



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.10.2007
SEC(2007) 1408

COMMISSION STAFF WORKING DOCUMENT

Accompanying document to the

Proposal for a

COUNCIL DIRECTIVE

**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

IMPACT ASSESSMENT

Volume I

{COM(2007) 638 final}
{SEC(2007) 1393}

TABLE OF CONTENTS

| | | |
|--------|---|----|
| 1. | Procedural issues and consultation of interested parties | 4 |
| 1.1. | Organisation and timing | 4 |
| 1.2. | Consultation and expertise | 5 |
| 1.2.1. | Consultation with the services within the Commission | 5 |
| 1.2.2. | Impact Assessment Board | 5 |
| 1.2.3. | External expertise | 5 |
| 1.2.4. | Consultation of stakeholders | 5 |
| 1.3. | Main results and follow-up to the consultations | 6 |
| 2. | Problem definition | 6 |
| 2.1. | The context | 6 |
| 2.2. | Scope of the problem | 8 |
| 2.2.1. | The issue/problem to require action – rights gap and complex and inefficient admission procedures | 8 |
| 2.2.2. | Who is affected in which Member States and to what extent? | 13 |
| 2.3. | Underlying drivers/causes of the problem (problem tree) | 16 |
| 2.4. | Possible evolution of the problem all things being equal | 17 |
| 2.5. | The EU's right to act – legal base, subsidiarity, proportionality | 17 |
| 2.5.1. | Legal base | 17 |
| 2.5.2. | The necessity test - the first condition to the subsidiarity principle | 17 |
| 3. | Objectives | 20 |
| 3.1. | General (global) policy objectives | 20 |
| 3.2. | Specific and operational objectives | 21 |
| 3.3. | Consistency with the problems identified | 22 |
| 3.4. | Consistency and complementarity with other EU policies | 23 |
| 4. | Policy options | 24 |
| 5. | Analysis of impacts | 30 |
| 5.1. | Intended impact: will the policy options achieve the global objectives? | 30 |
| 5.2. | Impact assessment of each policy option | 34 |
| 5.3. | Likely unintended impacts | 43 |

| | | |
|--------|--|----|
| 5.4. | Financial and administrative costs of policy options | 44 |
| 6. | Comparing of options..... | 53 |
| 6.1. | Summary assessment of the options | 53 |
| 6.2. | Multi-criteria assessment | 54 |
| 6.3. | The political feasibility of option 5 | 57 |
| 6.4. | The preferred option..... | 58 |
| 6.4.1. | The European added value | 58 |
| 6.4.2. | The principle of proportionality | 59 |
| 6.4.3. | Advantages and disadvantages of the preferred option..... | 59 |
| 6.4.4. | Additional assessment of the preferred option as a combination of Option 3b and Option 4..... | 60 |
| 6.4.5. | The scope of the preferred option | 63 |
| 6.4.6. | Consequences of the preferred option for individual Member States..... | 64 |
| 6.4.7. | Assessment of the administrative and implementation costs of the preferred option | 66 |
| 7. | Monitoring and evaluation | 70 |
| | References | 73 |

1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

Lead Directorates-General

Directorate-General for Justice Liberty and Security

Other involved services

Directorate-General Employment, Secretariat-General, Legal Service, Bureau of European Policy Advisors, DG Economic and Financial Affairs, DG Enterprise and Industry, DG Research, DG Internal Market and Services, DG Education and Culture, DG External Relations, DG Trade, DG Development, DG EuropeAid, Eurostat.

Agenda planning or Work Programme reference

Reference number 2007/JLS/003 of the Commission Legislative and Work Programme 2007

1.1. Organisation and timing

The Commission Legislative and Work Programme 2007 includes this proposal as a strategic initiative under the priority "*a better management of migration flows*" stating that "*The pressures of demography have added to the need for the European labour market to attract economic immigrants. A European regime for economic immigrants would give them a secure legal status making clear the rules attached and the rights they should enjoy*". A road map was prepared for this strategic initiative¹. This proposal is included under the following title and reference number:

Legislative proposal for a general framework directive addressing labour immigration – 2007/JLS/003

The chronology of this Impact Assessment was as follows:

- March 2006 – July 2007: data gathering and discussion with Member States in the context of the Commission's Committee on Immigration and Asylum (hereinafter "CIA");
- January 2006 – July 2007: consultation and exchange of views with relevant stakeholders (including NGOs, social partners, countries of origin, etc) in a number of meetings and conferences;
- 18 December 2006 – 15 July 2007: external study² (hereinafter "the external study") ordered by the Commission in December 2006;
- 7 May 2007 and 25 June 2007: meetings of the Inter-service Steering Group accompanying the Impact Assessment.

¹ http://ec.europa.eu/atwork/programmes/docs/clwp2007_roadmap_strategic_initiatives.pdf

² Impact Assessment on a EC proposal for a general framework directive on Third Country Workers, Ernst & Young Rome (Specific Contract No JLS/2006/A1/IWC/001 – 30CE-009620/00-08).

1.2. Consultation and expertise

1.2.1. Consultation with the services within the Commission

In the course of developing the proposal there has been from the beginning intensive working contacts and substantial input from DG EMPL being involved in this process. The other concerned DGs have been consulted by means of the Inter-Service Group meetings and of direct/bilateral meeting / contacts.

1.2.2. Impact Assessment Board

In the impact assessment process an oral procedure in front of the Impact Assessment Board (IAB) on 11 July has taken place. The written opinion and the recommendations of the Board have been taken into account notably as regards the more precise elaboration of the problem definition and the policy objectives, the qualitative analysis of budgetary, fiscal and social benefits and the more Member State specific demonstration of the consequences of the chosen option.

1.2.3. External expertise

This report is based on consultations with Member States and other stakeholders and on the external study commissioned by the Commission. The data were collected from the consultations set out below as well as from case studies and literature reviews. The problem, objectives and policy options assessed were based on the draft final report from the contractor prepared and on the basis of a desk analysis of appropriate analytical methods and applicable legal documents.

1.2.4. Consultation of stakeholders

A public consultation has been carried out with the Green Paper on an EU approach to managing economic migration. The Commission received more than 130 contributions from Member States, the other EU institutions, social partners, NGOs, third countries, academia, etc.³ and a public hearing was held on 14 June 2005.

Further consultations were held by means of seminars and workshops (eg.: the workshop organised by the European Policy Centre gathering NGO-s, social partners, academics and other stakeholders on the 8 of June 2007), while the Member States were consulted within the framework of the Commission's Committee on Immigration and Asylum. Through the external study commissioned to support the impact assessment, further consultations of the main stakeholders (including social partners such as ETUC⁴, Caritas Europe, the International Organisation for Migration, and also an organisation representing SME's (UEAPME⁵)) were undertaken by means of questionnaires and interviews. The results of such consultations are reflected in this report where relevant. In addition the summary of the answers by the Stakeholders are presented in Annex 12.

³

http://ec.europa.eu/justice_home/news/consulting_public/economic_migration/news_contributions_economic_migration_en.htm

⁴ European Trade Union Confederation.

⁵ European Association of Craft, Small and Medium-Sized Enterprises.

1.3. Main results and follow-up to the consultations

The analysis of the 130 contributions received during the public consultation showed a general support for a common EU policy for economic immigration, albeit with important differences in the approaches to be followed and in the expected end result. Some clear elements emerged, i.e. the need for EU common rules regulating at least some key categories of economic immigrants establishes attractive conditions for them (highly skilled and seasonal workers) coupled with the request to ensure a secure legal status to all immigrants in employment.

Comments made to the Policy Plan on Legal Migration are also taken into account. Therefore unlike the 2001 proposal for a directive on economic migration - intending to regulate entry and residence conditions horizontally - the proposal as a framework only establishes a procedural simplification (single application procedure and single permit) and grants rights only to those who are already admitted to the territory and the labour market of a Member State. This approach has been supported by the Member States in the framework of the Commission's Committee on Immigration and Asylum.

2. PROBLEM DEFINITION

2.1. The context

Since the 1990s Community migration policy has taken significant steps forward. The Amsterdam Treaty for the first time established immigration and asylum as areas of Community competence. The Tampere European Council (15-16 October 1999) called for the development of a common EU policy on asylum and immigration and for “*a more vigorous integration policy*” aimed at “*granting legally resident third-country nationals rights and obligations comparable to those of EU citizens*”

During the period of implementation of the Tampere programme (1999-2004) four directives were adopted:

- Directive 2003/86/EC on the right to family reunification.
- Directive 2004/109/EC on a long-term resident status for third-country nationals.
- 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.
- Directive 2005/71/EC for the facilitation of the admission of researchers into the EU.

The only proposal that did not receive the necessary support from the Council concerned the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities. This proposal was the first attempt to define a common legal framework at EU level specifically concerning third-country economic migrants.

Since then, the issue of economic migration has become a central theme of EU debate on immigration policy, as is shown in four major initiatives:

- The **Hague Programme 2005-2010** (adopted at the Brussels European Council of 4-5 November 2004) aims to make Europe an area of freedom, security and justice and focuses on setting up a common immigration and asylum policy for the EU 25. Two of its key components are measures for third country nationals to work legally in the EU in accordance with labour market requirements, and a European framework to guarantee the successful integration of migrants into host societies. The Hague Programme roadmap for 2005-2010 lists includes developing a common EU immigration policy and countering illegal migration, and maximising the positive impact of migration on society and economy.
- The Justice and Home Affairs (JHA) Council of 19 November 2004 adopted **Common Basic Principles** (CBPs) to underpin a coherent European framework on integration of third-country nationals, which state that *“Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible”*. In order to strengthen the implementation of the CBPs, the Commission adopted a **Common Agenda for Integration**⁶ with the aim of fostering a more coherent EU approach to integration.
- The **Green Paper on an EU Approach to Managing Economic Migration**⁷ covers the central themes of economic migration policy, i.e. a degree of harmonization at EU level, admission procedures for paid and self-employment, applications for work and residence permit, rights to be granted to migrant workers and accompanying measures. It states that *“migrant workers must have a secure legal status”* and that *“third country workers should enjoy the same treatment as EU citizens in particular with regard to certain basic economic and social rights”*.
- The **Policy Plan on Legal Migration**⁸ defines a roadmap and a set of actions and legislative initiatives for the coherent development of EU legal migration policy. The Policy Plan proposes a general framework directive, applicable to all economic migrants in in employment, covering the basic rights of third-country workers and the single residence/work permit. The main purpose is to guarantee a common framework of rights within EU. This would also contribute to granting fair treatment to all migrants workers admitted into a Member State. Within the general framework, four specific directives will address the admission and residence conditions for broad categories of third-country migrants, namely highly skilled workers, seasonal workers, intra-corporate transferees, and remunerated trainees.

