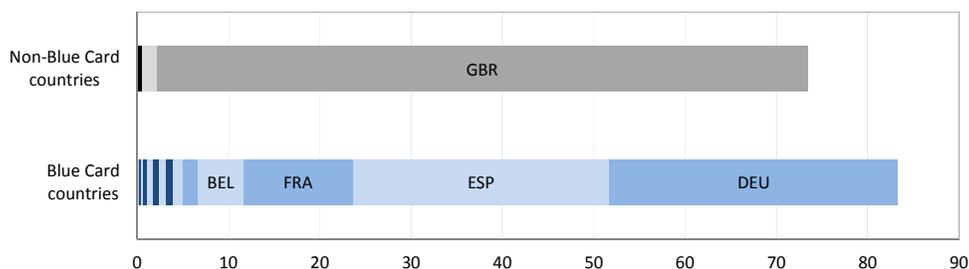
It is also clear from the table that the EU Member States outside the Blue Card scheme host a large number of high-earning highly qualified third-country nationals. The United Kingdom alone has as many top-decile highly qualified third-country nationals as all other EU Member States combined. One reason is the concentration of high-income occupations (e.g. financial services) and their concentration in London, where incomes are skewed towards the upper deciles relative to the national distribution. The high proportion of top earners in the United Kingdom points to the enormous impact on uptake which countries that have opted out of the Blue Card would have if they opted in.

Figure 4.10 shows numbers of highly educated and mostly highly qualified migrants (ISCO Levels 1 and 2) in the top three income deciles who had been resident for up to six years in EU Member States in 2013. Counting recent arrivals helps yield a rough estimate of potential inflows into Blue Card countries. Such figures are not an exact gauge of inflows,

as they do not capture migrants who entered and left, and not all Member States are covered. Nor does it consider those whose first salary was not in the higher deciles, but who were in the upper deciles only at the time of survey. Nonetheless, recent incomers give an indication of the order of magnitude of flows. If there are close to 100 000 recent migrants who meet criteria similar to those set out in the Blue Card for high-earning highly qualified third country nationals, the inflow figure should be in the many tens of thousands. Germany accounts for a substantial share. Indeed, its Blue Card issuance statistics suggest that it is close to issuing the number of Blue Cards estimated by this analysis. Other countries where figures might have been expected to be higher are Spain, France and Belgium.

**Figure 4.10. There is a significant number of highly educated, highly qualified, high-earning third-country nationals among recent migrants, 2013**

Estimated number, in thousands, of third-country nationals employed in ISCO occupations 1 and 2 and in the top three income deciles in each country, resident for six years or less



*Note:* Excludes a number of countries for which data were not available.

*Source:* European Union Labour Force Survey, 2013.

As this analysis is based on variables which cannot be confined to exact Blue Card criteria, it can only approximate the order of magnitude of potential Blue Card beneficiaries, rather than supply an exact figure. The number of potential Blue Card beneficiaries – i.e. highly educated third-country nationals with high incomes in highly qualified occupations – who enter Europe annually appears to lie in the lower tens of thousands. It may be assumed that many enter under family reunification arrangements or as family members of EU nationals, categories which yield simpler access to the labour market. Only a fraction can be expected to enter under national work permit schemes. The stock of potential Blue Card beneficiaries thus seems to be in the

hundreds of thousands, although they are more likely to hold other permits, e.g. long-term residence cards, from which they will transition to naturalisation rather than switch to EU Blue Cards.

Since there are many resident third-country nationals who already meet current criteria for the EU Blue Card, requiring Member States to issue EU Blue Cards preferentially upon admission and when renewing other permits, the number of EU Blue Card holders could rise quickly.

More importantly, since many potential EU Blue Card recipients have been resident for up to six years, efforts could focus on the tail end of the Blue Card, the Long-Term Residence Permit for Former EU Blue Card holders. It could be made more easily available to applicants who qualify for long-term residence but have not had the EU Blue Card for the entire five-year period of residence. If its mobility provisions were made more favourable and accessible, applicants would also be more likely to request it.

## The Seasonal Workers Directive

### *Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers*

Even before the Seasonal Workers Directive was proposed and adopted, EU Member States already had arrangements in place for short-term work. Germany, France, Spain, Italy and Greece, for example, have well established seasonal work programmes and permits. Many seasonal work schemes are part of bilateral agreements with countries of origin and the Directive has left them intact as long as they are compatible with it. As for the Nordic countries, they regulate short-season berry-pickers using a different model. It does not require specific permits and short-term work is possible if workers meet the requisite conditions.

The Seasonal Workers Directive does not seek to change the nature of the two very different approaches (permits vs. short-stay employment authorisation), but to harmonise procedures and establish basic rights. Further, as it only applies to third-country nationals residing outside the European Union, it is not designed to cover intra-EU mobility of seasonal workers, and will not give rise to any such mechanisms.

Overall, seasonal migration flows to EU Member States are below those of the early 2000s, as intra-European flows, which accounted for many seasonal workers, became “mobility” from 2004. In Germany, for

example, numbers fell from 270 000 in 2003 to just 3 500 in 2012 and, in Italy, from 68 000 to less than 10 000. In other countries, a weaker labour market has depressed seasonal numbers, with seasonal worker inflows to Spain, for example, dropping from 46 000 in 2008 to 2 000 in 2012.

There is no guarantee that declines will be long-lasting, however. Seasonal flows to Sweden and Finland, for example, have persisted even as oversight has increased. And the fall in seasonal work in traditional destination countries has been offset by large rises in Poland, which instituted a temporary declaration scheme for nationals of neighbouring countries in 2007. Since then, the number of participants has risen to several hundred thousand annually and although only some of these workers are engaged in seasonal activity and not all declarations translate into arrival and employment, it is the largest single work scheme for third-country nationals in the European Union. The underlying trends in the EU workforce suggest that there will continue to be a role for seasonal work.

The Directive shapes the rights of workers more than it does procedures and eligibility – although these are covered in the Directive – or channels for recruitment – which are not directly addressed in the Directive. It is designed to encompass most current legislation, leaving EU Member States' different permit durations as they are. It is thus unlikely to affect any national arrangements and those countries which wish to keep simpler schemes compatible with the Directive may also opt for bilateral agreements, to which specific more favourable conditions are attached (Töttös, 2014).

## The Intra-Corporate Transfer Directive

*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*

The Intra-Corporate Transfer (ICT) Directive comes in a policy context where Member States have different practices and, unlike the Seasonal Workers Directive, it could change those practices.<sup>22</sup> The Directive, currently being transposed, creates three categories of transferee (manager, specialist and trainee employee). It requires Member States to:

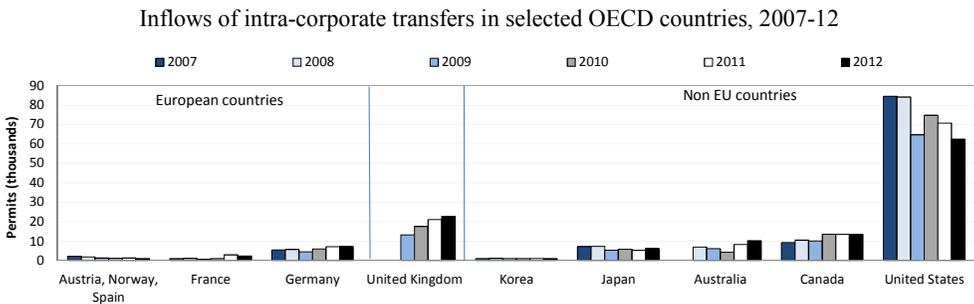
- create provisions for allowing intra-corporate transferees from third countries to work for short periods (up to 90 days) in other Member States,

- decide how to treat longer-term requests for intra-EU mobility,
- extend labour market access to accompanying family members.

At present, most transferees in the EU work in the United Kingdom. Indeed, outside the United Kingdom, Ireland and Denmark, the rest of the EU accounts for well under 20 000 ICTs – in sharp contrast to the much larger numbers, in relative terms, in other OECD countries (Figure 4.11). The relative number of ICTs, however, reflects not only the use of intra-company transfers by multinationals – itself determined by the distribution of companies’ activities – but also by the relationship between the ICT Directive and other permits.

Straightforward, unrestricted local hiring procedures may prompt companies to favour direct recruitment by local subsidiaries and traditional work permits, particularly if they grant ancillary rights for accompanying family members. Where local hiring is constrained by numerical limits – notably in the United States and the United Kingdom – the ICT channel is a more attractive alternative. However, in a number of EU Member States, especially those with fast-track procedures for direct hires, firms are likely to direct ICTs towards other work permits instead. One example is the Netherlands, where most multinational firms participate in the country’s Knowledge Migrant Programme and direct hire is straightforward.

**Figure 4.11. Countries covered by the ICT Directive have far fewer ICTs than other OECD countries**



*Note:* Australian numbers are restricted to the Long Stay Business Visa (Subclass 457), where a person’s visa application indicates that they are travelling on an ICT arrangement. Some individuals who meet the ICT definition will come to Australia on other visas, including short-term business visitors.

*Source:* OECD International Migration Database, [http://dx.doi.org/10.1787/migr\\_outlook-2015-table6-en](http://dx.doi.org/10.1787/migr_outlook-2015-table6-en).

As with other policy initiatives, transposition will not mean that third-country nationals currently covered by national schemes will no longer be able to come to the European Union. Those who currently qualify as ICTs will continue to do so even after transposition. So will potential ICTs who currently arrive as direct hires. The mobility provisions may turn out to be sufficiently attractive to prompt firms to use the ICT channel rather than work permits. Similarly, the provisions for trainees may also offer a fine opportunity for the mobility of young employees within firms.

The Directive affects the future development of restrictions on the use of ICTs. First, it prohibits salaries from being less favourable than the corresponding salaries for nationals. Second, it prohibits firm-level limits such as the Irish “50:50 Rule” (which requires that “at least 50% of the employees in a firm are EEA nationals”), although the Directive does allow countries to put overall caps on ICT admission. Member States would then, within the limits they have set, be free to draw up criteria for distributing available permits for ICTs and to assign them according to firm reliance on ICTs, for example.<sup>23</sup>

In conclusion, the Directive will help formalise ICTs in countries where the category is still undeveloped. Where current practice is to use local hiring provisions, rather than ICT channels, the practice is likely to continue, except where firms need to use mobility provisions and unless transposition facilitates ICT permit processes.

## **What have the Directives discussed changed?**

### ***Have changes levelled the playing field between third country nationals and EU citizens?***

“Levelling the playing field within the EU” is an objective of labour migration policy instruments. It is specifically cited in the preamble to the Single Permit Directive and in documents presenting the Blue Card.<sup>24</sup> This “level playing field” refers not only to the gap between the rights of legally resident third-country nationals and EU citizens, but also – and principally – to the differences in the ways that EU Member States treat employees and employers. In the “absence of a horizontal approach”, then, the EU Blue Card Directive seeks to better harmonise conditions for the admission of highly qualified workers, so that employers in all EU Member States have to meet similar requirements when recruiting them and can offer them permits with similar benefits.

The Single Permit Directive is a stride towards more equal treatment, with transposition in many countries improving the right to access new jobs and bringing more stable residence status, fewer labour market tests and simpler renewal procedures.

The EU Blue Card was implemented with substantial procedural differences from one country to another, creating a patchwork of national requirements. Salary thresholds are one of the main differences, but not the only one: the labour market test, recognition procedures and fees are variable, too. The ease with which migrants may change jobs both in the first two years of residence and on later permit renewals also differs among countries, as do reporting requirements. The ability of switching to general schemes also varies. In a word, the Blue Card in one EU Member State is not the equivalent of the Blue Card in another one.

The Researchers Directive has helped researchers to achieve a greater degree of mobility to conduct projects within participating Member States, eliminating the situation where EU citizens were able to move among Member States and their third-country colleagues on the same project were not.

### ***Have changes opened up new opportunities for recruiting foreign workers?***

The Blue Card Directive, as it has been transposed so far, has had little effect on admissions, as candidates who meet Blue Card requirements have already qualified for national schemes. In other words, the Blue Card has enabled no-one to enter the EU who would not otherwise have been able to do so.

The creation of the Blue Card translated into uptake in very few countries. Those that have issued the most Blue Cards in absolute terms are Germany, France, Spain and Luxembourg. Relative to total numbers of nationally issued labour migration permits, Germany and Luxembourg have the highest shares of EU Blue Cards. In both countries, the Blue Card superseded intentionally replaced prior programmes designed for individuals with similar profiles and contracts, so the shift is not surprising. Other countries, by contrast, transposed it alongside national schemes.

A number of countries have already reviewed the impact of the Blue Card in luring talented workers. Spain found that its transposition, which kept the more restrictive standards allowed by the Directive, “has not been as effective in attracting talent as expected” since it required higher

qualifications, set an “excessively high wage limit” which “posed obstacles to hiring, particularly in the case of young graduates”, imposed a LMT which was broadly applied, and did not contain provisions for a “corporate group concept” (Government of Spain, 2015). Spain also felt that the shortage list was too restrictive (ISCO Levels 1 and 2 only) and status changes too difficult. Yet it was the Spanish government itself which imposed those restrictions.

The Students Directive increased the access of international students to employment opportunities during their studies, allowing them to make more contact with employers. This increases the likelihood of being hired after graduation, although it does not represent a new channel for admission.

### ***Have the Directives made the European Union more attractive?***

There are several mechanisms through which policy changes related to transposition could increase the attractiveness of individual host countries and the EU area as a whole, even if they do not create new channels of entry.

The first mechanism is when policy changes ease conditions or criteria of entry. The Blue Card has not done that. Indeed, its qualification and salary requirements are at least as high as those of national schemes. Some Member States, however, did ease their national permit requirements at the same time as they transposed the Blue Card Directive.

The second way in which policy change can enhance attractiveness is through more transparent, speedier, lower-cost procedures. One of the most constraining Blue Card requirements is the need to prove qualifications. The Blue Card, as observed above, has failed to afford EU Member States the opportunity to transform the procedure for recognising higher-education qualifications obtained in third countries. Nonetheless, the statutory recognition requirements will place existing frameworks under pressure. There is scope for economies of scale at the European level, as evinced by Austria’s use of the German Anabin degree database. The multiplication of higher-education institutions in third countries – India and China have seen enormous expansion in their higher education sectors – means that recognition will require further effort on the part of the bodies that evaluate applications for Blue Cards.

As for overall processing time, most Member States bound by the Directive were already within the statutory time limit prior to

transposition and have not cut them much further. Nor have they lowered costs, which remain at much the same level as the national permits already in place. With the transposition of the Single Permit Directive, a number of Member Countries actually raised their permit fees, although they remain lower in most of the EU than in other OECD countries.

The third improvement that policy changes can bring to the attractiveness of the European Union is simpler procedures – either by scrapping stages in application procedures or providing more information. Indeed, as mentioned, labour market test exemptions have simplified procedures in a number of countries. And the growing body of official information on Blue Cards curbs opportunity costs for candidates and employers. However, the extra administrative burden caused by the need to prove qualifications cancels out the gains from exemptions. With regard to the Single Permit Directive, the introduction of joint work and residence permits also simplifies procedure.

The fourth way in which policy changes that stem from transposition could help make the European Union a more attractive migration prospect relates to the extra benefits that the Blue Card brings. The general framework for family reunification applies to most labour migrants and is a clear benefit. In addition, the Blue Card compels countries that formerly refused accompanying family members admittance to allow them entry, although the countries issuing the most Blue Cards (Germany and Luxembourg) already had similar policies in place under their national schemes. The mobility benefit is still underutilised, although transposition is still recent and the stock of permit holders small. Similarly, it is too early to evaluate whether the longer absences from employment allowed under the EU Blue Card Long-Term Residence Permit might boost its uptake.

Finally, the question of attractiveness should not confine itself to the choice of would-be migrants from third countries. It needs to consider employers, too. In many Member States, they determine the type of permit for which they intend to sponsor a recruit and offering a Blue Card, rather than a standard permit, can improve the packages offered to candidates. More important for employers, however, is ease of application. LMT exemptions, statutory processing times and automatic approvals are greater motivation for recruit talent from abroad far more than the ancillary benefits offered to applicants.

### ***Is the Blue Card associated with an increase in highly qualified inflows?***

As seen above, transposition of the Blue Card often coincided with the introduction or improvement of national schemes. In this way, it may have contributed to increasing the number of highly qualified third-country nationals entering the EU, even though the Blue Cards themselves have not been issued in greater numbers. An analysis of the total number of entries of highly skilled TCNs relative to the number of non-skill-defined permits finds that the Blue Card had a slight positive effect in the wake of transposition. The overall inflow of highly qualified immigrants into Member States bound by the Directive rose 1.1%, although the climb was not statistically significant (Colussi, 2016), except in France.

### **What are the next possible policy options?**

#### ***New opportunities for recruiting from abroad***

The Blue Card has not secured the admission of highly qualified workers who were previously ineligible under the patchwork of national schemes. It might, however, increase the pool of potential candidates applying for jobs in EU Member States. One way to achieve such an increase would be a pre-approval mechanism for Blue Card candidates in countries of origin, whereby individuals presented themselves to employers as “Blue Card approved” with certified qualifications and indicating their occupation(s). Such pre-approval would require co-operation in the credential recognition process through greater sharing between knowledge bases developed by different NARICs and more extensive collaboration between them. Although degree certification would be a step forward in itself, regulated professions would, however, remain a hurdle. Nor would pre-approval be of much benefit in countries which accept work experience as an equivalent to tertiary qualifications.

A further possibility would be to introduce a job-search visa for would-be Blue Card applicants. It would be subject to a cap and, possibly, to a points-based ranking system, such as the one used in the United Kingdom for work permits. As noted, most job-search permit recipients do not find highly qualified jobs, and this expectation would have to be built into any pilot scheme. Once more is known about the factors that determine success in obtaining a Blue Card, selection criteria could be refined.

Finally, the salary criterion could be rethought to reflect the actual salary distribution of highly qualified workers and factoring in the median

salaries of highly educated or highly skilled employees. While it is clear from the discussion that recognition requirements favour highly qualified workers who have graduated from EU universities, new graduates struggle to reach the salary threshold. For TCN international students who graduate in the EU, a lower threshold could be applied based on starting salaries in their branch. It is difficult to identify an appropriate benchmark, since the wage distribution varies across EU Member States. Benchmarking the threshold to the actual salary distribution of highly educated workers would narrow variations. It would, however, require using survey data, which are less reliable than administrative data and more difficult to use as an automatic policy lever.

### *Increasing the EU's attractiveness*

Overall, the Directives implemented so far have set baselines for the rights of certain categories of migrants. The piecemeal approach, however, means that some groups are still excluded. Directives have failed to affect the admission criteria for many work permits.

The EU labour migration system is demand-driven, but the Directives so far transposed have provided neither services nor assistance to employers, apart from setting minimum standards for procedural transparency and recognisable documentation. More active matching of workers to vacancies would be an important step in making the European Union more visible and attractive to candidates. This subject is discussed in the next chapter.

With regard to the Blue Cards issued to date, most – in the main issuing Member States – have gone to individuals already legally present. Yet the Directive fails to address the question of status change from study or work permits. It should address the question more explicitly, not only by formalising the positive right to a Blue Card when conditions are met, but by compelling countries to issue Blue Cards to applicants who qualify. As long as other permits offer easier conditions – e.g. simpler procedures for changing employer, as in Italy or Sweden – applicants may continue to eschew the EU Blue Card.

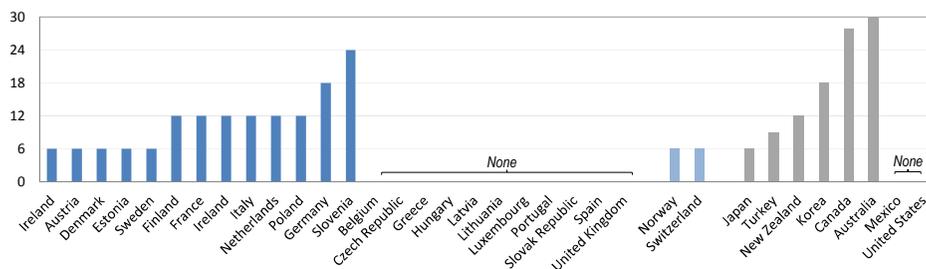
As far as students are concerned, the newly adopted Students and Researchers Directive<sup>25</sup> contains an important provision for post-graduation job seeking, although it does not specifically address the right to work during job hunting periods – a right denied to students by many EU Member States (Figure 4.12).

Opportunities for post-graduation work in EU Member States range widely, and there is no single procedure for obtaining permits. The Blue

Card does not appear to be the most likely first-choice permit after graduation. Its statutory contract duration, too, may be a barrier to getting a first job, as initial post-graduate employment is often temporary and short term. If the Blue Card is to be used to encourage third-country international graduates to stay on in the European Union, its provisions need to reflect the salaries of newly graduated workers and the longer periods of transition to employment on a long-term contract. The Blue Card should consider the post-graduation period as a time for bridging the gap, allowing graduates to take short-term work in the first year after graduating, as long as they meet the other criteria. Those who fail to obtain long-duration contract after the transition period, but who have nevertheless found work can, under the current framework, obtain permits under national schemes (although this may be subject to a labour market test or employer sponsorship regimes).

**Figure 4.12. Many EU Member States do not allow students to extend their permit beyond graduation to work while they search for employment**

Extensions of post-graduation stays (in months) to allow non-EEA nationals to work while seeking employment, selected EU and OECD countries, 2015



Source: OECD Secretariat analysis of national legislation.

### *Levelling the playing field among EU Member States*

The EU Blue Card has not levelled the playing field among EU Member States in terms of access to skilled workers insofar as the ease or difficulty of obtaining an EU Blue Card is still variable from one to the other. National schemes maintain lower thresholds than those of the Blue Card, and EU Member States not bound by the Directive also apply lower thresholds to their national schemes. Adjusting salary thresholds to reflect the real distribution of salaries for highly qualified workers would go a long way towards levelling the playing field among EU Member States in their application of the Blue Card, as would greater harmonisation of the recognition process. Even if it were possible to find

a reliable survey source on income distribution and use standard deviations as a reference value to set a universal level of restrictiveness, other variations that stem from the age and occupational structure of the population would ensure that differences remain.

As observed above, the reference value of the Directive has been interpreted using different indicators in different EU Member States. Even if the full-time equivalent annual gross salary is used, the restrictiveness effect varies. No single threshold yields identical results across countries. Nonetheless, a range of between 1.2 and 2 times the full-time equivalent would prevent some countries, like Italy and Malta, from applying extremely permissive or restrictive values (Table 4.6). That being said, current Blue Card thresholds fall between 1.2 and 1.8, with the exception of Romania and Lithuania.

**Table 4.6. Simulating the effect of different salary thresholds on the restrictiveness of the Blue Card in different countries**

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)

Actual BC threshold 2014	1 time mean	1.1 time mean	1.2 time mean	1.4 time mean	1.5 time mean	1.7 time mean	2 times mean	
Austria	49%	67%	59%	53%	39%	32%	23%	16%
Belgium	33%	53%	43%	34%	22%	19%	13%	8%
Bulgaria	44%	62%	50%	44%	30%	25%	18%	13%
Cyprus	57%	54%	49%	45%	35%	31%	25%	16%
Czech Republic	29%	71%	62%	53%	37%	32%	23%	16%
Germany	53%	65%	57%	48%	35%	31%	21%	12%
Estonia	20%	50%	43%	39%	29%	27%	18%	13%
Greece	17%	55%	44%	36%	24%	18%	13%	8%
Spain	37%	61%	55%	48%	37%	32%	21%	14%
Finland	28%	56%	46%	39%	28%	24%	16%	9%
France	17%	58%	48%	40%	27%	23%	17%	11%
Croatia	20%	77%	72%	65%	49%	40%	25%	18%
Hungary	25%	71%	63%	56%	43%	39%	29%	18%
Italy	72%	59%	50%	41%	28%	25%	20%	14%
Lithuania	4%	59%	52%	45%	34%	29%	21%	15%
Luxembourg	59%	72%	66%	59%	46%	39%	25%	16%
Latvia	29%	59%	53%	47%	35%	31%	24%	17%
Malta	84%	68%	58%	46%	31%	27%	20%	12%
Netherlands	48%	61%	53%	44%	28%	22%	14%	9%
Poland	25%	60%	52%	46%	35%	31%	23%	15%
Portugal	74%	77%	72%	66%	52%	47%	38%	27%
Romania	0%	72%	66%	59%	42%	35%	26%	13%
Sweden	23%	49%	39%	32%	21%	17%	12%	7%
Slovenia	43%	69%	62%	56%	42%	34%	25%	17%
Slovak Republic	13%	67%	49%	42%	25%	22%	13%	9%
<b>Blue Card countries average (total)</b>		<b>61%</b>	<b>53%</b>	<b>46%</b>	<b>33%</b>	<b>28%</b>	<b>19%</b>	<b>13%</b>

*Note:* Tertiary-educated refers to ISCED 1997 levels 5b, 5a and 6. DEU-low refers to the lower threshold.

*Source:* Statistics on Income and Living Conditions, 2010, including gross earnings and annual bonuses and allowances not paid at each pay period. Data for Germany from the German Socio-Economic Panel Survey, 2010, gross earnings only, full time or at least 35 hours weekly employment.

Additional information for employers on eligibility for the Blue Card, the application process and the ease of hiring Blue Card holders currently employed in another EU Member State would boost uptake.

### *Favouring mobility*

The Directives' mobility provisions still appear limited. The 2004 Students Directive failed to address the questions of post-graduate extension and mobility during that extension. As a result there were no measures to facilitate students' post-graduation job seeking in the European Union. The Directive does not cover the intra-EU portability of EU degrees either, so TCN students must undergo recognition procedures for the same degrees as their EU peers whose qualifications are automatically recognised. The 2016 recast Students and Researchers Directive (2016/801) partially addresses both of these issues, with a post-graduate extension and equal treatment with nationals as regards recognition of diplomas.

Procedures for recruitment and cross-border transfers differ only slightly from those of initial entry. Accordingly, cross-border mobility is driven not by the permit holder but by the sponsor, whether employer or institute. In addition, most Member States impose country-specific human capital requirements in order to acquire long-term residence status – in addition to satisfying other residence conditions. And migrants who have invested in acquiring competencies may be reluctant to start over in a second Member State. EU Long-term residents (whether former Blue Card holders or not) are likely to have their families with them already, rooting them in the Member State of residence. The portability of residence rights, under the EU Blue Card, should in principle make individuals less reluctant to move. However, most EU Blue Card holders to date have acquired their EU Blue Cards through change of status and are soundly settled in their country of residence. Furthermore, years of residence for naturalisation are reset to zero with each move to a new Member State.

Holding an EU Blue Card should make it easier for highly qualified individuals to quickly take up employment in a second EU Member State while conserving some of the privileges they enjoy as Blue Card holders, such as accompanying family. Yet the obstacles to mobility are the same that plague initial issuance: the recognition of qualifications, meeting a salary threshold, and having a contract for more than 12 months of employment. Matters are compounded by the fact that prospective employers in the second country are not aware of the mobility rights of

EU Blue Card holders. Further development of matching tools – such as the EURES Mobility Platform – should allow employers to seek candidates who already hold permits with mobility provisions, since they will be able to take up employment quickly.

## Notes

1. This consultation procedure remained in place until the Lisbon Treaty entered into force, and it was not until the Single Permit Directive (2011/98/EU-) that a legal migration Directive was adopted under the co-decision, or ordinary, procedure now in force.
2. C-491/13 Ben Alaya vs Germany.
3. Austria, Belgium, Germany, Finland, Lithuania, Malta, the Netherlands, Poland and Sweden.
4. Definitions in Article 2:
  - (b) “Research” means creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications.
  - (c) “Research organisation” means any public or private organisations which conducts research and which has been approved for the purposes of this Directive by a Member State in accordance with the latter's legislation or administrative practice.
  - (d) “Researcher” means a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required.
5. The opinions of the two Committees may be found on the website of the Official Journal of the European Union (JO C/2005/120/60 and JO C/2005/71/6).
6. Art. 27c of Italian Law 286/98.
7. This figure is much higher than the number of “first permits issued for remunerated activity – researchers” reported by Ireland to Eurostat, suggesting that not all HAS recipients are reported to Eurostat as researchers.
8. Point 3 on the IUA salary scale, or EUR 23 181 from 2013, or 30 000 if they have dependents.

9. Judgment 2006/11/0039 of the Austrian Administrative Court (Verwaltungsgerichtshof – VwGH) of 14 May 2009.
10. Italy used the transposition to lift occupational exclusions on foreigners in certain transportation jobs (railways, ferries, public transport). These restrictions dated back to 1931 and had been overturned by the courts despite remaining in legislation.
11. See Judgment C-508/10 as well as recent preliminary ruling in case C-309/14.
12. In fact, after the Blue Card has been introduced and consolidated in legislation, it does not always appear in national strategies. Romania’s 2011-2014 Migration Strategy for example, identified the Blue Card as an action area, although none of the annual plans which followed brought this idea forward, and the 2015-2018 Strategy dropped any mention of highly qualified migrants.
13. This assessment was conducted by a multidisciplinary team composed not only of the traditional actors in immigration policy (Ministry of Employment and Social Security, Ministry of the Interior, Ministry of Foreign Affairs and Co-operation) but also the Ministry of Employment and Competitiveness. The latter placed weight on the barriers posed by immigration policy to the attraction of investors, entrepreneurs and highly qualified migrants.
14. Law 14/2013, Article 1 provides a declaration of intent: “This Act seeks to support entrepreneurs and entrepreneurial activity, foster their development, growth and internationalisation, and promote entrepreneurial culture and an environment favourable to economic activity, both in the initial period of business start-up and in its subsequent development, growth and internationalisation”.
15. The formulation in Article 6 of the Blue Card Directive focuses on the territory of the Member State, not the EU, and allows volumes of admission for TCNs coming from another Member State. This predates the formulation in the TFEU after the Lisbon Treaty, which allows – in 79(5) – only to restrict “coming from third countries” so not from other Member States.
16. Estonia, Bulgaria, Hungary, Latvia, Lithuania, Poland, Romania, Slovenia and the Slovak Republic.
17. Consultation report drafted by Ewa Klamt (EPP-ED, DE) in co-operation with the Employment Committee  
<http://www.europarl.europa.eu/sides/getDoc.do?type=IM-PRESS&reference=20081103IPR41239&language=EN>.

18. The “Skills and Competences” permit, which could also provide an alternative route, does not require a job offer but is based on a strict panel review, in which low salaries would likely have a negative effect on approval.
19. Qualifying for a Blue Card, among other conditions, requires a one-year minimum contract, so job seekers must find a new job offering at least one year, meaning they cannot accept trial periods during their job search period.
20. Destinazione Italia, DL 145/2013.
21. Further, the data are corrected for missing income information – for those countries where information is available – applying a multiple based on the total for which income information is available as a share of the total. The share without income data is 7% for Blue Card countries (23% for France and 11% for the Netherlands) and 33% for non-Blue Card countries.
22. Member States bound by the Directive have until November 2016 to transpose it.
23. There are different legal interpretations of how countries may set overall limits to ICT admission, with limited jurisprudence to guide this question.
24. [...] specifying the policy fields where equal treatment with own nationals is provided for third-country workers legally admitted in a Member States but not yet long-term residents. Such provisions are intended to establish a level playing field within the EU [...].
25. Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

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*Annex 4.A1*

**Labour market mobility for EU Blue Card holders**

**Table 4.A1.1. Labour market mobility for EU Blue Card holders**

Country	Do modifications require prior notification or prior approval?	Allows labour market mobility <i>after</i> two years
Austria	The employer has three days to communicate to the AMS regional office the beginning and the end of the employment of a foreigner	BC holder can be granted a “RWR card plus”, if they hold a Blue Card for two years. This gives total mobility.
Belgium	Any change of the employer, or conditions of employment which affect the validity of the Blue Card, is subject to the prior issuance by the competent authority of a provisional work permit.	BC holder must notify Minister (or representative) of changes. The competent authority notifies the Immigration Department of any information provided by the employer with regard to the termination of employment or changes in employment conditions.
Bulgaria	The BC holder can change employer only after receiving written permission from the Employment Agency	Continued restrictions
Czech Republic	Blue Card holder is obliged to communicate above mentioned changes to the Ministry within a time limit of three working days.	Same as in initial period.
Germany	Any change of employers requires approval by the immigration authorities.	Yes.
Estonia	Estonian Unemployment Insurance Fund must consent in case of new employment and employer.	Yes.
Greece	Requires prior written approval from the competent authority.	Requires only communication of change.
Spain	Renewal of the authorisation must be requested.	Employer must communicate the employment contract to the Public Employment Services.
Finland	Holder may work in one or several professional fields. For special reasons, s/he may be restricted to work for a certain employer.	Same as in first period
France	Requires prior written approval from the competent authority.	Yes.