The Policy Plan suggest the following line as regards management of legal migration: to open up specific channels of legal migration (highly skilled migrants, seasonal workers, remunerated trainees, intra-corporate transferees) on the one hand and a general directive on the rights of third country workers on the other. The latter is to serve as a framework for the specific directives. In other words no horizontal legislation is suggested concerning the conditions of residence for third-country nationals in employment. Instead specific directives

⁶ COM(2005) 389, 1.9.2005.

⁷ COM(2004) 811.

⁸ SEC(2005) 1680.

would regulate the admission of certain categories of migrants and as a basis a horizontal community legislation would cover rights of third country workers at EU level.

2.2. Scope of the problem

2.2.1. The issue/problem to require action – rights gap and complex and inefficient admission procedures

2.2.1.1. The rights gap

Analysis of the existing Community acquis (Annex 1) and Member States' national legislation (Annex 2), and international agreements (Annex 3) it prevails that there is a difference in rights ("rights gap") of third-country workers and those of EU/own nationals and long-term residents. The rights gap between third-country workers and EU/own nationals is different in each Member State and for each individual type of right.

These differences of treatment are partly due to the fact that international agreements concluded by the EC with different third countries (Annex 4) contain different equal treatment clauses, ranging from comprehensive equal treatment to best endeavor clauses, when providing for equal treatment in certain policy areas. Moreover it is partly due to the fact that International agreements, such as the ILO Migrant Workers Convention and the European Convention on the legal status of migrant workers, have only been signed and ratified by some (but not all) Member States. (Annex 5). In addition, the group of third-country workers has not been legally defined as such in most (if not all) Member States or at EU level, making it difficult for them to claim specific rights and creating uncertainty among third-country workers.

EC acquis (multilateral agreements and secondary legislation) regarding third-country workers rights

As stated above there is no EU legislative instrument covering the rights of all workers who are third-country nationals and legally employed in the EU, but who have not been granted long-term residence status. However, a number of legal provisions provide for the protection and equal treatment of certain categories of third-country workers.

- The Charter of Fundamental Rights of the European Union not only prohibits discrimination based on race and ethnic origin, but also discrimination based on nationality. The provisions concern both fair and just working conditions and access to social security and assistance. In addition, the Charter stipulates that nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the EU. The Charter however is not legally binding.
- In 2000 the European Council adopted two directives on equal treatment: Council Directive 2000/43/EC on equal treatment irrespective of race or ethnic origin, and Council Directive 2000/78/EC on equal treatment in employment and occupation. These directives on discrimination do not, however, cover differences in treatment based on nationality. Moreover, the directives are without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals concerned.

- Regulation (EC) No 859/2003 provides for the application of the coordination rules of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to third-country nationals legally resident in the Community, as well as to members of their families and to their survivors. As a result, provisions identified in the regulation are also applicable to a number of categories of third-country nationals. The provisions of this regulation however are not applicable in a situation which is confined in all respects within a single Member State. This concerns, *inter alia*, the situation of a third-country national who has links only with one Member State.
- Council Directive 2003/109/EC grants a set of uniform rights, which are as near as possible to those enjoyed by citizens of the European Union, to third-country nationals who have resided legally and continuously in a Member State for five years and who hold long-term residence permits. These long-term residents shall enjoy equal treatment with nationals as regards, among other things, access to employment and self-employment, education and vocational training, recognition of professional diplomas, and social security, social assistance and social protection. It goes without saying that many third-country workers do not meet the condition of the required period of legal and continuous residence in a Member State. In other words, large groups of third-country workers are not covered by this legislation.
- The Agreement creating the European Economic Area still applies to three EFTA-countries - i.e. Norway, Iceland and Liechtenstein - that wish to participate in the European Internal Market, while not assuming the full responsibilities of EU membership. The Agreement secures free movement for workers among the participating states which entail the abolition of any discrimination based on nationality between workers of EU Member States and EFTA-countries as regards employment, remuneration and other conditions of work and employment. In addition, the Contracting Parties shall, in the field of social security, secure for both (self-employed) workers and their dependents aggregation of periods and payment of benefits to persons resident in the territories of the EEA. Switzerland, also a member of the EFTA, has concluded a separate agreement on the free movement of persons with the EU. The rights under this agreement are similar to those of the EEA Agreement and include equal treatment of migrant workers.
- A number of bilateral and multilateral agreements have been established with other non-EU countries. Particularly important in this respect are the Decisions of the Association Council (1980) under the EC-Turkey Association Agreement which grant Turkish workers who have been admitted to the labour market of an EU Member State progressive rights on the labour market of that EU Member State after specified periods of legal employment there. Also with regard to the entitlement to social security, remuneration and other conditions of work, Turkish workers and their families shall be treated without discrimination. Other agreements (Russia, the ACP countries, a number of non-EU Mediterranean countries and countries of the Western Balkans) also provide for equal treatment with regard to nationality as concerns working conditions, remuneration and dismissal. It is important to note that the exact implementation of these rights is subject to national legal and administrative arrangements as well as to control by the European Court of Justice.

International agreements

- All EU Member States have ratified the European Convention on Human Rights, most EU Member States have ratified the European Social Charter and some have ratified the European Convention on the Legal Status of Migrant Workers all established by the Council of Europe. The last two agreements deserve most attention, for these directly refer to the principle of equal treatment in the economic domain of society, including working conditions, entitlements to social security and transfers of payments. As is clearly stipulated, national laws and regulations determine the conditions upon which the principles of equal treatment may be granted. Therefore, the provisions leave much room for specific circumstances and modalities applicable in each Member State. In addition, the personal scope of both the European Social Charter and the Convention on the Legal Status of Migrant Workers is limited because they only apply to foreigners who are nationals of one of the contracting parties. The European Convention on Human Rights covers all migrant workers admitted for employment in the Member States of the Council of Europe irrespective of their origin, but it primarily safeguards civil and political rights.

The above shows that at present, the principle of equal treatment with regard to working conditions and rights to social (security) provisions is granted to third-country workers only by national laws and for specific third-country workers through different multilateral agreement concluded by the EC (i.e. Europe agreements, Mediterranean agreement, Association agreement with Turkey). Some categories of third-country workers, either defined by their status (i.e. long-term) or by their nationality (i.e. those from countries that have signed multilateral agreements with the EU and its Member States, such as the EFTA-countries and Turkey) may claim a more privileged position on the basis of Community law. This is not the case, however, for most other third-country workers. The latter third-country workers are granted a number of fundamental rights as long as they are legally employed, but with regard to various social and economic conditions they are treated differently from EU nationals and long-term third-country residents⁹. These conditions are still subject to national legal and administrative arrangements.

National legislation of the Member States

The analysis is based on a survey carried out by a contractor by means of a questionnaire addressed to the 27 Member States. The focus of the questionnaire have been the categories and groups of third country workers, who have been legally admitted in a Member State to carry out a remunerated economic activity for and under the direction of another person, but who have not acquired the status of long-term third-country resident (as specified under Council Directive 2003/109/EC).

It is important to note that some categories and groups of third-country workers have remained outside the scope of the questionnaire: a) categories of third-country workers which are already covered by Community acquis (i.e. long-term residents, third-country workers posted in the context of the freedom to provide services, researchers, asylum seekers); b) specific categories for which other EU directives are foreseen (i.e. highly skilled workers, seasonal workers, intra-corporate transferees and remunerated trainees) ; c) categories of third-country workers under bilateral and multilateral agreements between the Community, or the Community and its Member States, with third countries.

⁹ It should be noted that there is no harmonization in the field of social security also as regards EC citizens.

The survey has investigated the following issues:

- Admission regimes for third-country economic immigrants, distinguishing between:
 - a) Application procedure for residence and work permit
 - b) Kinds of work permit and residence permit
- Rights related to entry and mobility.
- Rights related to employment and education distinguishing between:
 - a) Access to employment
 - b) Working conditions
 - c) Education
- Rights related to social benefits and to access to public services, distinguishing between:
 - d) Social security
 - e) Possibility for transferring social security benefits outside the EU
 - f) Access to public services
- Provisions specifically aimed at protecting or supporting immigrant women in employment.

Seventeen Member States replied to the questionnaire and namely: AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, IE, IT, LT, LV, NL, PT, RO, SI, SK, UK.

Finally, a desk analysis has been carried out in order to gather information on the MS for which no data have been collected through the questionnaire (DK, HU, LU, MT, PL, SE). The results of such an analysis are separately presented in a box within the Annex 2)

On the whole, it should be noted that the analyses presented are exclusively based on the questionnaire responses provided by Member States. Hereinafter the main evidences of the survey are examined according to the above mentioned issues, while the complete analysis and more detailed information about Member State replies are reported in Annex 2. A table in Annex 6 summarises the findings of the analysis. The following should be emphasized:

- Equal treatment with nationals in terms of working conditions and education – with some exception for education (Germany, Czech Republic) is generally granted to third-country workers.
- Some social security benefits are granted to third-country workers, depending on their immigration status but only few MS allow third-country workers to transfer these benefits outside the EU and, where this possibility is actually in force, it is

limited to some of the social security payments (mainly, survivors benefit, old age pension and invalidity pension).

- With reference to the rights which relate to the access to employment, instead, third-country workers are frequently subject to limitations. These restrictions mainly refer to the limited right to seek a new employment in case of job loss and/or to change job/employer which third-country workers enjoy in many of the Member State. The same consideration is valid for the freedom to choose an occupation/employer recognized to third-country workers. Indeed, work permits are frequently related to a specific work position and employer, as well as their validity is directly linked to the work contract/agreement.
- Access to public services is limited for third-country workers in most MS. EL, FR and IT appears the only Member States where the access to public service (such as of general economic interest, placement services) is quite widespread.

Conclusions

To sum up – on the bases of the analysis of Community acquis, the Member States national legislation and the various international agreements and in the absence of Community legislation it can be stated that the rights of third country workers may vary significantly depending on their nationality and on the Member States in which they stay. This **double rights gap** creates legal uncertainty for third-country workers and puts them on an unequal footing with workers whose rights have been explicitly defined. Such a situation does not correspond to the Tampere objective which aimed at granting legally resident third-country nationals rights and obligations comparable to those of EU citizens.