4. WHAT HAVE EU LABOUR MIGRATION DIRECTIVES CHANGED AND HOW CAN THEY BE IMPROVED? – 225

Country	Modifications require prior notification or prior approval?	Allows labour market mobility <i>after two years</i>
Hungary	Yes. Holder shall notify the immigration authority concerning the termination of contracts, of entering into another similar contract subsequently, within five days from the date of commencement and termination of such contracts.	No. The BC holder shall notify the immigration authority concerning the termination of the contract, of entering into another similar contract subsequently.
Italy	Changes of employer are subject to prior authorization by the competent territorial labour Direction.	Yes
Lithuania	Holder must apply to the Migration Department to replace the temporary residence permit at least 3 months before the date the contract with the new employer is signed.	Communication only.
Luxembourg	Prior authorisation required	Yes. Equal treatment with nationals as regards access to highly qualified employment
Malta	Change of employer and modifications that affect the conditions for admission are subject to the prior authorisation, by means of an employment licence.	The Blue Card holder shall submit an application to the Director to communicate changes that affect the conditions.
Netherlands	For holders of BC for less than 3 years, Ministry must be informed beforehand of intention to sign a work contract with another employer.	Free access to the labour market after <u>three</u> years.
Poland	Obligation to inform the competent authority about any change in the conditions.	The BC holder shall inform the competent authority of any change in a position, salary or in other conditions referred to in a permit.
Portugal	Communicate the modifications that affect the conditions for granting, in writing, if possible previously.	Yes. Equal treatment with nationals as regards access to highly qualified employment
Romania	Obligation to declare to the territorial division of the Romanian Immigration Office any change in [...] employment related to work.	Yes.
Sweden	Must apply for new Blue Card in case of change.	Yes
Slovenia	Requires written authorisation by the competent authority after receiving the consent to change employer.	Blue Card holder may change employer, by notifying the competent authority in writing of intention to change employer.
Slovak Republic	Requires application for the change of nature or purpose of residence	Yes



## *Chapter 5*

### **What is missing from the EU labour migration policy framework?**

*This chapter looks at what is missing from EU-level interventions in the light of policy developments inside and outside the European Union and how to fill and structure those gaps. It looks at how the European Union could play a role in increasing pools of candidates and improving the recognition of foreign qualifications. The chapter also looks at the EU's direct involvement in the selection of migrant candidates. It explores categories in the sector-based approach which have not been addressed – e.g. investors and entrepreneurs, including start-ups, exceptional talents and different occupations. The chapter assesses cross-cutting measures that are yet to be taken and could improve the effectiveness of current migration systems. They include standard application forms, EU-wide labour market tests and priority at border crossings. The chapter considers efforts to reduce the costs that migrants incur, then goes on to conclude.*

## A broad pool of candidates

In labour migration, a candidate pool is an intermediate step where interested candidates request inclusion in a list from which employers or public-sector player can choose. The pool of candidates can serve a number of purposes:

- Arouse greater interest and involvement from potential migrants and thereby improve matches between candidates and skills that are in demand. It is also a chance for employers to find workers who match their requirements.
- Increase the incentive for potential migrants to investment in their human capital and so improve their chances of selection.
- Preview eligibility requirements so that recruitment is accelerated when a skills match is found or a candidate selected.
- Improve caseload management, compliance, and programme monitoring.

There is a clear trend in non-EU OECD countries towards the use of pools of candidates for the selection of permanent migrants through so-called “expression of interest” systems introduced in New Zealand, Australia and Canada (OECD, 2014a). Such schemes seek to address the above-cited purposes, although means and procedures vary significantly. At present, however, there is no comparable pool of candidates at the EU level. No EU Member State systematically uses a pool of candidates for selecting economic migrants under its national scheme, nor requires inclusion in a pool as a prerequisite for labour migration.

The previous chapters have shown how the European Union is not perceived as a destination for labour migration in its own right, but that each country attracts migrants for particular reasons. At present, admission infrastructure reflects this single-country approach, with each Member State managing its own admissions for all permits whether national or covered by EU Directives. Consequently, candidates do not apply for admission in more than one EU Member State. National languages further link migrant applications to individual EU Member States, even though few of them have language requirements for temporary labour migration permits or research. The longstanding national approach to labour migration means that individual countries do not generally encourage third-country nationals to consider their eligibility for labour migration programmes in other EU Member States.

Instead, they see their mandate as attracting and admitting labour migrants whom they authorise for their own national labour markets.

A unified pool of candidates at the EU level would serve to break the exclusive bond between individual origin countries and single Member States by leading aspiring migrants to consider a broader range of destinations. The creation of a single pool at the EU level would allow candidates to express their intention of migrating to more than one EU Member State. Furthermore, it would allow all EU Member States to benefit from the interest shown by third-country nationals in a single EU Member State – resident in that country or abroad – by allowing employers across the European Union to find those third-country nationals who may never have thought to make their availability known beyond a single Member State.

National schemes cannot serve as the model for an EU-level candidate pool scheme, since only a limited number of examples or experiments with such pools have been identified in EU Member States. To date, experiments in national schemes in the EU have been oriented towards managing excess supply and ensuring training standards rather than increasing the attractiveness of the destination country. Some national seasonal work schemes – where workers’ profiles are relatively undifferentiated and the potential pool very large – have used pools of candidates that allow employers to select workers who have been pre-approved by third parties.

Apart from seasonal programmes, national schemes in EU Member States have rarely involved creating pools of candidates. Spain practiced third-party selection for dependent non-seasonal employment during its boom years, with larger enterprises recruiting through selection processes under bilateral co-operation agreements with countries of origin. Italy reserves an admission quota for participants in training programmes in origin countries, which can be considered a pool. Some countries have run bilateral training programmes to prepare candidates for recruitment in regulated professions – like Germany’s training scheme for nurses. However, their purpose is more aptly described as pre-recruitment rather than the creation of pools. Such programmes operate within the demand-driven paradigm, assisting employers in EU Member States to find candidates with the required qualifications.

There is scope for forming pools of candidates at the EU level. First, though, it is important to ensure that the mechanism can be incorporated into the existing EU framework. For example, seasonal work

programmes in individual countries have long worked through bilateral agreements to draw up lists of candidates. However, there is no provision for such lists in the EU Seasonal Workers Directive, which makes no mention of pools of candidates or the process of selection. While the Directive leaves open the possibility of placements conducted exclusively by the public employment services, it does not specify whether it means the PES in EU Member States only or in countries of origin as well. Nor does it regulate prior approval or selection by the PES or third parties.

Developing a pool of candidates could also hasten the introduction of a pre-approval system. Pre-approval accelerates the recruitment process for employers and makes it more predictable. Where labour migration procedures are complex or costly, or involve sponsorship schemes with high qualification thresholds, larger enterprises benefit from economies of scale. Pre-approval can help rectify the balance and grant more equal access to smaller employers or those recruiting fewer labour migrants (Ramasamy Kone, 2016). A pre-approval system usually entails the recognition of qualifications, so that if there is a single recognition process across EU Member States, the positive effects of the pool are multiplied.

Similarly, a pool can – though not necessarily – be linked to new or existing job vacancy databases and skills matching services. Matching databases could be a feature of the pool infrastructure. At present, public involvement in international recruitment is rare and limited to specific schemes and pilots, but the development of more robust, EU-wide matching platforms could provide the necessary infrastructure. The new expanded and revamped EURES mobility portal, approved by the European Parliament in February 2016, goes in that direction.

Beyond such databases, which help the public employment services scale up and expand their activities, governments can also take direct action to support skills matching. Examples include holding job fairs in countries of origin, or working with sectors to develop global recruitment strategies. To date, such efforts have been the work of individual EU Member States only. Thanks to its global presence, the EU is well placed to support recruitment efforts in countries of origin that bring together stakeholders from multiple EU Member States. Skills-matching tools and support are particularly helpful for small and medium enterprises and local authorities with little experience of international recruitment (OECD, 2014a; Ramasamy Kone, 2016).

## A general recognition system

The recognition of qualifications is an important factor in employment-related migration and mobility. Within the EU, the absence of simple mutual recognition procedures has been identified as an obstacle to the employment-related mobility of EU citizens. Efforts to facilitate recognition have been an EU competence for decades, both in employment-related mobility and the transferability of degrees and credits. As for regulated professions, they are covered by specific Directives. The poor transferability of qualifications and the special requirements for regulated professions are even more of a barrier for third-country nationals – especially if they have earned their qualifications in third countries.

The recognition of foreign qualifications makes a big difference in the employment outcomes of immigrants. The highly educated foreign-born have an overqualification rate that is 27 percentage points higher than that of the native-born. The gap falls to 10 percentage points among the foreign-born who apply for recognition (Damas de Matos and Liebig, 2014). There may also be a self-selection effect among immigrants who seek recognition of their qualifications: it reflects their higher skills levels and confidence in their ability to perform work for which they are qualified and to navigate the recognition process. At the same time, the actual skills of foreign-educated immigrants are usually, though not always, lower than those acquired in their host country. Immigrants born in non-EU countries have lower literacy skills, for example, even taking into account education levels (Bonfanti and Xenogiani, 2014). Foreign education accounts for much of that difference, even though the language used in the assessment of skills may play a role, too.

For labour migrants, the recognition of qualifications and skills plays a different role than for those who migrate for other reasons. In demand-driven systems, it helps them both to secure the job offer that is a prerequisite for admission and to meet the requirements of certain permit categories. The employer is the arbiter of whether the qualifications match the job, while the national authorities decide whether they meet admission criteria. Other actors may be involved in recognising diplomas and professional qualifications, but are not directly involved in authorising workers to immigrate.

Formal recognition can support labour migration in several ways:

- It informs potential migrants of prospects in destination countries' labour markets.
- It helps employers gauge candidates' potential skills.
- It qualifies labour migrants for selective admission procedures.

There are thus three different beneficiaries of recognition: the immigrant, the employer, and the government department that authorises admission.

For migrants, the recognition procedure gives a clear idea of the likely value of their qualifications and enables them to make an informed decision as to whether to pursue further training prior to searching for a job in the European Union. Recognition may also be a requirement for access to regulated professions as well as admission to the host country.

For employers, recognition is a signal of skills. They tend to discount the value of qualifications obtained in non-OECD countries (OECD, 2007), however, which is a challenge to job seekers from those countries. That being said, employers do have consideration for the skills of foreign-educated labour migrants, or there would be no skilled migration from non-OECD countries at all. Employer criteria for assessing the qualifications of recruits are not universal, however, and may not be based on formal recognition processes but – instead or also – on professional experience and the relevant attributes of the candidate. There is wide variation between professions and EU Member countries in the value employers accord to formal qualifications and to the need for education to match occupation.

For EU Member States, the recognition of qualifications is crucial to any scheme in which admission criteria demand a specific level of qualifications. Even if recognition has little or no value in the labour market, immigrants must still prove that they have the qualifications required under the national scheme. Producing proof of degrees obtained in a different country – even in another EU Member State – may require time-consuming, expensive and extensive documentation, notarisation and translation.

A recognition framework for TCNs requires progress on mutual recognition – a general objective of EU policy with regard to the single market and the European Higher Education Area. Those general policy efforts are laying the foundations of a recognition scheme for third-

country nationals, even if there are limits to the legal basis at EU level for developing an EU-wide recognition scheme

In the absence of a single EU recognition system, however, there are still areas where labour migrants could benefit from EU-wide initiatives. In most countries, third-country nationals are not entitled to equal recognition of their qualifications until they have obtained a residence status which grants them equal treatment. Some countries may require applicants for work permits – including the EU Blue Card – to obtain formal recognition of their qualifications, even if they do not intend to exercise a regulated profession. The statutory limit on processing times does not include recognition procedures, which may be lengthy.

The unequal treatment of non-residents, even if problematic from the point of view of rights, is not the principal barrier. Obstacles are related more to the origin of qualifications than of applicants. In other words, they are less of a reflection on the applicant than on the institution which issues the qualification. In fact, equal treatment would not necessarily lead to wide-scale recognition, given that Member State nationals are as likely to face hurdles in getting third-country qualifications recognised as third-country nationals.

### **Sectors not yet covered under the sector-based approach**

Since falling back on a sector-based approach to labour migration policy, the European Union has developed legislation that governs many different categories of migrants at different points in the migration cycle. Most legally resident TCNs enjoy a set of basic rights, the prospect of family reunification and a clear pathway to permanent residence, subject to conditions. The sector-based approach, however, fails to cover, or only partially covers, a number of categories.

#### ***A scheme for global talent superstars***

Schemes are in place in all EU Member States to ensure that the most sought-after talents – those with high incomes, high qualifications and a job offer in hand – are able to come and work. In some cases, the EU Blue Card application procedure offers faster, simpler admission than applicable national schemes (see Chapter 4). But in all countries, the highly talented are likely to obtain a permit – be it general or targeted – which grants them admission and work rights.

What is missing is a permit scheme targeted at the indisputably top talent that offers rapid approval and conditions that are substantially better than for qualified migrants. It is the very intention of restrictive schemes to target a very small number of beneficiaries. Nonetheless, such schemes may be appropriate for ensuring that exceptional talents jump to the top of the queue and, more importantly, are granted a residence status that is clearly more favourable than for other migrant categories.

There are several national schemes offering exceptional conditions to outstandingly talented individuals with the right attributes. Germany has a provision for granting immediate permanent residence for “researchers and scholars” who demonstrate a “lasting prospect of integration”. The United Kingdom maintains a Tier 1 (Exceptional Talent) allotment for migrants of outstanding ability or promise in certain fields. They are comparable to – outside the European Union – the United States’ EB-1 Visa for those with “extraordinary ability”. Such permits are highly restrictive channels. Germany, despite putting no ceiling on issuance, has granted only a handful. The United Kingdom sets an annual cap of 500 on its Tier 1 visas, but its strict requirements mean that the cap has never been reached. Nor has the United States ever used up its annual allotment of EB-1 Visas.

Few such schemes for top talent draw people from abroad. They are taken up mostly by foreigners already living in the host country under another status. The United States, for example, issued only about 500 EB-1 Visas yearly to new arrivals between 2010 and 2012. Japan introduced a top-tier permit regime in 2012 and, similarly, found that it was taken up almost entirely by foreigners already resident.

Defining exceptional ability is a complex, time-consuming task that requires peer reviews. The United Kingdom requires applicants to be endorsed as exceptional by representative bodies in their field. The United States, for its part, requires assembling proof of qualifications, such as publications and awards, and generally grants visas to migrants of undisputed repute who are at the top of their field.

Since all EU Member States are able to find grounds for admitting such individuals, a narrow definition of eligibility for admission would not open the door to anyone who couldn’t previously enter. The challenge in designing a scheme with stringent conditions lies in finding an appropriate means of verifying the exceptional nature of talents. The national certification process in the United Kingdom, for example, would

be difficult to harmonise at the EU level, as it is based on support from national authorities. A focus on groups with measurable talents would help. It could emulate existing arrangements for artists and athletes, who are covered by national provisions exempting them from formal qualifications and, often, even salary levels.<sup>1</sup> A top-talent permit could use several criteria that draw on the experience of similar schemes: e.g. high salaries, high-level management positions, and scientific output.

The discussion of salary levels in Chapter 4 pointed to the drawbacks and limitations of using salary thresholds to identify talent and skills. Top-talent programmes, by contrast, make very high salaries a criterion, as in the United Kingdom and in Japan. Very few individuals meet those criteria but, when they do, they are exempt from most other requirements and granted favourable conditions.

### *A focus on inventors and patent holders*

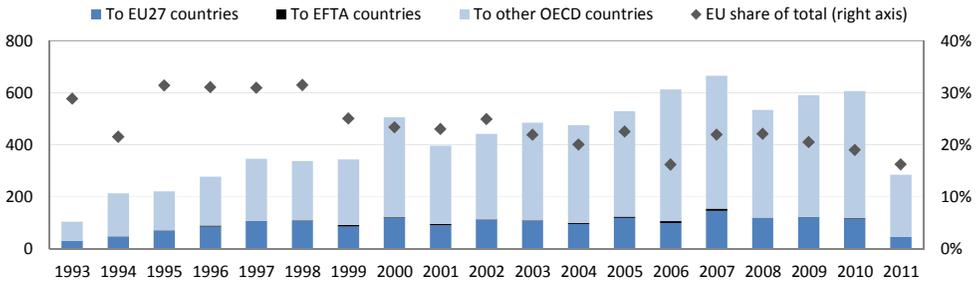
A highly talented group of obvious interest to policy makers – but which is also sensitive to residence status conditions – is high-value inventors, here defined as holders of patents. Patents are a key indicator of innovation and patent-holding inventors are a highly mobile group. In 2011, 6.5% of all patents were issued to inventors working outside the country of their nationality (a figure which does not account for migrant inventors who have naturalised). The nationalities of the two largest groups of migrant inventors were Chinese, of whom 7% worked abroad, and Indian, of whom 18% worked abroad.

Migrant inventors are increasingly less attracted to EU Member States than they are to other OECD destinations. The EU's share of non-EU nationals, who were awarded a patent in an OECD country other than their own, fell from about 26% in 1996-2004 to 20% in 2005-11 (Figure 5.1).

While the European Union has a framework for the highly qualified and researchers, these schemes are rigid in the salary thresholds that they apply and the hosting relationships with recognised institutions that they demand (see Chapter 4). As a result, some researchers do not fall under either framework. The recast Students and Researchers Directive grants greater flexibility in expanding the scope of coverage of researchers, especially by allowing Member States to drop the register of approved research institutions. However, it does not offer particularly competitive terms for top talent or inventors, nor does it consider scientific output.

**Figure 5.1. The European Union is home to a dwindling share of non-EU immigrant inventors**

Patents issued annually to immigrants from outside EU/EFTA to the EU27 or EFTA countries, 1993-2011



Source: OECD analysis of data from the World Intellectual Property Organization (WIPO) in Fink and Miguelez (2013).

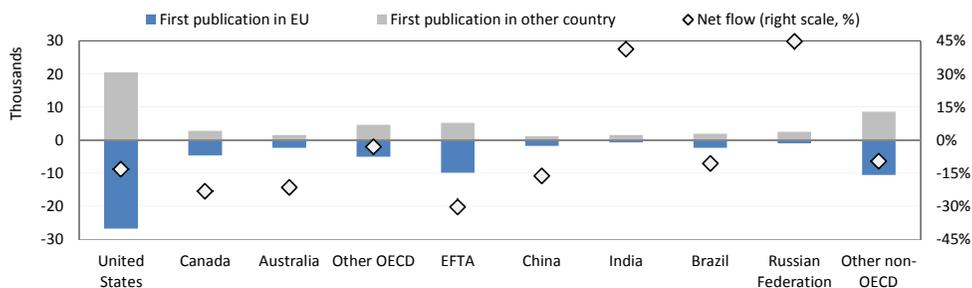
### *Scientific publications as an indicator*

Another yardstick for measuring top talent is scientific publications. The European Union loses more scientific authors than it gains. Comparisons between the institutions to which scientists were affiliated when they published their first paper and those where they work when they publish their most recent reveal that the net average number of researchers that the EU lost every year 1996 and 2011 was 1 500 (OECD, 2013). The indicator does not specify the nationalities of researchers, so it is possible to interpret the loss of scientists as the positive mobility of “brains” returning to their home country. The net inflow of scientists to the EU is positive only from two main countries of origin, India and Russia, while there is a net outflow towards China and Brazil (Figure 5.2). Over the same period, however, the United States showed a positive net inflow.

A number of countries look at scientific publications when assessing their skills to determine whether they qualify for special visas. The scientific publications indicator could be considered for assessing top talents in the EU. Institutional affiliation is another measure of talent, although third-party rankings (such as global higher-education rankings) can be problematic from the point of view of reliability and transparency (OECD, 2014a).

**Figure 5.2. The European Union loses more researchers than it gains**

International flows of scientific authors into and out of the EU, 1996-2011, by location of their first and last publication



*Note:* Denmark, Ireland and the United Kingdom are excluded as they are not bound by EU migration policy.

OECD, calculations based on the abstract and citation database of peer-reviewed literature, Scopus Custom Data,<sup>2</sup> version 5.2012, May 2013; OECD (2013).

### *Provide exceptional conditions for exceptional talents*

A top-talent scheme should not involve large numbers, but seek to benefit reputed experts in their field. They could be identified through nomination or points-based schemes such as patents, scientific publications, very high salaries, or other measures. Regardless of how the small group of top talents is defined, they should be offered exceptionally favourable conditions and the permit itself should be specifically for the talented. It may be difficult to propose benefits which set the talent permit apart from the EU Blue Card and other permits. Immediate permanent residence could be one distinguishing feature, but would break with the prevailing concept of permanent residence as a reward for integration and change it into a factor of attraction. The permit could also grant mobility rights in the European Union without a labour market test. Only a small number should be issued at first to reassure participating countries and underline its exclusive nature.

### *Self-employment*

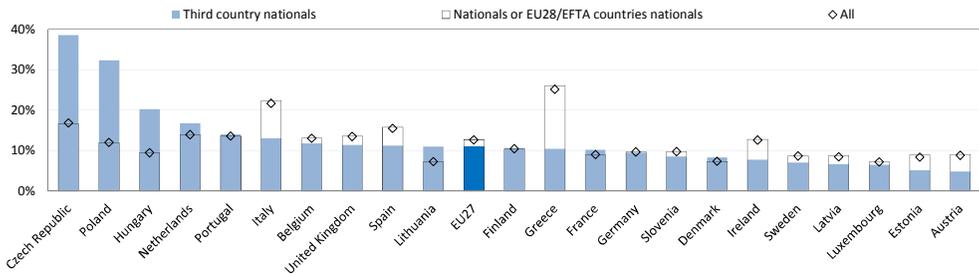
Immigrants widely show higher rates of entrepreneurship than the native-born (OECD, 2011a). They may be self-employed or run their own companies (of differing sizes) with employed workers. They may also be investors involved in managing the business in which they have a stake. Economic migration schemes do not have any single means of

distinguishing between the different categories of immigrant entrepreneurs. Not all schemes distinguish between investors, the self-employed and business operators and some, such as the Belgian system, do not have separate permit categories for any of those activities. Investors, who comprise a small share of the total, are discussed in more detail in the following section.

Self-employment accounts for about one in eight (12.6%) people in employment in EU Member States, although the range is wide – from 7% in Luxembourg to 26% in Greece (Figure 5.3). Third-country nationals have different self-employment profiles from the native-born. Mirroring the foreign-born in general, they are more likely to be self-employed in most EU Member States, except in those where native self-employment is generally very high (OECD, 2011a). In EU Member States, rates of self-employment among TCNs are slightly lower at 11%, but vary even more widely than among EU and host-country nationals.

### Figure 5.3. Third-country nationality is no obstacle to self-employment

Self-employed persons as a share of all persons in employment, by nationality, 2013



*Note:* Excluding the agricultural sector and countries for which third-country nationals were below reliability threshold.

*Source:* Labour Force Surveys (Eurostat), 2013.

The highest share of self-employment is to be found in the Czech Republic (38.5%), Poland and Hungary, where TCNs are twice as likely to be self-employed as mobile EU nationals and natives. The picture is reversed in Italy, Greece and Ireland, where self-employment is high and twice as likely among EU nationals.

While self-employment makes up one-eighth of employed TCNs, it accounts for only a tiny fraction of admissions for economic reasons. Few self-employed immigrants were in fact admitted as such through

economic channels. The number of first issuances of self-employment work permits is much lower than the number of newly self-employed TCNs identified in the EU Labour Force Survey. There are a number of reasons why so few self-employed workers arrive directly from abroad. Self-employment usually requires some experience of the host country and calls for language skills. Moreover, if the self-employed are to practice a regulated profession, they must undergo licensing procedures. Self-employment is also a risky prospect: immigrant businesses fail more often than native entrepreneurs and may lose their status as a consequence. Immigrant entrepreneurs are thus more likely to start businesses after they have had some experience of the host country and hold a more stable permit – such as long-term residence or family reunification – or have acquired nationality.

In the European Union, self-employed migrants are covered by national schemes which vary in their requirements (OECD, 2011a; EMN, 2015). The business income threshold (and, therefore, the type of activity allowed) ranges from very low in countries such as the Czech Republic, Hungary, Italy and Spain, to much higher in Germany and France. For example, a small family shopkeeper will qualify in some countries but not in others which require business to bring added value or reach a minimum annual income level.

Available statistics on immigrants admitted as self-employed workers indicate low take-up. The EU Member States with the highest self-employed admission rates are those with the simplest criteria and lowest thresholds, or those where self-employment is a form of dependent employment under a single-client relationship. This is the case in Italy, which admits more self-employed third-country nationals annually than any other EU Member State, even if the number fell from about 5 000 per year in 2008-10 to less than 2 000 in 2013 and 2014. Small-scale entrepreneurs in the Czech Republic also make wide use of trade licences – to the point where the country has moved to restrict changes of status from dependent employment. Stricter conditions are applied in countries such as France and the Netherlands, where inflows are below 200 annually, and Germany with under 1 000 per annum.

In-country status changes are thus particularly important to immigrant entrepreneurs, both enabling them to create new businesses and helping to integrate new immigrants. Entrepreneurship is often a means through which immigrants overcome barriers to their employment stemming from poor networks, inadequate language skills or problems with the recognition of qualifications (OECD, 2011a).

No EU instrument that formalises self-employed workers' conditions of admission and rights is in place. They are specifically not covered by the Single Permit Directive. There is obvious scope for EU-level action to add value in this area, if it can improve the admission of job-creating entrepreneurs and help resident migrants start new businesses.

As EU Member States do not have any single threshold for admitting entrepreneurs and self-employed TCNs, and often use their own discretion to determine whether an activity is admissible, it would not be easy to agree on a single shared definition at the EU level.

### ***Working holidays or youth mobility scheme***

The chief purpose of youth mobility or “working holiday” schemes is not about meeting economic needs, but “long-term public diplomacy” (GAO, 2015a). Such programmes are designed to give young people a chance to live and work in another country on cultural exchanges and to strengthen ties between countries. They last for up to a year, although some countries allow an additional year. They operate on the basis of bilateral agreements (the exception is the United States, which offers a Summer Work Travel Visa valid for up to four months, without any bilateral arrangement). The countries which have the densest network of bilateral agreements – more than 30 each – and which host the most working-holiday makers are Australia, New Zealand and Canada. The basic requirements are generally to be between 18 and 30 years of age, have no dependents, and be financially self-sufficient – though there may be more requirements, such as health insurance. Youth mobility agreements have multiplied over recent years, with OECD countries extending them to nationals of emerging economies, although they have generally introduced numerical caps and require certain levels of higher education attainment or language ability. The limits are designed to prevent overstay and ensure that programmes retain their cultural exchange purpose.

While youth mobility agreements have not been negotiated to meet labour market needs, they have in practice become sizeable sources of temporary labour in the countries that make the main use of them. Australia, Canada, New Zealand and the United States all experience large inflows in the seasonal tourist sector, for example, and in hospitality services (Table 5.1).

**Table 5.1. The European Union sends working-holiday makers abroad, but does not receive them**

Numbers of participants in youth mobility programmes in selected OECD and EU countries

	2007	2008	2009	2010	2011	2012	2013	2014
Australia	134 610	154 150	187 700	175 740	185 480	214 640	258 250	239 590
United States	147 650	152 730	116 390	118 230	97 640	79 800	86 360	90 290
Canada	32 490	41 140	45 330	50 010	54 920	59 070		
New Zealand	35 610	40 310	41 220	44 820	45 060	50 830	50 830	57 630
United Kingdom	39 390	34 840	25 180	21 270	20 660	19 630	20 860	23 530
Japan	6 230	6 480	6 480	7 480	8 480	9 480	10 480	11 480
Korea	280	310	270	490	800	1 000	1 180	1 320
Italy	390	420	440	390	430	430	510	480
Norway	150	180	200	150	180	180		
<b>Total</b>	<b>396 410</b>	<b>430 540</b>	<b>423 200</b>	<b>418 570</b>	<b>413 650</b>	<b>435 050</b>	<b>342 100</b>	<b>424 310</b>

Source: OECD International Migration Database; national sources.

Most EU Member States have agreements with some or all of the countries in Table 5.1, as well as with Japan and Korea, although the only EU Member State to issue a large number of working-holiday visas is the United Kingdom. Nonetheless, flows of young working-holiday makers are very imbalanced – much greater into Australia, New Zealand and Canada than out of them. EU nationals comprise about two-thirds of the working-holiday makers going to Australia, for example. The European Union has eight times the population of Australia, New Zealand and Canada and youth mobility from them is about eight times smaller – and entirely to one Member State: the United Kingdom.

The rest of the EU struggles with attractiveness. Although working-holiday participants admitted to one Schengen country under a bilateral scheme are able to travel within the rest of the Schengen area, they may only work in the country for which they hold a working-holiday visa and permit. So they must apply for a visa for each country in which they wish to work, even if it is only for a short while. Visa fees range from EUR 60 for a national Schengen visa to as high as EUR 655 in the Netherlands, for example. The need to apply for separate visas particularly curtails the attractiveness of smaller countries. The added value of an EU-level youth mobility scheme would be substantial in allowing mobility.

Working-holiday agreements are generally not considered to be labour migration channels, even if they involve employment, although many EU Member States classify working-holiday makers as a subcategory of their labour migrant categories. They are generally exempted from labour market tests, since they are not meant to compete with local workers, and there may be restrictions on the duration of each

employment contract. The number of working-holiday makers in EU Member States is limited, with the exception of the United Kingdom and Ireland.

Nonetheless, youth mobility schemes may need to contain safeguards, as programme evaluations in countries with large inflows have identified risks (OECD, 2014b). They range from adverse effects on very specific local labour markets because of high concentrations of working-holiday makers in certain occupations and cities to the risk of employers exploiting young foreigners' unfamiliarity with labour law and the short-term nature of employment. The United States revised and capped its programme, which had fewer criteria for admission and relies on private intermediaries (GAO, 2015a).

In light of the provisions of current bilateral agreements, the criteria applied in a pilot programme could include age, self-sufficiency, and education requirements, as well as a maximum length of stay in the European Union and limits on prior visits. Limits on working time in any single Member State could also be applied to encourage the mobility of participants. They would not be confined to the main partner countries, but would be extended as youth mobility programmes expand worldwide. Indeed, rising income and education levels in many non-OECD countries make them ideal partners for expanded working-holiday schemes. Numbers would initially be capped at the EU level, which would prevent large numbers of participants from clustering in a single city.

Under the current framework, individual Member States would issue the working-holiday visa, but it would be valid for employment in other EU Member States without a new visa application or labour market test. The young working-holiday maker would simply have to present his or her permit. Mutual recognition and speedy work authorisation – if required – would also be part of an EU-wide arrangement. However, until an EU-level body can issue a residence permit, it will not be possible to negotiate bilateral agreements at the EU level, although mobility provisions could be part of such framework co-operation agreements. Youth mobility programmes are traditionally under the aegis of the Ministry of Foreign Affairs, and any development at the EU level may have to respect that.

### *Investor schemes*

Investors are a special group of economic migrants, distinct from entrepreneurs, as they bring financial capital rather than – or in addition to – entrepreneurial and management skills. Within the category, there are distinctions between the type of investment and investors' level of involvement. There is no EU-level policy governing investors.

There are basic admission programmes for three kinds of investors in the European Union: business investors, real-estate investors, and purchasers of government or other securities.

#### *Business investment programmes*

Business investment permits are subject to very different national definitions and expectations in financial requirements, investor involvement, business plans, added value and other criteria (OECD, 2011a). They tend to be restrictive and admit only investors whose businesses create jobs or have high turnovers, and allow investors to accompany and manage their capital. Many investors would qualify for dependent or self-employment visas, but the investor visa is meant to circumvent limitations on entrepreneurs hired by a new company without a record. In fact, new businesses may not be able to recruit from abroad before demonstrating business sustainability, but an investor visa allows third-country nationals to enter and work in their business immediately.

Nonetheless, schemes in OECD countries have harboured very high expectations of business investment and have, therefore, brought in very few investors. Or they have set lower thresholds and raised concerns about the added value of the investments (OECD, 2011a). Schemes that do not require the direct involvement of investors in the business, such as EB-5 in the United States, have prompted worries over programme integrity – primarily the origin of the capital – and their added value (GAO, 2015b). Similar concerns over added value led Canada to close its five-year interest-free escrow scheme in 2010. In the United Kingdom, the Migration Advisory Committee called for more closely targeted use of business investment (MAC, 2015).

#### *Real-estate investment programmes*

Permits for real-estate investors have increased over the past decade in EU Member States and are generally issued to investors who purchase property. The value of such permits for non-residents lies not only in the fact that they allow them to visit and use the property, but also to travel

freely within the Schengen area. For smaller EU Member States in particular, the supranational benefits are a key promotional factor in the scheme. A temporary permit can lead to permanent residence under the general rules in accordance with the minimum residence requirement, which may be shorter for investors than for other migrants or subject to less stringent criteria. Indeed, a common feature of many investor programmes is their more relaxed requirements for residence in an EU Member State – particularly when it comes to real estate and securities visas, which do not stipulate continuous presence in the country, but grant investors and their families residence permits. During the financial crisis, there was a race to the bottom between competing countries' real-estate programmes, with the introduction of progressively lower thresholds, especially in countries where the construction sector was hard-hit. While real-estate purchase schemes have been the most popular of all investor programmes, and the total value of property purchased is consequently high, there is little evidence of a positive effect (OECD, 2016). A number of EU Member States have stiffened their requirements as their property sectors have recovered.