As far as the scope of this rights gap is concerned differences - as the table in Annex 5 shows - international agreements ratified by all Member States (such as European Convention for the Protection of Human Right and Fundamental Freedoms) cover all the basic human rights. Looking at Member States national legislations one can state that the difference in treatment lies in the access to employment, partly in the field of education and vocational training and in the field of social security and access to public services.

2.2.1.2. Complex and inefficient admission procedures

Analysis of the answers of the contractor's questionnaire to the Member States on their national legislations and an additional ad-hoc information request carried out directly by the Commission on the national admission schemes for work purposes the following has emerged:

In the absence of community legislation more than half of the Member States already have a single application procedure or envisage changing their system whereas a minority use separate procedures for obtaining work and residence permits respectively.

As Annex 2 for the contractor questionnaire (complemented by Commission ad-hoc information request) 11 Member States already apply a combined procedure and permit and 13 Member States still apply a distinct procedure. Out of these 13 - 4 Member State are to change it and another Member State is to consider. That leaves us 9 Member States (AT,BE BG,MT, LT,SL,SK,HU,PL) - who have a distinct procedure at this point in time - and no indication of change. There is no information on Luxembourg and Sweden. Annex 2 further

contains a table summarising the time required processing applications using distinct or single application procedures on the basis of the respective self-reporting of Member States.

On the whole it seems that the presence of a combined title and a unique procedure for residence and work permit represents a notable simplification in terms of admission regimes for third country workers. It has been found that the interdependence of the two titles could lead the applicants to a vicious circle, as there is no residence permit without a work permit and vice versa¹⁰.

Projecting from Member States answers on the advantages of introducing a single application procedure, one can conclude that distinct procedures have shown to have longer processing time and represent more administrative burden and costs for the employer and the would be migrant worker (arising from the involvement of different services and authorities in two distinct procedures).

2.2.2. *Who is affected in which Member States and to what extent?*

Total numbers

The origins of the European population are well documented. There are detailed migration and population statistics for almost every EU Member State. Table 1 (annex 7) provides a summary of the structure of the population of the EU25 in 2005.¹¹ These data show that in 2005 the EU25 had more than 19 million inhabitants with a third-country nationality. The vast majority of third-country nationals (almost 14 million) lives in five Member States, i.e. Germany, Spain, France, the UK, and Italy. A further 3 million live in Poland, Austria, Greece, Latvia, and the Netherlands.

Absolute numbers hide the fact the third-country nationals can comprise a large part of the population of small countries or a small part of that of large countries. Figure 2 (annex 7) compares the percentage share of third-country nationals in the total population of EU25 Member States. This comparison shows, first of all, that third-country nationals make up a larger part of the population of the EU15 than of that of the New Member States. Leaving aside Estonia and Latvia, only an average of 1.7% of the population of New Member States consists of third-country nationals compared to 4.1% of the population of EU15 Member States. On aggregate, third-country nationals account for 4.2% of the population of the European Union. In addition to the relative attractiveness of the various Member States, the percentage shares in the Figure 2 (annex 7) may be the result of differences in the possibilities for naturalisation in each country.

Duration of stay

This study is aimed specifically at third-country workers who have not yet lived in the European Union long enough to obtain long-resident status. However, the various statistical sources do not differentiate third-country nationals by their duration of stay.

¹⁰ EC, DG Justice and Home Affairs, “Admission of third country nationals for paid employment or self-employed activity”, 2001.

¹¹ The population data for Romania and Bulgaria do not distinguish all EU nationals (only the EU15) and do not present data on non-EU nationals.

Alternative data has been looked up to approximate the duration of stay. The German government has published data on the average duration of stay of foreign nationals (including EU nationals). These data include EU nationals, but they do provide specific numbers for the main nationalities that together account for about half of the total stock of foreign nationals in Germany. Table 3 (annex 7) shows that on average close to just under 20% of non-EU nationals has lived in Germany for less than 5 years. This constitutes the group of German third country workers for the purpose of this impact assessment.

Origins

Third-country nationals working in the EU are a very heterogeneous group. Further, information – LFS sample in the Annual Report on Asylum and Migration 2003 - available on the origins of third-country nationals in the EU 27 shows that Table 4 (in Annex 7) there is a clear pattern of preference among third-country nationals based on historical ties and geographic proximity.¹²

- Immigrants from the Balkan states and the former USSR account for 73% of third-country nationals in the new Member States (EU 10+2). The Balkan states account for 93% of third-country nationals in Slovenia, 75% in Greece, 53% in Austria, and 20% in Germany and Italy.
- North African immigrants account for 41% of third-country nationals in Southern Europe. The share of Moroccans is explained entirely by their contribution to the French immigrant population (33% of French third-country nationals). In Spain, France and Italy c. 20% of third-country nationals are of other North African origin (e.g. Algerians in France).
- Spain and Portugal are home to 98% of all South American nationals (94.8% in Spain, 3.2% in Portugal), which is probably a result of historical (colonial) ties.¹³
- Turkish nationals dominate the population of third-country nationals in Central Europe, which is due almost entirely to the Turkish community in Germany. Almost 80% of all Turkish nationals in the EU live in Germany.
- Scandinavia and North Western Europe are characterised by a more diverse composition of their immigrant populations than the other regions. The high share of other, less important, countries of origin is an indication of this diversity. Other remarkable features include the presence in Scandinavia of Iraqis and Balkan nationals –presumably due to the attraction of these countries to refugees – and the comparatively large shares of third-country nationals from Turkey, Morocco, and India in North Western Europe.

Employment and education of third country workers

The Labour Force Survey¹⁴ - compared with the aggregated data from the Annual Report on Asylum and Migration which than includes almost two-thirds of the population of third-country nationals in the European Union – shows the following (Tables 5-10 of Annex 7):

¹² The percentages would change if a full set of national migration statistics were used.

¹³ This percentage would be lower if all South Americans living elsewhere in the EU were included in the calculations. These may not be among the ten most important source countries in other Member States, but together they will nonetheless make a significant contribution.

- Overall, the level of educational attainment is significantly lower among third-country workers than among nationals, especially for males. The share of persons with a lower secondary education is considerably higher among third-country workers.
- The main pattern among males is that fewer third-country workers have an upper secondary education and more have a lower secondary education. This pattern appears particularly in sectors 4 through 9, which are low-skill and medium-skill occupations. There are some differences in the group of highly skilled workers, but there male third-country workers perform at a comparable level.
- Compared to national workers, female third-country workers either have a lower level of educational attainment or are more highly skilled. This pattern is particularly noticeable in sectors 3 and 4 (high-skill occupations) and 7 and 8 (medium-skill occupations). Female third-country workers appear to fall into two distinct segments, one with high skills and the other with low skills.
- On average, 11.6% of third-country nationals in the LFS indicates that he or she is **unemployed** (Table I.5 in annex 6). Unemployment is higher among third-country nationals than among nationals. The differences are far more pronounced among men than among women.¹⁵

The main conclusions of that brief statistical analysis are the following:

- Third-country nationals form a large group at EU level with more than 16 million people or 3.6% of the EU population.
- Most of these (c. 12 million) live in 5 Member States (Germany, France, Spain, the UK, and Italy).
- The origins of third-country nationals in each Member State differ especially due to geographic proximity and historical ties.
- The analysis of the educational attainment and labour market performance of third-country workers confirms the notion that they are less likely to be highly skilled, more likely to become unemployed and work in occupations with lower levels of skill.
- It also appears that the group of third-country workers is segmented between a highly skilled group (including female workers) and a larger group with low and medium skills and with a concomitant labour market performance.

Tables and information on the data and the data collection and the constraints on the availability of data are annexed (Annex 8)

¹⁴ The LFS is a sample and does not cover every single third-country national. It is conducted in every Member State of the European Union as well as 3 countries of the European Free Trade Association (EFTA). The LFS is a household survey, carried out by national statistical institutes, that includes persons aged between 15 and 64 (the working-age population).

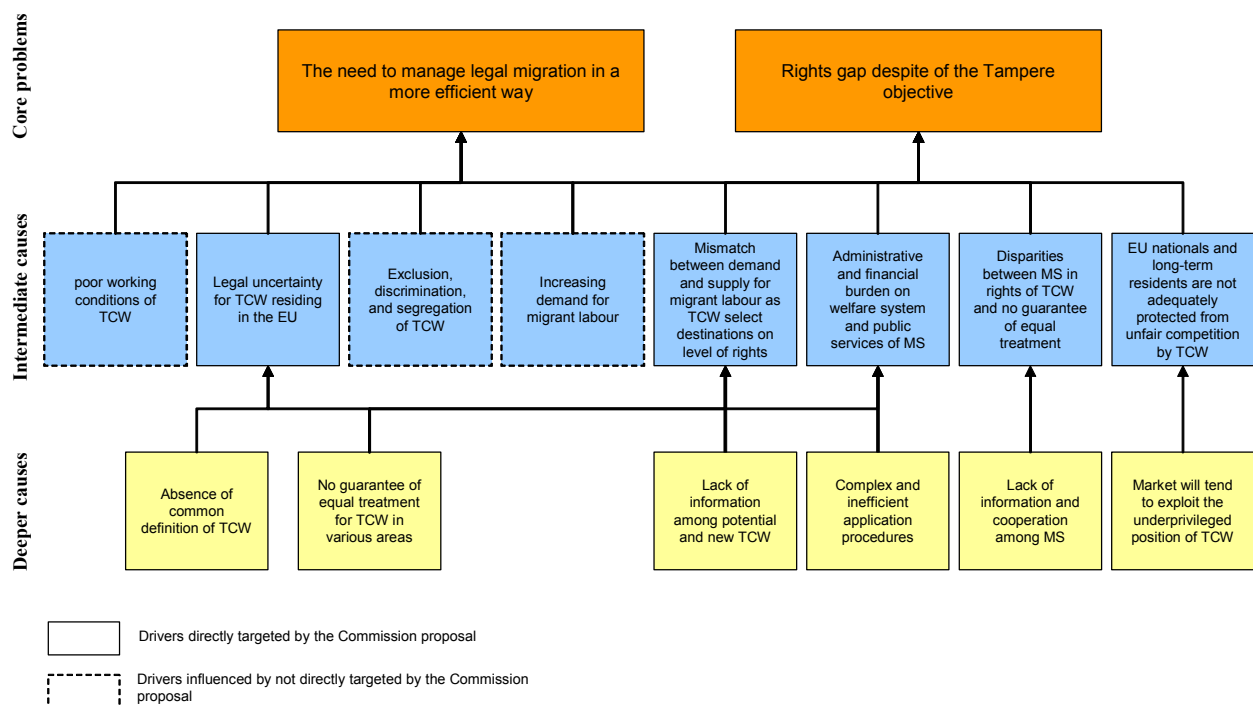
¹⁵ Eurostat's definition of unemployment is: "Unemployed persons are all persons 15 to 74 years of age who were not employed during the reference week, had actively sought work during the past four weeks and were ready to begin working immediately or within two weeks".
(http://europa.eu.int/estatref/info/sdds/en/une/une_sm.htm)

2.3. Underlying drivers/causes of the problem (problem tree)

As it follows from the analysis of the international, community and national law despite of the objective first expressed in Tampere to grant legally resident third country nationals comparable rights and obligations to those of EU citizens – there is still a considerable rights gap as far as especially their access to employment, access to education and vocational training or access to social security public services are concerned.