#### *Admission schemes for purchasers of government assets*

Investment in government securities or bank deposits and loans or gifts to government funds can also open the way to residence permits or even naturalisation. Some OECD countries have moved away from cash deposit visas as they appear of little value. Canada suspended its scheme, while the United Kingdom increased its requirements following a sceptical report questioning its resumption of the programme (Migration Advisory Committee, 2014). Some high-threshold schemes may also contain provisions that facilitate naturalisation. Mediterranean-island Member States have introduced investment schemes which bring rapid naturalisation with no residency requirement. And since naturalisation policy lies within a strictly national purview, there is little one country can do if another one opens up an easier pathway to EU citizenship – even if the individual in question invested at the lowest possible price to obtain EU citizenship.

#### *Possible EU-level added value in investor permit programmes*

In light of the many different types of investor schemes, it would be difficult for a single EU scheme to offer eligibility criteria and focus that would cover them all. On the other hand, minimum standards could ease concern over countries using lower thresholds to compete – particularly

for investors in real estate and those who make contributions or loans to government funds. A single investor permit could address the question of attractiveness by creating an EU-level permit for high-value investors which the EU would promote widely.

An EU-level scheme could also improve compliance. One of the main concerns prompted by investor visas is money laundering. There is no EU-level database tracking financial transactions and EU-level co-operation in the fight against money-laundering is still developing. The 2015 Directive on the prevention of money laundering<sup>3</sup> is meant to improve risk assessment and could be linked to diligence in the assessment of applications for investor permits.

### *A scheme for start-ups*

One programme which combines the attributes of investor, self-employment and entrepreneur visas is the start-up visa. Investor visas require a certain amount of capital, while start-up visas are based on a business plan or innovative idea and a direct management role for the start-up founder. Capital requirement levels vary, however.

Start-up visas have become more widespread in recent years as countries vie to attract innovation and host firms that drive growth. In practice, they generally mirror business investor schemes, although they may allow lower thresholds of financial support. Ireland, for example, introduced a start-up visa in 2012. Its minimum capital threshold was EUR 75 000 (later lowered to EUR 50 000), which was much lower than the EUR 300 000 minimum in Ireland's general business investor scheme, suspended in 2016. Denmark and Canada both introduced start-up permits in 2015. Denmark's was intended for up to 50 investors annually, requiring enough funds to be self-sufficient during the first year, while the Canadian scheme for start-ups requires investment from a Canadian venture capital fund, angel investor, or incubator.

The evaluation parameters and instruments range widely and are difficult to harmonise. And start-up visas, like business investor visas in general, are particularly challenging. The evaluation of innovative ideas and business plans may be cost-intensive, difficult to standardise, and left largely to countries' discretion. External evaluation and sponsorship both add tiers of discretion. Canada has a list of recognised sponsors, while the Netherlands demands support from one of eight "recognised facilitators". As for Australia, which has subsumed the concept of "start-up visa" in its general self-employment scheme, it requires provinces to

nominate individuals under its Business Innovation Stream. Italy has put in place an accelerated procedure for start-ups with a low capital requirement of EUR 50 000, where a business incubator reviews proposals or lends its support. The aim is to facilitate the six-month processing period for self-employment permit applications, rather than create a new start-up permit.

Most of these schemes are very recent and their outcomes have yet to be assessed. However, participation has been low so far and, where countries have set aside permit allotments, they have not been used up. An alternative is to offer funds. Chile's "Start-Up Chile" programme involves a competition for public funding, the prize being funds for winners to develop their idea in Chile. Evidence from the first four years of the programme shows that the retention rate was less than 20% and that about one in eight winners found venture funding outside the programme. The Chilean experience is reflected in France, which, instead of introducing a new visa, launched its so-called "Tech Ticket" programme within the existing visa framework. Judging a programme based on such indicators depends on expectations and broader programme benefits. High-visibility start-up programmes may also be acceptable as loss leaders, using public investment to support potentially innovative firms and improve nation-branding.

Given the widely varying objectives, constraints and parameters of EU Member States' current start-up schemes, it is not clear what an EU-wide start-up visa would look like. Some aspects, like duration and rights, could be harmonised in a number of Member States. Start-ups could, for example, be granted two-year permits to allow foreign investors to work in new firms, using private capital or public innovation funding. The European Union could also cap the length of processing times. For example, an extension to cover self-employment in a revised Single Permit Directive would bring processing time to a four-month maximum, which could be further shortened for start-ups. However, countries that assess business plans as part of the application process may struggle to meet shorter processing times.

An EU start-up visa may not be the only way to institute a harmonised approach and develop an EU identity in this area. A start-up programme could also be introduced within the framework of current EU and national schemes without creating a new permit category – although a mobility component is possible only as part of an EU-level scheme.

Competition for innovative business plans could be supported by other EU programmes, such as research and innovation, using incubators as the legal person who would hire the third-country nationals associated with the winning application. A start-up visa could operate along those lines.

Self-employment options in permits, like the EU Blue Card, which do not currently foresee self-employment could allow permit-holders more options. Allowing EU Blue Card holders to meet income requirements and maintain their status through a combination of dependent employment and entrepreneurial activity would open up the EU Blue Card to start-up founders. The possibility of transitioning to a start-up visa of the Blue-Card type would enable a migrant entrepreneur to keep the years of residence accrued as a EU Blue Card holder. An EU start-up visa framework could also address the problem of researchers who, in some countries, are unable to qualify for self-employment permits to pursue business opportunities.

### *A status for international students who have graduated*

Chapter 4 addressed the shortcomings of the Students Directive – in particular, the limited harmonisation of the post-graduate job-search extension. The addition of a job-search extension to the 2016 recast of the Students and Researchers Directives addresses that omission, but not related issues.

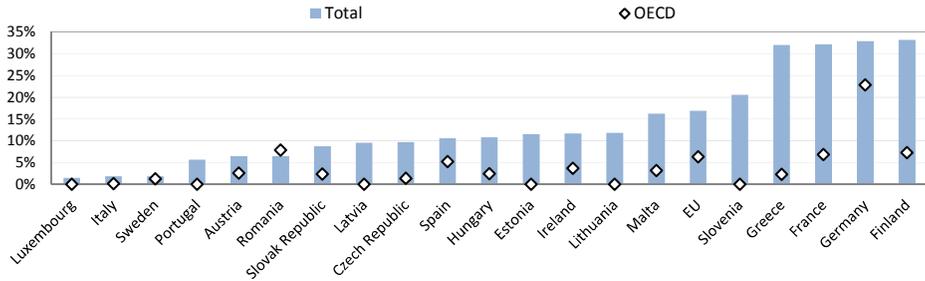
International student retention rates are low in the European Union. Depending on the method used for calculating those who stay on, the rates are estimated at between 16% and 30% (Weisser, 2016) and range significantly from one EU Member State to another (Figure 5.4).

The revised Directive does not resolve the issue of post-graduation intra-EU mobility or offer more favourable channels to other forms of employment. The Directive allows – but does not require – Member States where students have exercised mobility to issue job-search extensions, but does not extend this possibility to other Member States where the student has never exercised mobility. Nor does it favour an international student's status change, for example, through exemption from labour market tests. Such exemptions are already in place in many OECD countries.

More direct access to EU permit categories could also be provided. In the case of the EU Blue Card, for example, changes could lower salary requirements or ease – or even scrap – the criteria for recognising degrees obtained in other EU Member States by waiving notarisation and translation.

**Figure 5.4. International students in the European Union mostly leave when they graduate**

The estimated stay rates of international students from outside the EU/EFTA, 2010-12



Note: The EU denotes the EU28, with the exception of the United Kingdom.

Source: Weisser (2016) based on Eurostat permit data.

### *Minimum standards for domestic workers*

An important sector of employment among the foreign-born, and third-country nationals in particular, is domestic work. It comprises several different distinct domains: household help in basic domestic tasks, child care, and personal care. Household employees often perform more than one of those tasks.

Domestic work is a significant area of migrant labour for a number of reasons:

- It is a transitional occupation for new immigrants and often the first job available to migrants, especially women. During the economic downturn of the late 2000s, the increased labour force participation of women, especially in the domestic sector, enabled many immigrant families to maintain an income even though the primary male breadwinner had lost his job (in a hard-hit cyclical sector).
- The domestic employment of immigrants has clearly contributed to increased labour force participation among natives, especially high educated women (Cortes and Tessada, 2011), even though child care and other social policy changes may have more of an impact.
- It raises legality-related issues. Domestic workers are among the most vulnerable groups of employed migrants, since they work,

and may even live, in private households where oversight is unlikely and compliance with regulations on wages and hours particularly complicated.

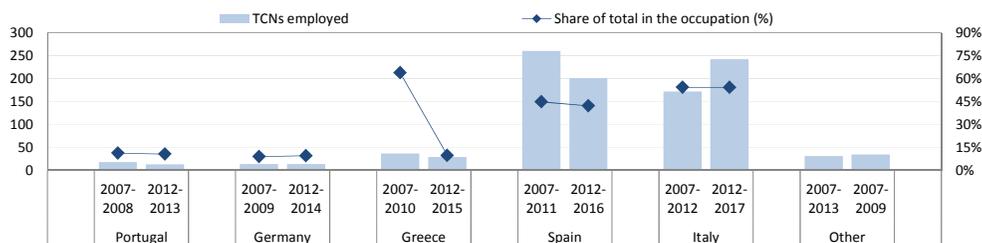
- Finally, the sector has been one of labour migration’s main channels of entry in the past two decades, either through recruitment from abroad or regularisation.

EU-wide, domestic occupations account for about 0.4% of total employment, according to the 2012-13 EU Labour Force Survey. In some EU Member States in 2012-13, they accounted for much higher shares –1.6% in Spain and 1.2% in Italy. Such figures probably underestimate the true numbers because it is difficult to classify domestic occupations and capture workers in a traditional labour force survey. In Italy, for example, about 1 million people paid pension contributions as domestic workers in 2012, suggesting that up to 4% of the employed were in domestic work of one kind or another.

Third-country nationals accounted for 34% of employment as “domestic cleaners and helpers” in 2012-13, a share which increased from 30% in 2007-08. Most employment, however, is concentrated in Southern European countries, primarily Spain and Italy (Figure 5.5).

### Figure 5.5. Southern Europe employs many third-country national domestic workers

Number and share of third-country nationals employed as “domestic cleaners and helpers”, 2007-08 and 2012-13



Note: Excludes Mediterranean island Member States due to missing data. “Domestic cleaners and helpers” correspond to International Standard Classification of *Occupations* Code 913 for 2007-08 and Code 911 for 2012-13.

Source: OECD Secretariat calculations based on the EU Labour Force Survey (Eurostat), 2007-08 and 2012-13.

Another important category in domestic work is “personal care-workers employed by households”. It includes childcare workers, teachers’ aides, and personal care workers in health services. Most are home caregivers. The sector is driven by the demand for elder care which is expected to grow sharply as the population in European countries ages. “Home-based caregivers” account for 1% of total employment in Europe. Of that 1%, 30% are foreign-born (OECD, 2015). Although intra-European mobility contributes substantially to the personal care workforce, the share of TCNs among workers directly employed by households was about 37% in 2012-13 – up from 26% five years earlier. Labour force survey data indicate that Italy and Spain account for the bulk of TCN personal carers employed by households.<sup>4</sup>

EU-level intervention in the domestic work sector would primarily address minimum standards in order to clarify legal obligations, contractual conditions and rights. It would also address compliance measures. Mobility provisions may be applicable to domestic workers as they could increase the mobility of the employer, whether EU national or third-country national. Japan, for example, considered the possibility of migrants bringing an accompanying domestic worker sufficiently important to grant an exemption to its domestic worker restrictions for its exceptional talent migrant category.

There is, however, little consensus among EU Member States on whether domestic work should be encouraged or discouraged, and whether foreign domestic workers may be recruited. In fact, few EU Member States currently allow labour migration for the purpose of domestic work, childcare or non-regulated home care, as it is not considered sufficiently skilled and does not meet wage or qualifications requirements. The countries which do admit TCN domestic workers as labour migrants are confined to Southern and Eastern Europe. Any initiative in this area is likely to have more of an impact in those countries, but will also be resisted by Member States which have excluded domestic occupations from eligibility for labour migration.

A related question is that of au pairs, even though EU legislation treats them as belonging to a sub-category of rules for promoting youth and cultural exchange – much as national legislation does. Indeed, most EU Member States – apart from the few which consider them as workers – classify au pairs under educational or youth mobility schemes, since they are not supposed to work but to exchange cultural and learning opportunities with their host families. Au pair programmes in many

EU Member States, however, have become channels for paid domestic work (OECD, 2014d).

### **Box 5.1. Should au pairs be regulated as workers or as an education category?**

Au pairs are meant to be part of cultural exchange. The issue of third-country nationals in au-pair programmes performing domestic work, particularly in Nordic countries and the Netherlands, has prompted scrutiny. Many au pairs, and host families, consider the purpose of their stay is employment rather than cultural exchange (Bikova, 2015). The recast 2016 Students and Researchers Directive (covering also trainees, volunteers and, as optional categories, school pupils and au pairs) recognises that the relationship between an au pair and the host family may be considered an employment relationship and gives Member States the option transposing the conditions included in the Directive or maintaining existing ones. The voluntary nature of transposition is unlikely to change the regulation of au pairs. Even if the conditions of the Directive are transposed, the Directive does not cover areas such as the fees charged by mediating agencies in the home country, or the difficulty of enforcement, both of which make au pairs more vulnerable (Stenum, 2011). Furthermore, some EU Member States have no special status for au pairs, who are generally treated as language students (in Italy and France, for example), in which case the economic relationship with the host family is entirely invisible and unregulated.

More could be done at the EU level to ensure that au pair work is clearly in the framework of cultural exchange. The fact that au pair permits are time-limited reduces the long-term risk of an exploitative employment relationship. But permits do not put a limit on the total time that an au pair stays in the European Union. They may therefore move from one EU Member State to another. However, some EU Member States do not admit au pairs if they have already been an au pair in another EU Member State. The added value that the European Union could bring those countries would be to put into place a mechanism for monitoring the circulation of au pairs, so that the cultural exchange programme does not become a means of hopping from one country to another for domestic work. The European Union could set a total au pair period.

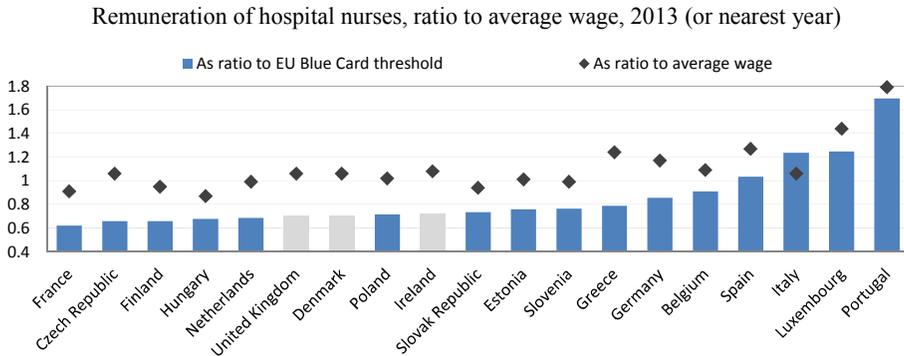
### ***Health professionals and regulated professions where mutual recognition is advancing***

Between the highly qualified and low-skilled migrant groups, there is scope for new categories of common interest. They could include healthcare and other occupations where the recognition of vocational qualifications is evolving, but where professionals do not meet the salary requirements of the EU Blue Card. The framework governing regulated professions is developing faster than for those that are non-regulated. Minimum training requirements have been established for the mobility of EU nationals. The 2013 Directive on the recognition of qualifications (2013/55/EC) limits those measures to EU nationals and third-country nationals who enjoy equal treatment under specific Directives. Under the 2013 Directive, third-country nationals who move to a second Member State after gaining recognition and working in their first host country for

three years are able to transfer recognition if they benefit from equal treatment. Extending equal treatment to third-country nationals in other categories (e.g. self-employment) would facilitate mobility possibilities for those with EU qualifications.

Health professionals in particular are an area of great interest for labour migration. About 63% of the foreign-born nurses in EU OECD countries, and 70% of the doctors, were born in third countries. Although medical doctors generally qualify for Blue Cards, nursing professionals may not, as their Member State average salary fails to meet the card's threshold in most EU Member States and below the average wage (Figure 5.6).