As to the procedural aspect of their admission application procedures tend to be complex and inefficient causing administrative and financial burden to the would-be employer and/or the migrant.

The following problem tree summarises the causes of the problem by dividing it up to deeper causes, intermediate causes and core problems.



2.4. Possible evolution of the problem all things being equal

Given the differences in standards of living between most EU Member States and the major suppliers of labour (Eastern Europe, Northern Africa, and the Middle East), it is likely that the immigration pressure of third-country workers into the EU will remain high in the coming years, regardless of legislative measures at the EU level. Differences between Member States in the numbers of third-country workers are to a large extent determined by different entry and labour market policies.

Having said that persistent differences may increasingly contribute to ethnic segmentation in national labour markets as opposed to EU nationals; being in a much more privileged position. In the long run, this tendency towards different legal standards concerning economic and social rights may create significant advantages for EU employers when attracting third-country workers instead of national workers. Particularly, the lower-skilled minority labour force in the EU is likely to see their labour market position deteriorate further.

A weak legal position of third-country workers is expected to have impacts beyond the functioning of national labour markets. More specifically, a tendency towards further polarisation of society on the basis of ethnic and national origins is foreseen, with clear-cut spatial and social segments of underprivileged migrant workers.

The sending countries of third-country workers continue to lack the ability to benefit from the outward migration of their workers. Their citizens who work in the EU are limited in their possibility to transfer pension savings and other social contributions, to invest in their human capital through vocational training, or to work in medium-skilled and high-skilled occupations. As a result, when they return to their country of origin, their contribution to the national economy will be lower than is possible.

As far as the application procedures are concerned – those Member State who hasn't simplified their scheme yet, might maintain it causing administrative and financial burden to the would-be employer and/or the migrant.

2.5. The EU's right to act – legal base, subsidiarity, proportionality

2.5.1. Legal base

The legal basis for Community action is laid down in Article 63 (3) of the EC Treaty, which states that the Council shall adopt measures on immigration policy within the following area:

- a) conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion.

2.5.2. The necessity test - the first condition to the subsidiarity principle

As this area falls under the shared competence of the EU and its Member States it needs to be demonstrated that the problem can not be sufficiently solved by the Member States acting alone.

- The absence of an explicit definition of third-country workers in most Member States and the gap between the rights of third-country workers and other workers requires intervention

at EU level in order respond to the Tampere objective. Further more efficient and transparent admission procedure should be laid down at EU level coupled with procedural guarantees.

As regards the "rights gap" when considering the need for public intervention, it is important to take into account the following considerations:

- *third-country workers are not without rights*. Certain rights, especially fundamental human rights, are already guaranteed to all third-country workers.
- *third-country workers are not a homogeneous group*. They include groups with more or fewer rights. The rights of third-country workers from EFTA countries are closest to those of EU nationals; Turkey has secured a fairly high level of rights for Turkish workers in the EU; other countries (mainly Mediterranean countries) have reached bilateral agreements with the EU that establish equal treatment in a number of areas; and, finally, a large group of workers from other third countries find themselves in less privileged position.
- *there is a difference in treatment as regards their access to the labour market*. The EC Treaty provides for free movement of workers for EC citizens and their family members¹⁶ which entail free access to the labour market. This is not the case for third country nationals whose access to the labour market is not guaranteed by the Treaty. Further Community preference as recalled in the latest Accession Treaties (EU 8 and EU 2)¹⁷ refer to the access to the labour market of new Member States citizens as opposed to third country nationals. This means that if an EU instrument is to touch upon access of third country nationals to the labour market - community preference would have to be taken into account, which means that rights of EC citizens prevail over the rights of third country nationals in this regard.
- *level of rights differ form Member State to Member State*. As social security systems are defined by national law the level of benefits (e.g. unemployment benefits, duration of maternity leave) may differ from one country to the other.

Without prejudice to the above mentioned considerations this rights gap - as understood for the purpose of this report with special regard to the difference in treatment in access to employment, partly in the field of education and vocational training and in the field of social security and access to public services - if maintained can have the following consequences:

- The combination of legal uncertainty and inequality affects *the quality of life of third-country workers* and their decisions with respect to employment, migration, housing, investments, savings, etc.. It may be a contributing factor to a number of other problems, such as high unemployment and low labour participation among immigrants, exclusion and discrimination, and a lagging supply of migrant labour. Differences in rights and entitlements between Member States may affect the selection of a destination country by third-country workers.

¹⁶ In particular Article 39 of the Treaty establishing the European Community and Regulation 1612/68.

¹⁷ EU8 :Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia; EU2 Romania and Bulgaria.

- The rights gap creates *unfair competition for EU nationals and long-term residents*. It could become a competitive disadvantage for EU nationals and long-term residents to exercise rights that third-country workers do not have and that impose a burden on employers. Under current conditions, third-country workers are more likely to work below accepted or regulated minimum wage levels and in occupations that are below their level of educational attainment. The market will tend to exploit the underprivileged position of third-country workers that is created by their inexperience with working and living in the EU, their inadequate command of the languages of the host country, and the rights gap.

It is generally accepted that many aspects of immigration policy must remain within the domain of Member States. The geographic origins of migrants vary between the major regions of the EU; the social status and degree of integration of third-country nationals and foreign-born EU citizens are different in the various Member States; national economic performance affects the demand for labour and in periods of rapid growth labour scarcity can result in favourable contract conditions for third-country workers; and the cultural and political heritage of Member States plays a significant part (e.g. vis-à-vis former colonies). The result is a politically accepted degree of variation in European policies with respect to immigration of third country nationals (ie: conditions of entry and stay). Some problems however can be identified that are either common to all Member States or supranational by nature:

- *A request* has already been expressed by the European Council in the Tampere Conclusions in 1999 to ensure fair treatment of third-country nationals residing lawfully on the territory of the Member States by granting them rights and obligations comparable to those of EU citizens.
- *Spill-over effects of independent national policies*: Although third-country workers enter a specific Member State within the EU, but a Member State's decision on the rights of third country nationals could affect other Member States with possible distortions of migratory flows. The difference in treatment granted to third country nationals in the different Member States - as perceived by potential migrants - consequently has a supranational dimension that lies outside the scope of national legislation.
- The *rights of long-term residents* from third countries are regulated at EU level. Given that many third-country workers will eventually become long-term residents, it seems only logical to follow the same approach for them as well.
- *Equal opportunities for all* are goals of the European Union and their attainment provides a rationale for EU intervention.
- *Granting rights can be seen as part of the integration process* of third country nationals: As recalled earlier it is acknowledged by the Council (in the Common Basic Principles to underpin a coherent European framework on integration of third country nationals) that Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible.
- *Further polarisation of society* on the basis of ethnic and national origin can be expected if the rights gap maintained. However Member States would have little incentive to adjust their policies to those of other Member States without Community intervention. Creating a

level playing field for third-country workers requires establishing the principle of equal treatment notwithstanding specific features of national legislation. It is highly unlikely that Member States will introduce the principle of equal treatment for third-country workers without EU-level guidance and support.

To sum up, in addition to the inherent need to respond to the Tampere objective to grant comparable rights to third country nationals, there is also possible spill-over effect of this maintained rights gap. Further, a maintained rights gap between third country nationals and own nationals within a Member State would continue to impose unfair competition through the possible exploitation of third-country national workers who have not yet acquired long term resident status. Finally the integration element of granting rights should not be forgotten either. Therefore it follows that an EU-level approach is necessary.

Further as far as the proposed procedural simplifications (single application procedure, single permit) are concerned if those Member States who still use parallel structures continue to do so procedures to get a permit to stay and work will stay long and cumbersome for both the employer and the employee and without regulating it at EU level - along with procedural guarantees - could further impose legal uncertainties to migrants.

3. OBJECTIVES

3.1. General (global) policy objectives

In accordance with the Policy Plan on Legal Migration¹⁸ and the Commission Legislative and Work Programme 2007¹⁹ the Commission is to present a proposal for a general framework directive covering the basic rights of all third-country workers already admitted in a Member State but not yet entitled to long-term resident status. In addition this proposal should create a single application procedure and a single residence/work permit.

The overall aim of this directive - in accordance with the request of the Council at first expressed in Tampere - should be to provide rights to third-country workers comparable to those of citizens of the European Union in order to contribute to a successful common immigration policy of the EU. Such a Directive would serve as a framework by laying down a common set of rights for third country nationals and would prepare the ground for subsequent policy initiatives which open specific channels of legal migration (for highly skilled migrants, seasonal workers, remunerated trainees and intra-corporate transferees). In this respect the single application procedure is also to be seen from a rights-based approach protecting migrants by ensuring a more efficient and transparent admission procedure laying down procedural guarantees for them. Further such a Directive would contribute to improve the functioning of the labour market: comparable rights in a form of equal treatment would elevating third country workers rights and thereby protect EC citizens from cheap foreign labour an, the single application procedure would do it by a quicker, more efficient admission scheme and the one permit would do it by increasing transparency of the labour market (with one permit for residence and work it is easier to know who resides and works legally than with two). Last but not least granting equal treatment for third country workers would contribute create a level playing field for migrant workers, not influencing their selection of

¹⁸ COM(2005) 669.

¹⁹ 2007/JLS/003.

destination on the level of rights but rather on other factors when seeking entry to one of the Member States (i.e.: where they work is needed).

The general (global) policy objectives therefore should be:

- 1) Responding to the request first expressed in Tampere to grant comparable rights, establishing the principle of equal treatment for third-country workers across the EU, particularly to protect them from abuse and inadequate working conditions and to grant them basic benefits.
- 2) Improving the functioning of the EU labour market
- 3) Protecting the EC workers from unfair competition in the labour market.