**Figure 5.6. Average salaries for nurses in EU Member States are often below the average national salary**



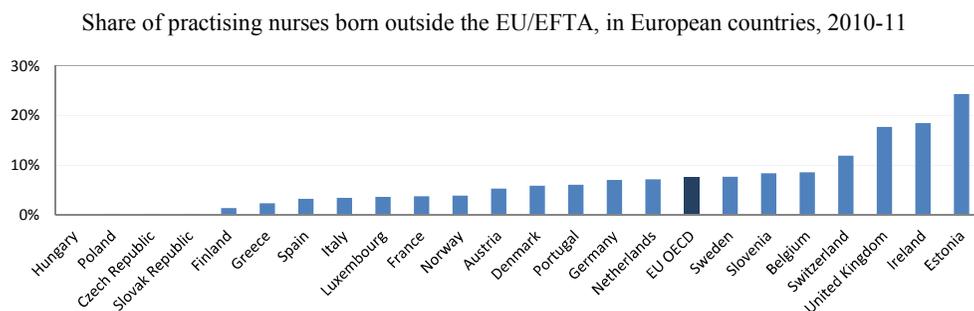
*Note:* Data from Ireland refer to registered (“professional”) nurses, resulting in an overestimation. For the United Kingdom, Ireland and Denmark, the EU Blue Card threshold refers to 1.5 times the average wage.

*Source:* OECD Health Statistics 2015, <http://dx.doi.org/10.1787/health-data-en>.

Immigrants from third countries supply about 7.5% of the foreign-born nurse workforce (compared to 11.6% of doctors). Much higher shares are to be found in the United Kingdom and Ireland (Figure 5.7). The share of foreign-born and foreign-trained nurses is increasing, although many of them train in EU Member States. An EU-level permit would build on efforts by single EU Member States to ease nurses' entry conditions under their national schemes. Nurses already benefit from exemption from volumes of admission, lower salary thresholds or inclusion of nursing on occupational shortage lists. The United Kingdom, for example, still includes nursing on its shortage occupation

list because most third-country nurses fail to meet admission criteria (MAC, 2016). An EU-level permit could also incorporate the 2010 WHO Global Code of Practice on the International Recruitment of Health Personnel. The WHO code seeks to promote and practice the ethical recruitment of healthcare workers.

**Figure 5.7. Some EU Member States have a large share of medical personnel born in third countries**



Source: OECD Database on Immigrants in OECD Countries (DIOC) 2010/11, [www.oecd.org/els/mig/dioc.htm](http://www.oecd.org/els/mig/dioc.htm) and European Union Labour Force Surveys 2009-12, in OECD (2015).

In addition to nurses, the other regulated professions where automatic recognition is in place – dentists, veterinarians, midwives, pharmacists and architects – could also be subject to the sector-based approach, separately or together, in a single legislative package. Unlike nursing, however, national labour migration schemes have not sought to legislate for the other professions mentioned.

Following on from the sector-based approach, trades (i.e. occupations in crafts, commerce and industry, originally covered in Annex IV of the 2005 Professional Qualifications Directive and updated following the 2013 amendment) could be another area in which to build labour migration provisions. As trades recognition procedures develop, those where skills are in strong demand could be added. Provisions for the recognition of qualifications under any trade-oriented Directive would have to include:

- a shared definition of the requisite training and experience,
- the recognition procedure,
- the portability of qualifications as part of the mobility framework once admission is granted.

Provisions may also link recognition to trainee programmes: they would offer third-country nationals the option of completing a training programme which would lead to recognition and enable them to stay on for employment.

### ***Mobility provisions for the Seasonal Workers Directive***

Chapter 4 observed the lack of mobility mechanisms for seasonal workers. The Seasonal Workers Directive seeks mainly to protect workers and prevent unfair competition between EU Member States by ensuring that wages meet the legal minimum standards. The Directive does not aim to put in place an approved seasonal labour force which follows the season from one Member State to another, as it does not allow seasonal employers to post their workers to other EU Member States. Workers have to file separate applications if they wish to follow an agricultural crop season or work in border regions straddling two or more Member States. However, the short working period and low wages in seasonal work would not generally justify the paperwork and fees involved in such multiple visa applications. Seasonal work is different from other types of labour migration because of the frequent involvement of co-ordinating bodies – employers, employers' associations, employment agencies and public employment services – in managing the recruitment and migration of multiple workers. There may be scope for determining categories of employers who could send their seasonal employees to take up jobs in different EU Member States. Communication requirements and compliance measures would be based on those used for other mobility mechanisms (e.g. the ICT or Posting of Workers Directive). Rather than allow all seasonal employers to post their workers, though, provisions could apply only to bilateral agreements or EU mobility partnerships with countries of origin under which wages and working conditions are closely supervised.

### **Horizontal approach**

Taking the sector-based approach to specific categories is no substitute for addressing gaps in horizontal coverage. There are a number of steps which can be taken to extend minimum standards to a broader range of third-country labour migrants.

### *Increase coverage of minimum standards*

The Single Permit Directive has extended minimum standards in processing times, in transparency and in equal rights with regard to social security, goods and services (including housing) to most categories of third-country workers admitted by EU Member States under EU and national schemes but not covered by other Directives. Some categories, however, are still excluded from the Single Permit Directive, as well as from other EU legislation. In addition to the gaps in coverage, several issues are not addressed by minimum standards. Conditions for in-country status change are not specifically regulated, while maximum permit costs are not defined. Nor is it clear whether the employer should recover fees from the employee, or vice versa. There is no absolute benchmark for costs, and fees vary widely among EU Member States.

Asylum seekers and refugees are generally not covered by labour migration Directives and are expressly excluded from coverage by the Single Permit Directive. In most cases, refugees benefit from relatively favourable rights under the asylum *acquis* although, in some cases, they are excluded from certain high-priority statuses. EU Blue Card holders and EU long-term residence for former EU Blue Card holders are examples. If highly favourable permit regimes are to be introduced, refugees should not be excluded from them. Overlap should allow access to greater rights without the loss of any protection already granted.

More complicated is asylum seekers' access to economic migration channels. The aim in keeping channels distinct is:

- to ensure that asylum seekers may access the asylum process rather than being redirected towards other channels that do not offer protection,
- the concern that allowing asylum seekers to join labour migration channels will increase the incentive to abuse the asylum channel.

The risk of abuse is presumed higher if asylum seekers who are refused protection are then allowed to apply for work permits. There is little conclusive evidence of this, however, as the Swedish example suggests. Sweden allows failed asylum seekers work permits if they worked while they were awaiting a decision on asylum. It introduced the policy in 2008 to encourage asylum seekers to take up employment during long procedures. Only about 10% did so (OECD, 2011b). Few EU Member States permit such status changes, though. Yet, there may be some scope, during and after the asylum procedure, for granting status

changes to high-threshold labour migration categories – for which few people would qualify, however – and to students and researchers, if supported or sponsored by an institution.

A further question is whether to support potential asylum seekers – e.g. displaced people in third countries or those under UNHCR protection – in accessing labour migration channels. There is a strong argument for the provision of labour migration opportunities as part of support for the displaced, especially those with low or no priority access to resettlement. They are not prohibited from applying for work – or EU-regulated study-based residence permits – as they have no specific status under EU law and are therefore treated like any other applicants. And the European Union has so far introduced no targeted provisions to facilitate employment (like the waiving of certain conditions). Displaced persons are clearly in need of special support – such as the recognition of their qualifications, for example – in order to be able to actually benefit from available migration channels.

### *A job search visa*

There is no EU-wide job-search permit at present. Indeed, such programmes are rare in EU Member States and, where they do exist, they do not allow mobility for employment.

As the European Union itself cannot issue residence permits, or require countries to authorise labour migration permits to third-country nationals abroad, there are limited prospects of an EU-wide job-search permit. However, TCNs may be entitled to permits for such non-employment purposes as family reunification or study, an avenue that could be used to create a migrant category that enjoys mobility. As both students and researchers are allowed to seek employment and switch to employment permits if they meet conditions, similar arrangements could apply to other permits in the presence of a job offer.

A more indirect means of introducing a job-search permit is to require EU Member States to allow legally present third-country nationals to file their applications for work permits within the EU, rather than requiring them to return home. Such an advantage is afforded to some categories, like students, but the practice varies from one EU Member State to another. If it were applied to all legally present third-country nationals, including tourists, it would allow visits for any purpose to be used for effective job seeking. The nationals of countries who do not need visas obviously stand to benefit much more than those who do.

The EU cannot directly sponsor third-country nationals as their employer or guarantor, so it is unable to select job seekers and require member countries to admit them. However, it is able to support the intermediate bodies which are the legal persons employing or sponsoring TCNs. The admission of employees from outside the European Union is still subject to volumes of admission. Direct hires by EU-funded projects or programmes for activities in more than one EU Member State could benefit from greater mobility provisions and allow changes of status to employment categories if criteria are met.

### ***Standardised procedures***

At present, no EU body manages any part of the admission process. Employers and employees interact only with national authorities, who transpose, implement and report. Administrative decisions are taken at the national level and EU-level intervention, apart from some harmonisation under EU law, is confined to jurisprudence in the event of non-compliance or court challenges.

There is no EU-level registration of labour migrants either in general or in any of the categories governed by EU Directives. Intra-EU mobility – although facilitated under EU law for certain categories (e.g. long-term residents and highly skilled workers) – is conducted through bilateral arrangements with no reporting outside communication between the two Member States involved.

Similarly, there is no EU-level management of applications for admission, renewal or status change, so that only mobility in the statutory categories is captured statistically, even if mobility levels appear to be much higher according to data from the labour force survey estimates reported in the previous chapter.

No EU body issues or registers recognition of qualifications, the management of applications for labour migration, or the monitoring of intra-EU mobility. The ability to evaluate programmes is curtailed as a consequence.

Because there is no EU-level operational co-ordination, such as a central gateway for filing applications, statistical reporting involves extracting data from national permit registers which were not designed to cover categories and movements of interest at the EU level.

### *A standard application form*

While there is a standardised format of residence permits, there is no such form for applications for residence permits, as there is for Schengen visas, for example. Application forms for national visas – used for employment permits – are not standardised, either.

A standard application form would simplify visa and permit applications to multiple countries and could be used in mobility requests under existing provisions. It would also facilitate compliance work within and between countries and the development of a database for better exchange of information on residence permit holders across Member States.

Finally, there is currently very little comparable statistical information on labour migration to EU Member States. Reporting requirements to Eurostat do not go into any detail on occupation, education or national permit categories, unlike richer national classification systems. A single application form could include occupational and education data in accordance with international classification systems to allow better analysis.

### *An EU labour market test*

National labour market tests are designed to safeguard the national labour market. As noted, all EU Member States operate on the principle that recruitment from outside the EU must fill a vacancy which cannot be filled with available labour at prevailing (or minimum) wage levels within a reasonable time frame. LMT requirements are determined at the national level, with the onus of proof on the employer ranging from nominal to burdensome.

All EU labour migration schemes are structured on the principle that employers are capable of identifying a candidate that they would like to hire but who is not part of the local labour market. The labour market test is designed less to fill vacancies than to increase the cost, complexity and delay of international recruitment so that employers have an incentive to give preference to available local workers. The low refusal rate – cited by employers as evidence that the test is superfluous – is not the only grounds for evaluating the efficacy of the LMT. Even where there is no LMT requirement, the recruitment of third-country labour migrants, unless they enjoy equal access to the labour market, is more complex than hiring EU nationals. At best, there are administrative procedures and, at worst, high fees, lengthy delays and firm eligibility

requirements to meet. Such obstacles automatically give rise to preferences for candidates who can be hired with no red tape.

The LMT is thus a means of making it difficult – though not impossible – to recruit from abroad. If employers could not recruit from abroad at all, most vacancies would still be filled regardless of the size of the labour pool (Petrongolo, 2001). Allowing employers to expand their search to a larger labour market allows them match vacant positions with candidates who have better skills and greater productivity (Petrongolo and Pissarides, 2005), so achieving higher overall growth. Employers thus weigh the added cost of recruiting from abroad against the expected productivity gains from the candidates they find in the global labour market.

At present, a missing element is EU-level indications as to the structure and requirements of the labour market test. The value of an EU LMT could lie in safeguarding the EU labour market as a whole or encouraging mobility. In practice, the two are related, as greater mobility is a form of protecting the EU labour market.

The distinctiveness of an EU-level labour market test lies in two possible areas: coverage, i.e. *who* is considered and from *where* they originate; and the test procedure itself (how it is carried out and for how long).

As regards coverage, while it is simple to use existing legislation to clarify the employment rights of resident EU nationals – and add third-country nationals who enjoy labour market treatment – there is no clear argument for EU-wide geographical coverage or for the mandatory use of EU-wide vacancy matching systems, whether public or private. Since the willingness of workers to move for employment depends on many factors, a relevant generic catchment area is difficult to determine. The requirement to list vacancies at the EU level through public employment services – the future improved EURES Job Mobility Platform – could be included. It would obviate the need to set explicit requirements.

The mandatory posting of vacancies on the EURES platform, however, would have to be evaluated to determine whether it effectively supports the labour market test in finding the right workers, or whether it is just another level of administration that discourages the use of international recruitment. In either case, it serves the purpose of encouraging local recruitment. If it is just more red tape, then it could be replaced by a simple waiting period or a simpler disincentive to recruit abroad.

The EU-level labour market test could be defined by its length and the contractual information in the job description (employer, salary, conditions, etc.). A ceiling could be placed on restrictions to prevent the EU-level LMT from paralysing admission schemes. It could be limited to schemes targeting qualified workers, which would allow, for example, the Blue Card application procedure to function more smoothly in a number of EU Member States.

Finally, an EU-level LMT would immediately raise the related issue of an EU-wide shortage list that would exempt special-skills applicants from the test. Such a shortage list would be complicated to assess, as shortages are not uniform across the European Union and current mobility provisions have not done away with regional differences. The shortage list, however, could send a strong signal to employers and applicants abroad that advantageous conditions apply to recruitment of labour migrants in certain occupations. Nevertheless, the positive message from the signal would have to be weighed against its possibly adverse effect on individuals' and enterprises' investment in training in the European Union.

### *Trusted Migrant Workers*

The “trusted traveller” concept – used normally to indicate a facilitated regime for border crossing for frequent (short-stay) travellers at border crossing points – could be extended to facilitate the admission of labour migrants in two ways.

First, circular migration is predicated on the idea of the “trusted worker”. This idea is enshrined in the Seasonal Workers Directive which allows a number of facilitations (e.g. multiple permits, accelerated or priority processing). However, this only concerns re-entry in the same Member State. It could both be extended to other categories of economic migrants and cover successive entries to other Member States, so that prior work experience in one Member State leads to faster approval in another Member State at a later time.

Second, beyond a security check, the EU has scope for easing formalities at border crossings. While long queues at passport control might seem no more than an occasional nuisance, the wide take-up of trusted traveller schemes in EU and non-EU OECD countries indicate how important a smooth passage through border control is to some travellers. In France alone, for example, more than 150 000 had registered in the PARAFE fast-track border-crossing system by 2013.

Similarly, more than 3.3 million had signed up to the United States Global Entry Programme in 2014.

Another facilitation for the above categories would be to facilitate and speed up their border crossing. The Schengen Borders Code creates separate lanes at border control that distinguish between “persons enjoying the right of free movement under Union law” and others. Certain categories of permit holders could be included in this first group – such as EU Blue Card and EU Long-Term Residence Permit holders. The Schengen Borders Code also exempts certain categories of permit holders from the obligation to have their travel documents stamped.<sup>5</sup> Such an exemption could be extended to categories of residence permits for whom facilitation is judged important. The use of priority lanes and exemption from passport stamps are both measures which could be part of EU schemes only, not national ones.

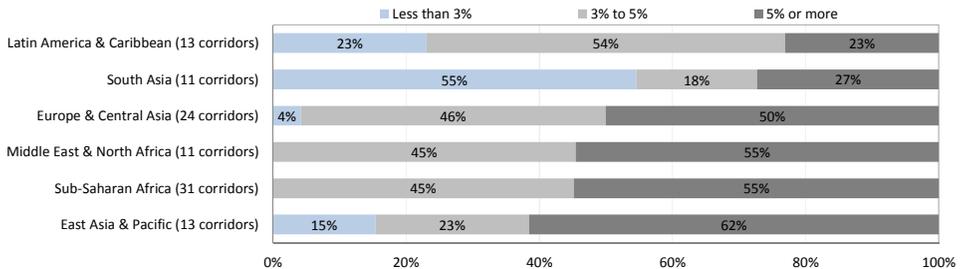
#### *Efforts to reduce remittance costs*

Goal 10 of the 2015-2030 Sustainable Development Goals (SDGs) is to reduce inequality in and between countries. It contains a migration target (10.7): “To facilitate orderly, safe, regular and responsible migration – including through the implementation of planned and well-managed migration policies” (United Nations, 2015).