3.2. Specific and operational objectives

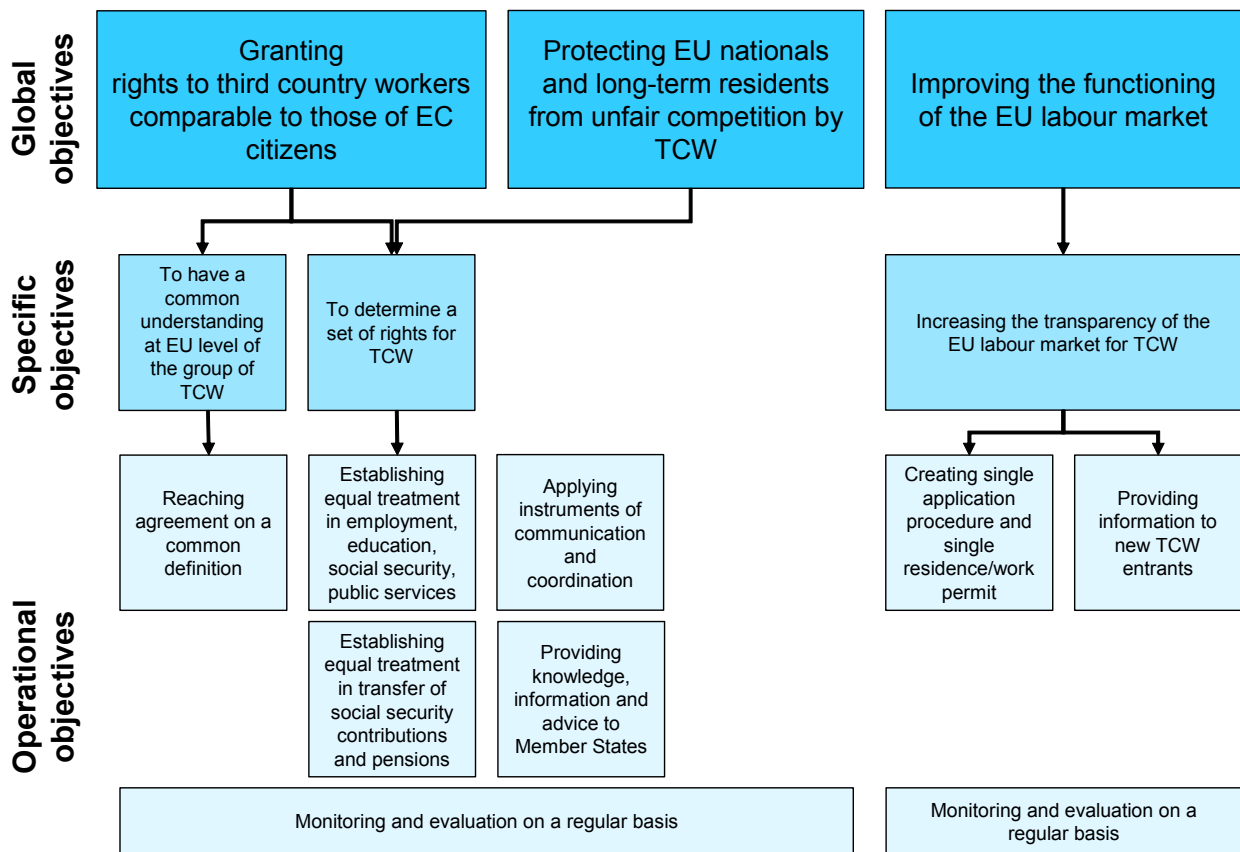
The specific objectives should be:

- 1) To have a common understanding at EU level of the group of third-country workers that legally resides in the EU but has not yet acquired long-term resident status.
- 2) To determine a set of rights for third-country workers.
- 3) To safeguard the position of EU nationals and long-term residents against the possible consequences of competition from cheap and exploited foreign labour.
- 4) To increase the transparency of the common EU labour market for third-country workers by reducing disparities between Member States in the rights granted to third-country workers and improving the information available to (potential) third-country workers

Related operational objectives following the intervention logic should be:

- 1) To reach an agreement on a common definition of third-country workers.
- 2) To grant rights as regards access to the labour market
- 3) To establish equal treatment with regard to working condition, education, social benefits and access to public services.
- 4) To establish equal treatment with regard to the possibility of reimbursement of social security contributions, transfers to other pension schemes, and exports of acquired pensions.
- 5) To create a single application procedure and a single residence/work permit
- 6) To provide knowledge, information and advice to Member States, including information on best practices, comparative analyses, innovative approaches, and experiences.
- 7) To monitor and evaluate on a regular basis.

Figure 1. Objective tree



3.3. Consistency with the problems identified

This paragraph assesses the adequacy and consistency of the objectives with respect to the main problems and their underlying causes, as identified in the problem tree (see Section 2.4)

The following connections have been identified:

- Global Objective 1 (to grant rights to third country workers comparable to those of EU citizens) directly responds to one of the core problems, which is an identified rights gap and the need to integrate migrants into EU society and guarantee their legal rights.
- Global Objective 2 (Improving the functioning of the EU labour market) is particularly consistent with one of the core problems, since this second global objective is in connection with the need to "manage legal migration in a more efficient way" which would entail remedying complex and inefficient application procedures, creating more legal certainty for third country workers and their employers and thereby contributing to a better match between demand and supply on the labour market.
- Global Objective 3 directly responds to the need of protecting EU nationals and long-term resident from unfair competition.

3.4. Consistency and complementarity with other EU policies

Given the effects of immigration policy to social and economic policies there are many connections between this proposal and other Community policies. Therefore it is necessary to take due account of the consistency and complementarity of the objectives of the proposal in particular with the following EU policies and Community acquis:

Lisbon Strategy²⁰:

- The general objective launched at the Lisbon Council “making the European Union the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion, and respect for the environment” is directly consistent with global objective to improve the functioning of EU labour market.
- Similarly, the area of action set in 2000, i.e. making EU “a more attractive place to invest and work”, re-affirmed in 2005, appears to be consistent with all the global objectives of the EU action for third country workers and it is particularly related to the specific objective 3, by protecting the EU labour force from possible unfair competition and thereby enhance the overall attractiveness of the EU labour market.

Integrated Guidelines for Growth and Jobs 2005–08²¹:

- Guideline 19 recalls the need to “*improve matching of labour market needs also through the appropriate management of economic migration*”. This guideline is generally consistent with the three global objectives, particularly with the second global objective, i.e. to improve the functioning of the EU labour market by encouraging an efficient allocation of migrant workers.

European Sustainable Development Strategy²²:

- Among the key actions proposed, it is recalled the need “to respond to the demographic challenges, notably by promoting active ageing strategies, the integration of immigrants and better conditions for families” also as it is pointed out that “the EU and its Member States should continue to develop an EU policy on legal migration, strengthen the integration of migrants and their families and fight illegal immigration”. These statements seem particularly consistent with the three global objectives since they foster the development of an EU common policy and the social and economic integration of third country workers.

Commission Communication on the demographic future of Europe – from challenge to opportunity (COM(2006) 571 final):

- Among the main areas of action set by the Communication, the following seems particularly relevant: “*Receiving and integrating migrants in Europe*”. The global objectives to create a level playing field and to improve the functioning of the EU labour market seem relevant and consistent with the purpose of this Communication.

²⁰ COM(2005) 24.

²¹ COM(2005) 141.

²² COM(2005) 658.

A table (Annex 9) **summarizes and specifies the nature and intensity of the connections** or links between, on one hand, the global and specific objectives identified for the present proposal for a Directive and, on the other hand, the other EU relevant policies.

4. POLICY OPTIONS

In developing the policy options the following considerations and restrictions have been taken into account:

The objective will be to define at EU level the *principle of equal treatment* and not to lay down a list of specific rights as the EU has no right to *harmonise* third-country workers rights especially in the employment related and the social security field, since the EC Treaty explicitly forbids EU measures aimed at harmonising the laws and regulations of Member States with respect to employment (Art. 129) and social policy (Art. 137). So even if EU intervention may be opportune under the subsidiarity principle, the competence of the EU to intervene is limited. Many aspects of the rights and entitlements of third-country workers fall within the jurisdiction of the Member States. Therefore when laying down rights for third-country workers this must be in a form of equal treatment.

The question is then how far EU intervention should go and if it has value added in this policy area. The value added of EU intervention can be deduced from an analysis of the rights gap between third-country workers and EU nationals in the Member States. An analysis of the responses to the Member State questionnaire (in Annex 10) show that the rights gap between third-country workers and other workers is most pronounced in access to labour market, access to social security (especially, unemployment benefits, family benefits, and social assistance) the possibility of transfer of pension savings and restitution of security benefits, access to public services (access to placement services, to services of general economic interest, and to other public services, including public housing). Considering that the rights gap varies among the problem areas – with major differences in some and a high degree of equality in other areas– the following options can be listed for the scope of EU intervention with respect to third-country workers rights.

Further as it has been pointed out there is a difference in treatment/rules among Member States as regards the admission procedures encompassing the access to employment for third country nationals sometimes resulting in complex and inefficient procedures. There if EU intervention deems to be opportune, question arises how to tackle it.

- **Option 1 – No change:** The further developments of the EU policy on economic migration will continue within the present legal framework which remains unchanged and ongoing activities continue. The rights of some third-country workers will be further specified by national legislation and only be covered at EU level by the specific Directives - on highly-skilled workers, seasonal workers, intra-corporate transferees, and remunerated trainees.
- **Option 2 – The non-legislative option: communication, coordination, and cooperation:** No new legislation is introduced on the rights of migrant workers in general. The rights of some third-country workers will be further specified by national legislation and only be covered at EU level by the specific Directives - on highly-skilled workers, seasonal workers, intra-corporate transferees, and remunerated trainees. Instead attention would be given to complementary and supporting activities. The aim is to bring the

legislative practices of Member States closer through the gathering and exchange of knowledge and information –including best practices – performing comparative analyses, giving advice, promoting innovative approaches, and evaluating experiences.