The SDGs contain no specific indications on how to meet the migration target, nor have any indicators been agreed upon. The only concrete indication is to be found in the related goal of reducing remittance costs to less than 3% of transaction costs and eliminating remittance corridors where costs are higher than 5%. On this point, there is scope for action at the EU level, since the transaction costs of many remittance corridors from the EU to countries of origin exceed the SDG target level. An analysis of remittance corridors by the World Bank (<https://remittanceprices.worldbank.org/en/countrycorridors>) found that in the third quarter of 2015 almost half (47%) of all money-sending firms charged fees in excess of 5% for large remittances, i.e. EUR 345 in a single transfer. Average fees in only 12% of all corridors were below the SDG 3% target level. The most expensive were from the European Union towards the Middle East and North Africa, Sub-Saharan Africa and East Asia (Figure 5.8).

**Figure 5.8. High-cost remittance corridors from the European Union tend to be towards the least developed countries**

Total average money transfer cost as share of EUR 345 transfer, by destination, Q3 2015



Source: OECD analysis of remittance price data from the World Bank, “Remittance Prices Worldwide”, <https://remittanceprices.worldbank.org/en/countrycorridors>.

Remittance costs disproportionately affect lower-wage workers, since they remit smaller amounts and tend to use non-banking channels which carry higher costs. There has been ample research on means to reduce remittance costs, with most looking at non-regulatory solutions such as transparency and cost-comparison, banking partnerships, and contractual elements. None of the current economic migration Directives contain explicit reference to financial instruments or to the barriers to banking by foreign workers. The Seasonal Workers Directive, which applies to workers who remit their earnings, makes no reference to the issue. The right to equal treatment with regards to goods and services incorporates equal access to banking and financial services, although residence criteria may mean that effective access to banking is not possible. The payment of wages to a third-country bank is neither excluded (as in some OECD countries to facilitate compliance) nor regulated. There is scope for the Seasonal Workers Directive – and other ones – to address the issue of remittances directly.

#### *More precise indications on acceptable fees*

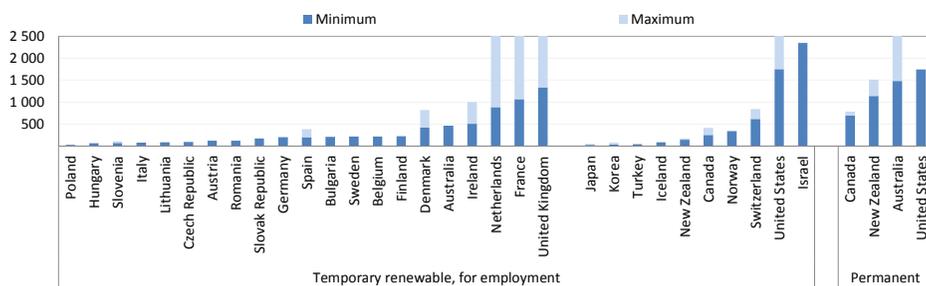
The SDGs do not explicitly address the overall costs of migration, which include government fees, the cost of gathering and preparing documentation, travel costs and recruitment agency fees. Agency fees have prompted concern in SDG discussions, since they are the biggest single cost in the migration of less skilled workers. One benchmark which has been advocated in the context of the Sustainable Development Goals has been to lower migration costs to the equivalent of one month’s

expected earnings (ILO, OECD and World Bank, 2015). Concern in the development community has focused on poor and low-skilled workers for whom migration costs account for many multiples of monthly salaries and drive workers into debt.

Government fees, on the other hand, are not a major obstacle to the migration of highly qualified workers, since they amount to a fraction of monthly salaries in most countries. France, for example, levies a fee of 55% of the average monthly salary for the EU Blue Card. Even such higher fees, however, are lower than those in non-EU OECD countries (Figure 5.9).

**Figure 5.9. Work permit fees are much higher in non-EU countries**

Permit processing fees for applicants and employers, temporary and permanent programmes, 2015



Source: OECD (2014d) and national administrations.

Prompted by national trends in OECD countries and policy developments in EU Member States, this chapter has explored a number of elements missing from the current EU labour migration policy framework. Not all can be added to the policy framework, nor are all feasible. Some would be politically controversial, difficult to negotiate, or even require changes in the competences granted to the European Union. In other cases, outcomes cannot be predicted, making it important to proceed cautiously through pilot programmes which are conditional and subject to monitoring. The next chapter, which concludes the report, sets forth recommendations on how to pursue policy changes that address the most important gaps and improve the existing framework.

## Notes

1. While it would be possible to draw up criteria such as league status for athletes or classifications for artists, the permit regime is not an assessment of such talents and the added value of any European intervention would be limited. Athletes and artists are not swayed in their choice of destination by their residence status.
2. For more on Scopus Customs Data, go to “Scopus Custom Data Fuels World Rankings” at <https://www.elsevier.com/about/press-releases/science-and-technology/scopus-custom-data-fuels-world-rankings>.
3. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.
4. In Italy, a direct family subsidy for eldercare is partly the reason (OECD, 2014c).
5. Stamps are likely to become less of an issue with implementation of the Entry/Exit System (EES), as they will be superseded by electronic registration.

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## *Chapter 6*

### **Recommendations for EU labour migration policy**

*This chapter concludes the report with some policy recommendations. It opens with general and systemic recommendations on the EU-level migration framework, types of migration and categories of migrant. It provides recommendations on sector-based policy approaches and how to build on current legislation, including possible changes in the overall legislative approach and the creation of a space for pilot schemes. It provides specific recommendations to improve the EU Blue Card. The chapter then makes recommendations for clarifying and simplifying procedures; improving information, communication and awareness-raising; and positioning the EU as a labour migration destination. Finally, it discusses how to involve more EU Member States and strengthen co-operation with third countries.*

## Systemic recommendations

Labour migration is different from other policy domains because it has no clear benchmark against which to judge its success. Employment policy, for example, can be evaluated by the rate of employment, the quality of jobs, and numerous other unambiguous indicators. Health policy, too, can be evaluated by outcomes related to the quality of life. In most policy domains, benefits can also be measured against the comparative costs of policy interventions.

Labour migration policy, which seeks to meet the demand for labour that cannot be satisfied effectively and efficiently by the locally available supply, cannot be easily distilled into a single yardstick of success. Nor can a single indicator measure its effect. Simply looking at migration levels is not revealing, since labour migration levels may be unrelated to the success of a particular policy or programme. Lower vacancy rates or the time needed to fill open positions are likewise ambiguous indicators, since vacancy data may reflect general skills mismatches, inelastic supply or demand, and many other factors. Indicators may be found, however, such as the characteristics and number of labour migrants, their longer-term employment outcomes, or in procedural indicators such as processing time. These indicators are not universal, and must be chosen based on the specific policy objectives. Policy success is located in the coherence between chosen objectives and results.

Achieving that coherence is a particular challenge for labour migration policy at the EU level, where the overall objective – ensuring that the European Union is able to attract skills – is difficult to translate into specific migration indicators. The indicators in this review – migration intentions and the recent migration of individuals with different characteristics – suggest that the European Union is well-positioned internationally but has not achieved its full potential, which is greater than the sum of its Member States. If it functioned and were perceived as a single space for labour migration single, its attractiveness to skilled migrants would outweigh anything a single Member State could propose. To those ends, the following recommendations address some areas of EU-level improvement.

### ***Expand and go beyond the sectoral approach***

The sector-based approach has been to identify specific categories and types of economic migrants and negotiate minimum standards for their management, leaving room to the Member States to decide

admission. As for individual Member States, their implementation approach has been to pick and choose options within the sectoral Directives and adapt them to their national policy priorities. The sectoral approach could continue to add categories until all labour migration is encompassed. However, there are many channels for which consensus on definitions and regulations would be difficult to achieve, even though the final responsibility for volumes of admission remains with Member States. An alternative “framework approach” could be to cover all the different types of economic migration in a single coherent framework, extending coverage to additional existing national initiatives. The objective should be to prevent confusing and inefficient overlap of EU and national schemes. Absorbing national schemes would require a framework which embraces the current diversity of national policy priorities.

*Policy should be oriented to where needs are high and attractiveness is low*

Future skill needs in Europe will be clustered at specific levels. For the most highly skilled, attracting larger numbers carries no drawback or downside in terms of adverse labour market effects and brings productivity gains. As for other skills needs and levels, the European Union should measure demand against shortages. Jobs requiring medium- to medium-high education make up a large share of total employment in absolute terms, and small relative shortages can translate into large numerical demand. It is important, therefore, that the EU has the capacity to identify migrants’ skills and to target the skilled workers to whom the EU is a less attractive prospect.

*Routes must be put in place*

A labour migration framework at the EU level should be able to capture all the skills which Member States have identified as ones that they need. Where no labour migration channel is in place for individuals with the required skill profile, employers and migrants would be tempted to circumvent the labour migration framework, potentially fostering irregular migration and misuse of other migration channels. In the sector-based approach, the European Union has defined different migrant categories. Countries must therefore implement the EU-level rules for the labour migrant category when they consider applications from migrants who belong to that group. However, they may block such migration by setting volumes of admission at zero. Volumes of

admission do not apply to third-country nationals already legally resident in the European Union, so countries cannot entirely seal use of EU labour migration routes. The sectoral approach could be continued and expanded, with routes created one by one until a complete framework is in place. Even if they are not opened by all countries in the short term, the EU should develop programmes for vulnerable categories, such as domestic workers, or for groups where minimum standards are desirable, such as real estate investors.

### *Status change needs to be addressed directly*

Labour migrants seldom arrive in the European Union as permanent residents. The usual pathway is to switch status, starting out as students or temporary workers, then moving on to short-term work permits until they acquire permanent residence. This so-called “two step migration” is the dominant model – even in non-EU OECD countries which offer immediate permanent residence – and is labour migrants’ only path to permanent residence in EU Member States. EU initiatives largely ignore the importance of status change. None of the Directives smooth the status-change process for specific temporary resident groups. The newly adopted recast of the Students and Researchers Directive takes the important step of allowing students and researchers to look for jobs, or to set up a business, for nine months after they have completed their studies and research. It does not, however, affect the criteria required to obtain any subsequent permit, and is valid only in Member States where the student or researcher was resident. Since volumes of admission cannot be applied to admission of third-country nationals already legally resident in another Member State, retention in the EU – if not in the Member State of first admission – should be further reinforced through status-change bridges. In-country applications, exemptions from labour market tests (LMTs) and the portability of prior residence in another country need to be considered in the future for students and researchers and other categories. Indeed, the portability of residence history in the European Union could be expanded, so that years spent in one EU Member State are counted by another country when considering whether to grant migrants permanent residence and residence-based social security and benefits.

### *Reduce exclusion from coverage under existing Directives*

Many EU Directives exclude certain categories, further restricting the scope of coverage afforded by the sectoral approach. The Single

Permit Directive, for example, could widen its coverage to self-employed third-country nationals, while provisions for self-employment could be added to the EU Blue Card Directive. As for the Seasonal Workers' Directive, it could be widened to incorporate third-country nationals in the European Union, as they are still not covered. The Single Permit Directive could be extended to categories such as au pairs, where not otherwise covered.

### *Avoid penalising asylum seekers and refugees*

Many EU labour migration Directives do not apply to asylum seekers and refugees as defined under the 2011 Directive on Minimum Standards for Qualification (2011/95/EU). The Single Permit Directive, the Blue Card Directive and the original and recast Student and Researchers Directives all exclude them. The Seasonal Workers Directive applies only to those outside a Member State, so that an applicant for asylum or a beneficiary of protection in one country could apply for seasonal work in another EU Member State. The Directive allows the seasonal permit to be revoked if the migrant applies for protection.<sup>1</sup>

Locking refugees and other beneficiaries of international protection out of labour schemes is a means of ensuring that they are not tempted into a status which affords them less protection. Indeed, refugee status is in most cases more secure and offers more benefits than that of labour migrant. However, as mobility rights develop, and certain EU labour migration schemes become markedly more advantageous than standard residence permits, it is unfair to close them off to refugees. Refugees are ineligible for EU Blue Cards, so they cannot acquire the special Long-Term Residence for former Blue Card holders, which carries more benefits than the EU long-term residence permit for which they would normally be eligible. Nor are they entitled to the mobility provisions of EU Blue Card holders. To offset that exclusion, a related category of permits could be created for beneficiaries of protection. It would allow them to revert to their most favourable previous humanitarian status should they no longer qualify for an employment-based permit.

A related issue is the exclusion of beneficiaries of international protection in one EU Member State from applying for labour migration schemes in another EU Member State. Recently the European Commission considered a proposal [COM(2016)197] to amend the Long-Term Residence Directive so that beneficiaries of international protection acquire five years of residence only if they reside continuously for that period in the Member State that has granted

protection and do not move to other Member States irregularly. However, the proposal allows the country of protection to “authorise” the beneficiary to go to other Member States. In order to ensure that skills and talents are fully utilised, it may make sense to develop a system that would allow beneficiaries of protection to apply to work in other EU Member States. If they receive a job offer, the Member State of protection could authorise their departure for employment and keep or freeze their accrued period of residence, rather than reset it zero. The first Member State would continue to protect the refugees, while the second Member State would treat them in accordance with its prevailing migration scheme. This would allow refugees to use their talents across the European Union without contributing to “asylum shopping”.

A more complex question is that of asylum seekers whose application for protection has been rejected. Some Member States, such as Sweden, allows failed asylum seekers work permits if they worked while they were awaiting a decision on asylum. The aim is to encourage asylum seekers to take up employment during long procedures. Other Member States oppose the practice on the grounds that it would constitute a pull factor and become an incentive to abuse the asylum channel. The automatic exclusion of rejected asylum seekers from eligibility to work should be weighed against the need to address skills shortages.

Less of an obstacle from a legal viewpoint but more complex in practice is the eligibility of persons outside the European Union – recognised in third countries as refugees or in need of protection – to participate in EU labour migration programmes. The question will become more important as lists of refugees awaiting resettlement lengthen and the pressure on resettlement systems grows. As the most vulnerable refugees – those least likely to start work immediately – are often resettled as a matter of priority, young single professionals may therefore have to wait the longest to be resettled. They should be able to access the labour migration channels available and encouraged to do so. The possibility that they apply for protection once in the EU cannot be ruled out, but that should not compromise their permit status in itself, especially if they qualify for selective permits.

#### *Link implementation to related mobility measures*

One of main added-value contributions of EU-level labour migration legislation is that it can confer mobility between EU Member States. As a result, mainstream mobility measures have an impact on the third-

country migration framework, especially as it affects labour migrants. Two important mobility measures are the improvement of the mutual recognition of qualifications and the portability of social security rights. As these measures develop, they should extend to third-country nationals with work rights in the EU who should be included not only through their equal right to access procedures, but also through targeted information and promotional materials. Professional Cards and Diploma Supplements (as well as other Europass documents) should be integrated into third-country migration programmes as necessary.

*Address the cost of infrastructure related to labour migration*

The EU labour migration framework has not directly addressed the costs of migration – government-imposed fees, private agency involvement and the cost of remittances. A number of Directives request that fees be “proportionate”, although there is no special guideline. They could be set at a maximum of one month’s wages – the likely initial target within the framework of the Migration and Sustainable Development Goals – with lower costs for seasonal workers based on their earnings during employment. Cost caps should also be applied to private agencies, which drive costs up, particularly for less skilled workers. The high cost of remittances, which the Sustainable Development Goals seek to reduce, could be addressed in the context of bilateral relations with third countries.

***Add flexibility to the policy framework while maintaining harmonisation***

One of the main weaknesses in the current approach is the long policy-making cycle of EU Directives, which can take five to ten years from the preparatory stage to final transposition. This cycle is much longer than the national policy making cycle in the EU and most OECD countries, and suggests that Directives have focused on broad goals and granted a wide margin of flexibility in transposition. Important details left to national discretion – to varying degrees depending on the Directive – include the presence and structure of labour market tests, administrative procedures, fees imposed, mobility conditions granted, and data collected.

The evident lack of harmonisation can be attributed to the – sometimes considerable – leeway left to Member States in implementation. The Commission and the European Court of Justice have intervened in cases where transposition has not complied with

Directives, but their interventions have not yielded sufficient harmonisation. The need to amend Directives to make relatively minor changes suggests that a process outside the Directives might be more appropriate.

### *Determine parameters outside Directives*

In light of the frequent difficulty in negotiating Directives in the sensitive area of migration, there are other means of building flexibility into the legislative framework. The first is to define parameters by regulations applicable at the EU level and leave the details to implementing measures, just as national legislation is often followed up by regulations or decrees, or even administrative decisions, which define the terms of implementation. The European Union has procedures in place for implementing or delegating acts that involve consultation with representatives from all Member States. The procedure may be binding or advisory, depending on the parameters, which would make the system more flexible. The risk is that the political difficulty of negotiation is simply delayed until – or even multiplied during – the consultation phase.