- **Option 3a – Legislative option in a form of a Directive focusing on the commonalities:** This option would grant equal treatment for third-country workers in all the employment-related fields excluding social security, the transfer of social security contributions and pensions and access to public services. The Directive would only lay down the principle of equal treatment with nationals for third-country workers in employment related area in a strict sense basically only covering working conditions, and access to vocational training/education. These areas - as the questionnaire to the Member States revealed – are tackled by a large extent already by national legislation. It would merely establish agreement in areas where agreement already exists. However, this approach would bring issues under EU law (insofar as they are not already covered by the existing *acquis*) enact current achievements, and prevent a divergence between third-country workers rights and other rights in the future especially with a view to further enlargement of the European Union.
- **Option 3b – The equal treatment legislative option in a form of a Directive:** This option would grant equal treatment for third country nationals who are already admitted to the labour market in all the employment-related fields including social security, the transfer of social security contributions and pensions and access to public services. The Directive would lay down the principle of equal treatment with nationals for third-country workers in the area of employment-related fields in a wide sense including access to education/vocational training, mutual recognition and assessment of diplomas and degrees and access to social security benefits, access to public services and the possibility of the reimbursement of public social security contributions as well as the possibility to export pensions once they are paid with regard to the first and second pillars of pension funding (state and collective provisions). This option would not tackle the access to the labour market.
- **Option 4 - A complementary legislative option in a form of a Directive; single application procedure and single residence/work permit:** The Directive would focus on a single application procedure simplifying the procedure both for immigrants and for public authorities and a single document enabling a third country national to reside and work in a Member States. These provisions could build on Regulation 1030/2002 on a uniform residence permit which already enables Member States to add national remarks as regards the access to the labour market. This option could encompass – following the rights based approach - *procedural safeguards and guarantees* (e.g. the right to mount a legal challenge in the Member State concerned) in relation to the application for a single permit.
- **Option 5 - The fully-fledged legislative option in a form of a Directive regulating access to labour market and also granting equal treatment for third-country workers:** The Directive would regulate the labour market access of third-country workers to a Member State in order to grant comparable treatment as regards access to employment and mobility within that Member State. In order to grant access to the labour market for third-country nationals, conditions for admission to work (economic needs test etc.) need to be harmonised. EU intervention would further focus on the right to choose another occupation or employer or to change jobs, to work in the public sector, to gain access to management

functions, and to seek new employment in the case of job loss. Since as shown through the analysis of Member State's legislation work permits are frequently related to a specific work or employer but as migrants acquire experience in the labour market they may wish to move to different occupations or destinations. This is an area where the rights gap is considerable and where differences between Member States are pronounced. This option would further provide for equal treatment with own nationals – in all the areas listed in Option 3b - for third-country workers is also foreseen.

Table Describing the options: how they will work in practice

| | <i>Option 1</i> | <i>Option 2</i> | <i>Option 3a</i> | <i>Option 3b</i> | <i>Option 4</i> | <i>Option 5</i> |
|------------------------------|--|--|---|---|---|--|
| | <i>No change</i> | <i>The non-legislative option, Communication, and cooperation</i> | <i>Legislative option in a form of a Directive focusing on commonalities - covering rights for which equal treatment has already been achieved</i> | <i>Directive granting equal treatment for third-country workers in all employment related areas including social security</i> | <i>Single application procedure and single residence/work permit</i> | <i>A Directive regulating access to the labour market in addition to grant equal treatment</i> |
| Description of policy levers | no new legislation; planned directives for specific groups of third-country workers; | no new legislation other than planned specific admission directives; use of other instruments of (e.g. conferences, Communication, benchmarking, networks, committees) approximation of rights insofar as MS learn from each other and EU efforts in that direction are successful | Minimum requirements directive binding for all MS (although the UK and Ireland may opt out and Denmark cannot opt in); common definition of third-country workers; principle of equal treatment defined on high-level; but only covering areas where Member States have already granted the same or similar rights to third-country workers, ie: working conditions, and education, right to define the content of the rights remains MS competence | Minimum requirements directive binding for all MS (although the UK and Ireland may opt out and Denmark cannot opt in); common definition of third-country workers; principle of equal treatment in all important employment related area - including social security - defined on high-level; the right to define the content of the rights remains MS competence | introduction of a single residence/work permit; introduction of a single procedure for the application by third-country workers for a residence/work permit | Directive binding for all MS (although the UK and Ireland may opt out and Denmark cannot opt in) granting rights as regards access to the labour market has the consequences of harmonising admission conditions and procedures (ie.: economic needs test), in addition equal treatment is provided as in option 4 - |

| | <i>Option 1</i> | <i>Option 2</i> | <i>Option 3a</i> | <i>Option 3b</i> | <i>Option 4</i> | <i>Option 5</i> |
|---|---|--|--|--|---|--|
| | No change | The non-legislative option, Communication, and cooperation | Legislative option in a form of a Directive focusing on commonalities - covering rights for which equal treatment has already been achieved | Directive granting equal treatment for third-country workers in all employment related areas including social security | Single application procedure and single residence/work permit | A Directive regulating access to the labour market in addition to grant equal treatment |
| Why policy levers might work with regard to global objectives | in some areas third-country workers already have rights that are similar to those of EU nationals and long-term residents; differences will be maintained; current 'hands-off' approach may be sufficient for level playing field | MS gain better access to information on effective policies, indirectly promoting approximation of third-country workers rights at MS level; EU guidance and support to encourage MS to adjust policies and legislation to those of other MS; better information for potential third-country workers to influence migration decisions | ensures that all MS explicitly deal with entire group of third-country workers in national legislation and establish agreement where agreement already exists; bring issues under EU law (insofar as not already covered by existing acquis), enact current achievements, and prevent divergence between third-country workers rights and other rights in the future, especially with a view to further EU enlargement | ensures that all MS explicitly deal with entire group of third-country workers in national legislation; establishes equal treatment of third-country workers rights across the EU, helping to reduce disparities between MS and further encouraging third-country workers to move to where work is really needed | single permit and single application procedure simplify immigration process for third-country workers and for authorities; standardisation of permits across the EU creates more transparency and legal certainty ²³ | Conditions and procedures of admission harmonised together with the provision of equal treatment would further encourage third-country workers to move to where work is really needed – as for equal treatment same remarks as in Option 4 |

²³ The format of residence permits has already been standardised (Regulation (EC) No 1030/2002).

| | <i>Option 1</i> | <i>Option 2</i> | <i>Option 3a</i> | <i>Option 3b</i> | <i>Option 4</i> | <i>Option 5</i> |
|-------------------------|--|--|--|---|---|---|
| | No change | The non-legislative option, Communication, and cooperation | Legislative option in a form of a Directive focusing on commonalities - covering rights for which equal treatment has already been achieved | Directive granting equal treatment for third-country workers in all employment related areas including social security | Single application procedure and single residence/work permit | A Directive regulating access to the labour market in addition to grant equal treatment |
| Risks and uncertainties | rights of many third-country workers remain uncertain, although implicitly covered by existing legislation; harmonisation remains autonomous trend but divergence in national implementation is not impossible | MS can participate in and still ignore multilateral communication and cooperation efforts as well as EU guidance and for reasons of political expedience; benchmarking may result in MS converging on lowest common denominator rather than best practice; networks and committees may end up in political gridlock, delaying definition of third-country workers rights and harmonisation at MS level | harmonisation not guaranteed but depends on national implementation; framework directive defines a bottom line, but EU competence may not extend far enough; migration to where work is really needed remains exogenous to policy, not have significant impact regarding global objectives, particularly encouraging immigrants to go where their work is really needed and protecting the EU labour force from unfair competition in the labour market, given that some of the relevant rights (social security) will not be included | harmonisation not guaranteed but depends on national implementation; framework directive defines a bottom line, but EU competence may not extend far enough; migration to where work is really needed remains exogenous to policy and builds on assumption that migrants decide on basis of relative rights and have access to information on those rights, which may be untrue | adjustment of national mechanisms for entry and admission to common single procedure may take time and resources; differences between MS in terms of time, resources, and delays; adjustment of various public authorities (e.g. policy, immigration services, social services, etc.) | adjustment of national mechanisms for entry and admission may take time and resources, as for equal treatment same remarks as in Option 4 |
| Transition problems | none | none | some, mainly with respect to education | difficulties especially with respect to access to social security, and rights to export social security contributions and pensions | some in the area of technical implementation of requirements imposed on MS | Implementation of new or altered conditions of admission as for equal treatment same remarks as in Option 4 |

5. ANALYSIS OF IMPACTS

5.1. Intended impact: will the policy options achieve the global objectives?

The first question in the assessment of the individual policy options is whether they will achieve the Commission's objectives as identified in chapter 3.

The following tables assess the achievement of the global objectives by each of the selected policy options. The assessment is given on a five-point scale, namely

-- (very negative),

- (negative),

0 (neutral),

+ (positive), and

++ (very positive).

Impact assessment: policy option 1 – No change

| Impacts | Rating | Explanation of the rating |
|---|--------|---|
| Granting rights to third country workers comparable to those of EC citizens | - | <p>National legislation remains dominant.</p> <p>Rights will be granted only:</p> <p>in areas where equal treatment already exists;</p> <p>when national policy directions merge;</p> <p>through directives aimed at specific groups of third-country workers.</p> <p>As a consequence, for a large group of third-country workers equal treatment is not guaranteed. Where no equal treatment exists, present differences between Member States are expected to remain.</p> <p>In the short and medium term, equal treatment is unlikely to be achieved without a change in policy.</p> <p>In view of the expected increase in the number of third-country workers, more workers will be facing unequal treatment.</p> |

| | | |
|--|---|--|
| To improve the functioning of the EU labour market | 0 | <p>Non-economic motives for the selection by migrants of Member States as destinations as well as barriers to entry for specific sectors remain in place. The functioning of the labour market will not improve.</p> <p>Impacts are different for temporary and (semi)permanent third-country workers:</p> <p><i>Temporary migration:</i> Workers already move to where they are really needed. Residence is not an option. The goal to encourage third-country workers to move to where they are most needed will be achieved under the no change scenario.</p> <p><i>(Semi)permanent migration:</i> third-country workers select a destination on the basis of the quality of life, security of rights, level of entitlements, and opportunities for employment. The goal to encourage third-country workers to move to where they are most needed is unlikely to be achieved nor is the current situation expected to become worse.</p> |
| To protect the EU labour force from unfair competition | - | Where equal treatment is not guaranteed and differences between Member States persist, employers have no incentive to give third-country workers more rights than those to which they are formally entitled, which may result in a further degradation or devaluation of their legal position. In addition, the number of third-country workers is expected to grow. Unfair competition will increase. |

Option 2 – The non-legislative option: Communication, coordination, and cooperation

| Impacts | Rating | Explanation of the rating |
|---|--------|--|
| Granting rights to third country workers comparable to those of EC citizens | 0 | <p>Member States gain better access to information on effective policies and good practices as a result of cooperation, the international exchange of knowledge, and EU guidance and support.</p> <p>This may result in a degree of harmonisation of third-country workers rights as Member States may adjust their policies and legislation to those of other Member States.</p> <p>The most likely outcome is, however, that this option will have little or no significant impact on lowering the rights gap.</p> |
| To improve the functioning of the EU labour market | 0 | Member States and third-country workers may be provided with better information, but the outcome depends entirely on the implementation of activities at Member State level. No significant impact is expected. |
| To protect the EU labour force from unfair competition | - | No significant impact expected. Development as in the “no change” scenario. |

Option 3 a – Legislative option granting equal treatment in a form of a Directive focusing on commonalities (covering rights for which equal treatment has already been achieved)

| Impacts | Rating | Explanation of the rating |
|---------|--------|---------------------------|
|---------|--------|---------------------------|

| Impacts | Rating | Explanation of the rating |
|---|--------|---|
| Granting rights to third country workers comparable to those of EC citizens | 0 / - | <p>third-country workers will be clearly defined in all Member States, using a common definition, and the directive ensures that all MS explicitly deal with entire group of third-country workers in national legislation, even if implementation of the directive may differ.</p> <p>No significant improvement on the current state of affairs. Most rights will not be affected. The directive would extend the scope of current achievements to all third-country workers, by introducing a common definition, and enact those achievements, preventing a gap between the rights of third-country workers and those of other workers in the future, especially with a view to further EU enlargement. This represents a marginal improvement relative to the “no change” scenario.</p> |
| To improve the functioning of the EU labour market | 0 | No significant impact expected. Development as in the “no change” scenario. |
| To protect the EU labour force from unfair competition | - | No significant impact expected. Development as in the “no change” scenario. |

Option 3 b – Sub option 3 granting equal treatment in a form of a Directive in all employment related fields also including social security

| Impacts | Rating | Explanation of the rating |
|---|--------|--|
| Granting rights to third country workers comparable to those of EC citizens | ++ | <p>Third-country workers will be clearly defined in all Member States, using a common definition, and the directive ensures that all MS explicitly deal with entire group of third-country workers in national legislation, even if implementation of the directive may differ.</p> <p>Level playing field created by granting equal treatment to third-country workers across the EU27, helping to reduce disparities between third-country workers and own nationals/EU citizens and further encouraging third-country workers to move to where their work is really needed.</p> <p>Limits to EU competence in many of the areas included in the directive may make achieving significant impacts difficult. Rights granted to workers will further differ as no minimum rights are defined but equal treatment.</p> |
| To improve the functioning of the EU labour market | + | <p>Equal treatment for third-country workers in employment throughout the EU27 would encourage immigrants to go where their work is really needed, since differences between Member States in the level of legal protection would be reduced. However, the direction of migration flows is to some extent exogenous to policy and may not be affected by (information on) the relative rights of third-country workers.</p> <p>National differences will remain and harmonisation between Member States is not guaranteed. The directive will, however, establish a clear bottom line.</p> |

| | | |
|--|---|---|
| To protect the EU labour force from unfair competition | + | <p>Establishing the principle of equal treatment and including all third-country workers in legislation will reduce unfair competition for EU nationals and long-term residents on the European labour market. third-country workers will be less likely to work below accepted or regulated minimum wage levels.</p> <p>There are, however, limits to what can be achieved as a result of the boundaries of EU competence and the principle of Community preference.</p> |
|--|---|---|

Option 4 – Single application procedure and single residence/work permit

| Impacts | Rating | Explanation of the rating |
|---|--------|--|
| Granting rights to third country workers comparable to those of EC citizens | + | More transparency and legal certainty for third-country workers as permits are standardised and the vicious circle of delays in separate procedures for residence and work permits is broken. |
| To improve the functioning of the EU labour market | + | Third-country workers labour can be employed with greater flexibility as procedures for residence and work permits are merged being more efficient and differences between Member States are reduced. Further the single permit can increase transparency in the labour market (with one permit for residence and work it is easier to know who resides and works legally than with two) |
| To protect the EU labour force from unfair competition | + | The vicious circle of delays in separate procedures for residence and work permits is broken, reducing the need for illegal and undeclared work. |

Option 5 – The fully fledged legislative option in a form of a Directive regulating access to the labour market and also granting equal treatment for third-country workers

| Impacts | Rating | Explanation of the rating |
|---|--------|--|
| Granting rights to third country workers comparable to those of EC citizens | ++ | <p>Third-country workers will be clearly defined in all Member States, using a common definition, and the directive ensures that all MS explicitly deal with entire group of third-country workers in national legislation, even if implementation of the directive may differ.</p> <p>Level playing field created by regulating the access to the labour market in Member States and granting equal treatment to third-country workers across the EU27, helping to reduce disparities between Member States and further encouraging third-country workers to move to where their work is really needed.</p> <p>Limits to EU competence in many of the areas included in the directive may make achieving significant impacts difficult. Rights granted to workers will further differ as no minimum rights are defined but equal treatment.</p> |
| To improve the functioning of the EU labour market | 0/+ | Given the differences and the diverging needs of the MS labour markets, regulating the conditions of access to the EU labour market might not result in achieving the objective. |
| To protect the EU labour force from unfair competition | + | <p>Establishing the principle of equal treatment and including all third-country workers in a Directive will reduce unfair competition for EU nationals and long-term residents on the European labour market. third-country workers will be less likely to work below accepted or regulated minimum wage levels.</p> <p>(This however cannot be considered as unfair competition.)</p> <p>There are, however, limits to what can be achieved as a result of the boundaries of EU competence and the principle of Community preference.</p> |

5.2. Impact assessment of each policy option

The following tables give a summary of the impact assessment for each policy option as regards the likely economic, social and environmental impacts.

Policy option 1 – No change

| Impacts | Rating | Explanation of the rating |
|---|--------|--|
| Economic impacts | | |
| Competitiveness, trade and investment flows | + | Diverging legal standards concerning economic and social rights may create significant advantages for EU employers when attracting low-wage third-country workers instead of national workers. |
| Costs for businesses | 0 | No significant impact expected. |
| Innovation and research | 0 | Supply of low-wage third-country workers labour may provide a small disincentive to invest in innovation. |
| Consumers and households | 0 / + | Steady supply of low-wage, flexible labour for household work. |

| | | |
|---|----|--|
| Specific regions and sectors | – | Concentration of third-country workers in specific sectors and regions continues, contribution to problems such as high unemployment and social exclusion, to the extent that it depends on the unequal treatment of third-country workers and the inadequate definition of their rights. |
| Third countries and international relations | 0 | The sending countries of third-country workers do not reap optimal benefits from the outward migration of their workers. Their citizens who work in the EU are limited in their possibility to transfer pension savings and other social contributions, to invest in human capital through vocational training, or to work in medium-skilled and high-skilled occupations. When they return to the country of origin, their contribution to the national economy will be lower than could be possible. |
| Public authorities | 0 | No significant impact expected. |
| Macroeconomic environment | 0 | No significant impact expected. |
| Social impacts | | |
| Employment and labour markets | – | Steady increase in low-wage and unfair competition by third-country workers with other workers. Inefficient and cumbersome application procedures remain in place preventing employers to employ third country nationals in a timely manner. Where educational qualification are not recognised third country workers will tend to worker as overqualified, or demand and supply can not meet efficiently. |
| Standards and rights related to job quality | 0 | Third-country workers are already granted equal treatment with respect to working conditions in most Member States. |
| Social inclusion and protection of particular groups | -- | Further polarisation of society on the basis of national origins, with clear-cut spatial and social segments of underprivileged migrant workers; persistent differences may increasingly contribute to patterns of ethnic segmentation in national labour markets, with EU nationals in a more privileged position compared to third-country nationals with temporary work permits. |
| Equality of treatment and opportunities, non-discrimination | – | The rights gap remains, giving third-country workers fewer rights than nationals and long-term third-country residents. This concerns in particular rights of immigrant women on the workplace, who may face specific problems linked to their gender. |
| Governance, participation, good administration, access to justice, media and ethics | 0 | The fundamental rights of third-country workers are already protected in all Member States. |
| Access to and effects on social protection, health and educational systems | – | Access to social security and public services of third-country workers is limited as they are excluded on the basis of nationality, residence status or other legal requirements. |
| Environmental impacts | | |
| Renewable or non-renewable resources | 0 | No significant impact expected. |
| Land use | 0 | No significant impact expected. |

| | | |
|--------------------------------|---|---------------------------------|
| Mobility and the use of energy | 0 | No significant impact expected. |
|--------------------------------|---|---------------------------------|

Option 2 – The non-legislative option: Communication, coordination, and cooperation

| Impacts | Rating | Explanation of the rating |
|---|--------|---|
| Economic impacts | | |
| Competitiveness, trade and investment flows | + | Diverging legal standards concerning economic and social rights may create significant advantages for EU employers when attracting low-wage third-country workers instead of national workers. This may provide Member States with an incentive to disregard multilateral communication and cooperation outcomes as well as EU guidance and support. |
| Costs for businesses | 0 | No significant impact expected. |
| Innovation and research | 0 | This option is unlikely to change current trends in the level and composition of third-country workers immigration. No significant impact expected. |
| Consumers and households | 0/+ | Steady supply of low-wage, flexible labour for household work. This option will not (directly) affect consumers and households. |
| Specific regions and sectors | - | Concentration of third-country workers in specific sectors and regions continues, contribution to problems such as high unemployment and social exclusion, to the extent that it depends on the unequal treatment of third-country workers and the inadequate definition of their rights. |
| Third countries and international relations | 0 | This option is unlikely to change third-country workers rights with respect to reimbursements and pension transfers. The sending countries of third-country workers do not reap optimal benefits from the outward migration of their workers. Their citizens who work in the EU are limited in their possibility to transfer pension savings and other social contributions, to invest in human capital through vocational training, or to work in medium-skilled and high-skilled occupations. When they return to the country of origin, their contribution to the national economy will be lower than could be possible. |
| Public authorities | 0/+ | Possible gains from knowledge exchange between Member States as information on good and bad practices is shared. |
| Macroeconomic environment | 0 | No significant impact expected. |
| Social impacts | | |
| Employment and labour markets | - | Steady increase in low-wage and unfair competition by third-country workers with other workers. Inefficient and cumbersome application procedures remain in place preventing employers to employ third country nationals in a timely manner. Where educational qualification are not recognised third country workers will tend to worker as overqualified, or demand and supply can not meet efficiently. |
| Standards and rights related to job quality | 0 | third-country workers are already granted equal treatment with respect to working conditions in most Member States. |

| | | |
|---|---|--|
| Social inclusion and protection of particular groups | – | Communication, coordination and cooperation with respect to third-country workers may generate synergies with similar initiatives in the area of inclusion, although option 2 is unlikely to have a significant impact on the polarisation of society and the position of underprivileged migrant workers. |
| Equality of treatment and opportunities, non-discrimination | – | The rights gap remains, giving third-country workers fewer rights than nationals and long-term third-country residents. This concerns in particular rights of immigrant women on the workplace, who may face specific problems linked to their gender. |
| Governance, participation, good administration, access to justice, media and ethics | 0 | The fundamental rights of third-country workers are already protected in all Member States. |
| Access to and effects on social protection, health and educational systems | – | Option 2 will not affect the access to social security and public services of third-country workers, which is limited as they are excluded on the basis of nationality, residence status or other legal requirements. |
| Environmental impacts | | |
| Renewable or non-renewable resources | 0 | No significant impact expected. |
| Land use | 0 | No significant impact expected. |
| Mobility and the use of energy | 0 | No significant impact expected. |