Another solution could be an expert advisory committee, put in place within the framework of a Directive. It would determine particular levers such as salary thresholds, eligibility periods and education levels. Unlike the formal procedures described above, an expert committee would comprise fewer members and could develop its own consultation and analysis approach. It would, however, not issue binding rules, so its effect on harmonisation would be limited.

Directives contain requirements for the Commission to report to Parliament and the Council after three years – and to propose amendments, where needed. The reporting procedure could be better linked to evaluation if an expert committee were involved. Amendments addressing rules for implementation could be made through a committee – as described – rather than require a full legislative procedure.

A parallel approach to building more flexibility into measures would be to use automatic mechanisms for adjusting criteria, rather than a political process. Examples are safeguard measures which apply if unemployment levels reach a certain threshold, or the fixed share of a reference value, e.g. total population or total employment. The use of automatic mechanisms allows labour migration management to react to changing circumstances without requiring legislative change. Reference

values and parameters can also be adjusted through one of the political processes described above while the previous ones remain in place. The risk, in both national and EU legislation, is that such fixed indicators are arbitrary or determined through political processes even when they use technical parameters. One way to reduce the risk is to make the link with political objectives clear and rely on the expert process described above to set and adjust the values.

### *Develop pilot measures of high value added at the EU level*

A related constraint of the EU legislative framework is its limited ability to use pilot projects. Under the current approach, it is impossible to introduce pilot measures and test them before adjusting, expanding or eliminating them. Consequently, EU initiatives have trailed behind national experience, and have sought added value in standardising practices which are already in place, rather than developing new ones.

Pilot programmes are an essential part of migration policy experimentation. They serve to build credibility when pilots are successful and to maintain trust when unsuccessful schemes are discontinued. The key to a pilot is to introduce it gradually and track its effects. Chapter 5 identifies a series of possible initiatives that call for possible EU-level pilots. Youth mobility, regulated professions, investor visas, post-graduate job-search, and a job-seeker visa are some of the areas where a pilot approach appears most justified. Where there is no national-level consolidated job-search visa experience that could be scaled up to the EU level, for example, a pilot meets the important purpose of testing criteria and compliance before roll-out.

The enormous effort involved in drafting, negotiating, finalising and transposing a Directive simply to run a pilot project may appear excessive, especially as a possible outcome is, by definition, failure and cancellation. Even a “sunset clause” (where a measure shall cease to have effect after a certain date) or the requirement to renew a programme may not be solutions. An alternative approach would be to create pilots through funding programmes which build on provisions in existing EU legislation. For example, the new Students and Researchers Directive has provisions for facilitating the European Voluntary Service. The EVS is structured entirely separately from the Directive, through a different policy process. This method of including EU programmes could be used with other innovation and funding packages, to introduce partial pilots without changing the legislative framework. For example, competition

for the direct funding of TCN start-ups is one possibility, since it would allow the winners to act as a legal person and use existing schemes.

Pilot schemes may also be fostered naturally through national variations in implementation approaches to Directives. As Directives also require regular assessment, effective national approaches could be used as pilot experiences and mainstreamed through adjustments to the Directive using the procedures discussed above.

### ***Improve the ability to compete with more favourable national schemes***

National schemes play an important role in matching national and local specific needs with global skills. Parallel national schemes are allowed under some Directives, as are more favourable conditions for certain provisions. Some Member States have taken a transposition approach to ensure that their existing national schemes remain more favourable. Others have introduced more favourable national programmes following transposition, as is particularly evident with the EU Blue Card, where many Member States have continued to invest in their national schemes. Nonetheless, in order to achieve the effects of scope and scale, EU schemes should be the default choice for those who qualify for them.

At present, any third-country national who meets all criteria has a right to receive the EU permit, but this right has not translated into widespread choice. The unequal uptake of EU long-term residence is an example of how national policies can steer applicants away from EU measures, “creaming” applicants who would have qualified – immediately or later – for the EU measure. In order to favour the choice of the EU scheme over the national scheme, EU measures should allow Member States to incorporate certain more favourable provisions currently used only in their national schemes.

### **Make the Blue Card more effective and attractive**

The EU Blue Card has not become the permit of choice for highly qualified professionals in most EU Member States, with the exception of Germany and Luxembourg. Under the current salary threshold, the number of Blue Cards issued annually to new arrivals (excluding migrants who change status) should be at least 10 000, more than double the current number. Considering the distribution of earnings, small changes in the threshold can greatly enlarge eligibility. However, the

EU Blue Card remains directed at the highly qualified, so cannot be issued to all labour migrants. By lowering the EU Blue Card threshold slightly to encompass the top three or four income deciles (rather than the top one or two) and maintaining the occupation and education requirements, it is estimated that eligible EU Blue Card admissions would rise to about 40 000<sup>2</sup> (excluding status changes).

As an indicative benchmark, recent annual flows of primary applicants who were granted employment-based Green Cards in the United States, admitted as permanent economic class migrants in Canada, and admitted under the Skill Stream in Australia numbered about 60 000 in each country, despite their very different population sizes. Many or most of the recipients were already resident with temporary status for study or employment. It may be inferred, therefore, that a lower Blue Card salary threshold, along with inclusion of individuals who currently come to EU Member States under national schemes, could help the EU Blue Card compete numerically with schemes in other OECD countries, and even outdo them. Furthermore, the numbers of national permit holders changing status would swell the numbers of Blue Card holders much further in the years following the lowering of the threshold.

Many EU Member States have preserved their national schemes not only because they have lower salary thresholds but also because they are able to offer faster processing and simpler procedures than the EU Blue Card. However, it could incorporate elements of those schemes – such as sponsorship or trusted employer options – as well as exemptions from recognition procedures granted by national systems. The EU Blue Card has a minimum contract duration that prompts preference for national permits which allow shorter contract duration. The EU Blue Card minimum contract duration could be shortened or eliminated.

The Blue Card allows the acquisition of EU long-term residence status with added advantages, but for most permit-holders, faster and easier national long-term residence is more attractive. The five-year wait for long-term residence could be shortened to match national schemes.

The visibility of the Blue Card should be increased. Standard permit application forms should make the Blue Card option clearer and a TCN migrant's entitlement to a Blue Card should be emphasised not only when they are first admitted but also when they renew their work permits, at which time they are more likely to meet the salary and contract-related criteria.

To encourage the choice of Blue Cards, the range of special provisions that it offers should be expanded to include, for example, labour market test exemptions. More visible benefits should be granted, such as the ability to use fast-track lanes at external border crossings.

The Blue Card should be integrated into a more wide-ranging approach to the recruitment of third-country nationals outside and inside the European Union. It could involve action like outreach to employers in the EU and partners in origin countries, attendance at job fairs, pre-qualification processes, and eligibility checks through on-line tools.

### **Boost added value for participating countries**

Member States' buy-in to a number of Directives has been less than complete – partly because their added value was not immediately apparent to participants and Member State implementing authorities, and partly because Directives have not brought funding for implementation. While countries remain responsible for processing, admission, and the overall management of residence permits, there is additional EU-level action which may increase Member States' enthusiasm for fully implementing provisions.

#### ***Improve clarification and simplification***

As has been done for Schengen short-stay visas, single application forms should be developed for labour migrants. Online applications could be centralised so that Member States can share information and eliminate verification steps for compliance and mobility. Even if applications are not processed at the EU level, the use of a single application procedure with a universal form would affirm the idea of the European Union as a single destination.

A standardised form and online platform would also provide statistical information for monitoring and evaluating legal migration schemes more efficiently, replacing *post hoc* data collection exercises currently conducted at the national level. The standardisation of elements in Directives – such as hosting agreements or lists of registered sponsors under the new Students and Researchers Directive – could also be considered, if the added value in such standardisation helps achieve the goals of the Directive.

Labour market tests vary substantially from one Member State to another. Yet, EU Directives give no direct indications as to how LMTs

should be structured, beyond allowing Member State to carry them out for certain migrant categories and prioritise workers from the domestic labour market. Clarification of how to apply it, how to ensure the inclusion of third-country nationals with equal access to labour market opportunities, and how to use EU-wide platforms for listing vacancies would harmonise LMTs.

### ***Reinforce matching tools and open them up to third-country nationals' skills***

The EU Immigration Portal is popular but needs to be reinforced, linked to information on and procedures for recognising qualifications, and tied to a central pool of candidates. As long as the portal only redirects to individual countries' websites, its use will be limited. It should be able to support a standardised application form and eligibility check so that potential applicants can see whether they meet criteria, in which countries, and, if so, what further conditions they must satisfy.

More important are efforts to match employers with employees. It is unlikely that employers will think that a single job-matching platform can compete with current recruitment methods. There is also a risk in creating a vacancy database for the purpose of matching jobs with candidates: if it does not work, there will be a severe loss of credibility. However, a pool with some element of selection or pre-qualification can send a message to applicants as to their chances of selection, and support related measures for capacity building and training. A candidate pool may also be used in labour market tests, although its capacity and its effectiveness should be carefully assessed to determine whether it is merely a burden and could be replaced with a waiting period that would achieve the same effect.

EU Long-term residents and Blue Card holders underuse their mobility rights. A pool of candidates who enjoy mobility rights, for example, could further employers' and employees' understanding of mobility opportunities. Candidates could also enrol in a pool for which eligibility is limited in order to communicate to employers in other EU Member States that they are "mobility qualified" and "pre-approved".

### ***Break the exclusive binary link between potential migrants and single EU Member States***

A few EU Member States dominate the migration intentions of potential migrants to Europe. Historical, cultural, economic and

linguistic ties have created channels which connect certain countries of origin with certain EU destinations. These ties add up to the global presence of the European Union. Its overall attractiveness, though, does not carry the same weight. The EU Immigration Portal should inform candidates who use it check their eligibility that there are multiple possibilities for using their skills in the European Union. Active promotion in origin countries – job fairs, student fairs, innovation events, etc. – should also seek to build contact between talented would-be migrants and destination countries.

### ***Improve branding of the EU as a destination***

The visibility of the EU as a destination will increase thanks to the some of the measures above – e.g. a single application format and the Immigration Portal as the first stop for checking eligibility and preparing applications. A “superstar” permit for top inventors, leading scientists and other specialists of repute that offers exceptional conditions would involve very few applicants and would not change inflows. It would, however, be an EU permit with even greater visibility than the EU Blue Card. An EU pool that brought together international graduates, EU Blue Card holders, and long-term residents with mobility rights could also reinforce “brand EU”.

### ***Publicise conditions that are more favourable than in competing destinations***

One of the main objectives of EU labour migration policy is to make the European Union more attractive than other destinations. However, policy has not yet carried out a proper comparison of labour migration opportunities, settlement prospects, and conditions for permit holders and their families in the EU and other migrant destinations. Communication has focused on standardising information on migration schemes in individual EU Member States, rather than comparing those countries and the European Union as an entity with the main competing destinations.

The European Union as a whole boasts several important competitive advantages over other destinations. As a single labour market, it is larger than any other OECD destination and has greater economic weight, offering more job opportunities. EU Member States’ ongoing integration measures, such as the mutual recognition of qualifications and social security arrangements, will improve intra-EU mobility options in the

future, justifying the promotion of the European Union as a single destination.

The European Union offers competitive conditions in the admission of labour migrants. There are no EU-level caps on economic migrant admissions, no numerical targets for or limits on qualified workers, and language requirements are rarely imposed on economic migrants. Indeed, the EU Blue Card does not allow Member States to require recipients to demonstrate command or even knowledge of the national language. This is in contrast to the system in many competing countries where language skills are a key element in determining admission.

The European Union is a cost-competitive destination compared with others, especially the United States and Canada. Processing fees for economic migrants are much lower, for example, while processing times and the complexity of admission procedures is another area where the European Union can draw comparisons with competing economies. Statutory limits on decision-making should be compared with lengthy processes in other countries and their long waits for visas.

Since competing countries offer the possibility of immediate permanent residence, it is important that the European Union communicate the clear pathway that it offers to permanent residence. The fact that most competing countries' permanent admission streams largely draw temporary workers and students should be noted. In practice, the pathway offered in the EU is not so different from those in the United States, Canada and Australia. Furthermore, permanent residence is increasingly portable in the European Union and, while naturalisation policy varies across the Member States, most long-term economic migrants obtain nationality.

### **Strengthen co-operation with and outreach to third countries**

The European Union could take a three-pronged approach to countries of origin.

- It needs to promote its migration channels in Asian countries as it has a low market share of the talents from those countries which are driving international migration to OECD countries.
- As part of its global outreach strategy, it needs to further develop ties with neighbouring countries which have traditionally had strong links with European countries.

- It can build on the multiple ties with all countries of origin to compete with other OECD destinations. International study is one key pathway, as there are no volumes of admission, so the EU should promote itself as a destination for students.

Although migration instruments are often a key element in negotiating free-trade agreements, the European Union does not generally put them on the table. Access for service providers and traders is one of the most common points of negotiation. Allowing access to the labour market is another, be it through setting aside provisions for specific categories or occupations, or undertaking to admit a set number of labour migrants. The European Union negotiates trade agreements, but has no power – under such agreements – to commit individual EU Member States to accepting labour migrants. Establishing standard categories of admission at EU level would allow a stronger negotiating position. Such categories could be service providers – they do not need to be traditional categories of labour migration.

With youth mobility schemes, the European Union could bring added value to bilateral arrangements, which would be the only level at which EU-wide working-holiday schemes could be negotiated. A cap on visas could be used in negotiations. Bilateral agreements could also cover agencies handling the recruitment of au pairs and other categories covered by EU Directives.

Active partnerships with institutions in countries of origin should support the recognition of qualifications, selection schemes, and enrolment in job-matching platforms. Capacity building should be oriented towards EU standards in training and processing so that the European Union becomes the default human resource market. Investment in training in countries of origin should be linked with access to trainee programmes or labour migration opportunities in the European Union. The EU can take the opportunity to use its global reach and represent EU Member States and actors looking for talent through job fairs and more targeted promotional measures. Bilateral agreements in sectors such as seasonal work and less skilled migration would also allow measures to reduce remittance costs.

### **Increase participation in EU initiatives**

EU labour migration policy making does not cover certain EU Member States. The non-participation of the United Kingdom, Ireland

and Denmark is an impediment to realising the added value of EU-level measures. While Denmark has a general opt out, the two other Member States can opt in when they clearly stand to gain from doing so. So far, there has only been one opt-in – that of Ireland which joined the Researchers Directive due to a felicitous alignment with its national policy objectives and the limited scope of the mobility provisions in the Directive.<sup>3</sup>

The challenge is to demonstrate to the three Member States with opt-out or opt-in clauses the added value of EU-level measures compared to what individual Member States can achieve. The case has to be made through practice. One example would be mobility. Prior to the EU Long-Term Residents, Students, Researcher and EU Blue Card Directives, no EU Member States had arranged bilateral mobility agreements among themselves, suggesting that none had independently identified mobility as beneficial. EU-level initiatives must demonstrate that participating countries stand to reap concrete benefits.

Encouraging EU Member States not bound by the current Directives to opt in on a temporary or provisional basis may also be a way of allowing them to participate in EU-level initiatives. Unlike other Member States, they may withdraw from participation at a later date, a reassurance which can simplify political debate on this issue. Where appropriate, non-EU countries, especially EEA countries, should also be encouraged to participate.

## Notes

1. The Intra-Corporate Transfer Directive applies only to migrants outside the EU or already holding an intra-corporate permit, although it does not authorise countries to withdraw permits if the ICT applies for asylum once in the European Union.
2. If the three non-participating EU Member States joined the scheme, the number would double.
3. Ireland will not, however, apply the rules of the recast Students and Researchers Directive.



## Recruiting Immigrant Workers

# EUROPE

The OECD series *Recruiting Immigrant Workers* comprises country studies of labour migration policies. Each volume analyses whether migration policy is being used effectively and efficiently to help meet labour needs, without adverse effects on labour markets. It focuses mainly on regulated labour migration movements over which policy has immediate and direct oversight. This particular volume looks at the efficiency of European Union instruments for managing labour migration.

### Contents

- Chapter 1. The context for labour migration in Europe
- Chapter 2. How attractive is the European Union to skilled migrants?
- Chapter 3. Where does the European Union bring added value in labour migration?
- Chapter 4. What have EU labour migration Directives changed and how can they be improved?
- Chapter 5. What is missing from the EU labour migration policy framework?
- Chapter 6. Recommendations for EU labour migration policy

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