Option 3 a – Legislative option granting equal treatment in a form of a Directive focusing on commonalities (covering rights for which equal treatment has already been achieved)

| Impacts | Rating | Explanation of the rating |
|---|--------|--|
| Economic impacts | | |
| Competitiveness, trade and investment flows | + | No significant impact on existing trends. Diverging legal standards concerning economic and social rights may create significant advantages for EU employers when attracting low-wage third-country workers instead of national workers. |
| Costs for businesses | 0 / – | Possible investments in working conditions |
| Innovation and research | 0 | This option is unlikely to change current trends in the level and composition of third-country workers immigration. No significant impact expected. |
| Consumers and households | 0 / + | No impact on the labour market position of third-country workers, steady supply of low-wage, flexible labour for household work. |
| Specific regions and sectors | – | No impact on the sectoral or regional distribution of third-country workers. As in option 1, concentration of third-country workers in specific sectors and regions continues. |
| Third countries and international relations | 0 | No significant impact on third countries. As in option 1, the sending countries of third-country workers continue to lack the ability to benefit from the outward migration of their workers. |

| Impacts | Rating | Explanation of the rating |
|---|--------|--|
| Public authorities | 0 / - | Modest increase in the costs of enforcement, support, monitoring and evaluation associated with new legislation in Member States where equal treatment in these areas has not already been granted. |
| Macroeconomic environment | 0 | No significant impact expected. |
| Social impacts | | |
| Employment and labour markets | - | Slight improvement in the protection for third-country workers, in Member States where equal treatment in these areas has not already been granted, lowers their competitive advantage on the EU labour market. Inefficient and cumbersome application procedures remain in place preventing employers to employ third country nationals in a timely manner. Where educational qualification are not recognised third country workers will tend to worker as overqualified, or demand and supply can not meet efficiently. |
| Standards and rights related to job quality | 0 / + | third-country workers are already granted equal treatment with respect to working conditions in most Member States, but this option may strengthen these standards and rights throughout the EU. |
| Social inclusion and protection of particular groups | 0 / + | Modest improvement in the rights and entitlements, access to public services, inclusion and protection of third-country workers. |
| Equality of treatment and opportunities, non-discrimination | - | The rights gap remains, giving third-country workers fewer rights than nationals and long-term third-country residents. This concerns in particular rights of immigrant women on the workplace, who may face specific problems linked to their gender. |
| Governance, participation, good administration, access to justice, media and ethics | 0 | The fundamental rights of third-country workers are already protected in all Member States. |
| Access to and effects on social protection, health and educational systems | - | Access to social security and public services of third-country workers is limited as they are excluded on the basis of nationality, residence status or other legal requirements. |
| Environmental impacts | | |
| Renewable or non-renewable resources | 0 | No significant impact expected. |
| Land use | 0 | No significant impact expected. |
| Mobility and the use of energy | 0 | No significant impact expected. |

Option 3 b – Granting equal treatment in a form of a Directive in all employment related fields also including social security

| Impacts | Rating | Explanation of the rating |
|-------------------------|--------|---------------------------|
| Economic impacts | | |

| | | |
|---|-------|--|
| Competitiveness, trade and investment flows | 0 | Equal treatment for third-country workers and a degree of standardisation of third-country workers rights across the EU will lower the opportunities for employers to use the competitive advantage of underprivileged third-country workers. This effect will mainly occur in low-wage, low-skill sectors and occupations. |
| Costs for businesses | - | Additional costs in systems in which employers directly contribute to on-the-job training, education, and other provisions; in exceptional cases additional contribution of employers to social security |
| Innovation and research | 0 / + | This option may result in an decrease in third-country workers immigration, which may include highly skilled workers. However, the latter group already experiences fewer problems on the EU labour market, so that the effects will be modest. A fall in the supply of low-wage third-country workers labour may provide a small incentive to invest in innovation. |
| Consumers and households | + | Reduction in unfair competition for EU workers and better living conditions for third-country workers households. The labour for house work may become less flexible and more expensive. |
| Specific regions and sectors | + | The directive will have a bigger impact in urban areas where the effects of the rights gap of third-country workers is felt more strongly. |
| Third countries and international relations | + | Increase in the net inflow of incomes from abroad on the balance of payments of third countries as the possibilities for the reimbursement of public social security contributions and the export of pensions increase. |
| Public authorities | - | Increase in the costs of enforcement, support, monitoring and evaluation associated with new legislation. Possible increase in the financial costs of social security and public services as more third-country workers claim rights and access. |
| Macroeconomic environment | 0 | No significant impact expected. |
| Social impacts | | |
| Employment and labour markets | 0 / - | Better protection for third-country workers lowers their competitive advantage on the EU labour market with a possible increase in undeclared work and illegal employment. Inefficient and cumbersome application procedures remain in place preventing employers to employ third country nationals in a timely manner. |
| Standards and rights related to job quality | 0 / + | third-country workers are already granted equal treatment with respect to working conditions in most Member States, but this option may strengthen these standards and rights throughout the EU. |
| Social inclusion and protection of particular groups | ++ | Substantial improvement in the rights and entitlements, access to public services, inclusion and protection of third-country workers. Better protection of EU workers against unfair competition. |
| Equality of treatment and opportunities, non-discrimination | + | Equal treatment will be ensured, although there are clear limits to equality of treatment and opportunities In particular additional rights will be granted to immigrant women, who may face specific problems linked to their gender. |

| | | |
|---|---|---|
| Governance, participation, good administration, access to justice, media and ethics | 0 | The fundamental rights of third-country workers are already protected in all Member States, while political rights will not be covered in this directive. |
| Access to and effects on social protection, health and educational systems | + | Significant improvement in access to public services, such as health care, education, and housing. |
| Environmental impacts | | |
| Renewable or non-renewable resources | 0 | There may occur a decrease in the immigration of third-country workers into the EU, but this is not expected to significantly affect the environment. |
| Land use and mobility and the use of energy | 0 | |

Option 4 – Single application procedure and single residence/work permit

| Impacts | Rating | Explanation of the rating |
|---|--------|---|
| Economic impacts | | |
| Competitiveness, trade and investment flows | + | Decline in legal uncertainty. Simplification and standardisation of procedures and legislation. third-country workers can be gainfully activated for the EU economy more quickly and with greater flexibility. |
| Costs for businesses | + | Cost savings due to simplification and standardisation of procedures. |
| Innovation and research | 0 | This option is unlikely to change current trends in the level and composition of third-country workers immigration. No significant impact expected. |
| Consumers and households | 0 / + | Greater legal certainty has a positive impact on the third-country workers households. |
| Specific regions and sectors | 0 / - | Reduction in illegal and undeclared work may raise labour costs for employers in some sectors, although the additional impact will be small. |
| Third countries and international relations | 0 | No significant impact expected. |
| Public authorities | + | Long-term structural savings in public organisations, although to some extent offset by one-time expenditure on implementation and structural expenditure on monitoring, evaluation, and procedural safeguards. |
| Macroeconomic environment | 0 / + | Reduction in administrative costs. Greater flexibility in segments of the labour market where third-country workers are concentrated. |
| Social impacts | | |

| Impacts | Rating | Explanation of the rating |
|---|--------|--|
| Employment and labour markets | + | Reduction in illegal and undeclared work as a result of breaking the vicious circle of delays in separate procedures for residence and work permits is broken. |
| Standards and rights related to job quality | 0 | No significant impact expected. |
| Social inclusion and protection of particular groups | 0 / + | Greater legal certainty for third-country workers. |
| Equality of treatment and opportunities, non-discrimination | 0 | No significant impact expected. |
| Governance, participation, good administration, access to justice, media and ethics | + | Simplification, streamlining and standardisation of procedures and legislation. |
| Access to and effects on social protection, health and educational systems | 0 / + | Improvement in access insofar as rights are linked to residence and/or work permits and the application procedure becomes more efficient. |
| Environmental impacts | | |
| Renewable or non-renewable resources | 0 | No significant impact expected. |
| Land use | 0 | No significant impact expected. |
| Mobility and the use of energy | 0 | No significant impact expected. |

Option 5 – The fully fledged legislative option in a form of a Directive regulating access to the labour market and also granting equal treatment for third-country workers

| Impacts | Rating | Explanation of the rating |
|---|--------|--|
| Economic impacts | | |
| Competitiveness, trade and investment flows | 0 | Equal treatment for third-country workers and a degree of standardisation of third-country workers rights across the EU will lower the opportunities for employers to use the competitive advantage of underprivileged third-country workers. This effect will mainly occur in low-wage, low-skill sectors and occupations. On the other hand, granting third-country workers equal treatment with respect to access to employment will increase their flexibility on the European labour market, allowing them to move between sectors, occupations. Given the differences and the diverging needs of the MS labour markets, regulating the conditions of access to the EU labour market might not result in achieving the objective. |
| Costs for businesses | - | Additional costs in systems in which employers directly contribute to on-the-job training, education, and other provisions; in exceptional cases additional contribution of employers to social security |

| | | |
|---|-------|---|
| Innovation and research | 0 / + | This option may result in an decrease in third-country workers immigration, which may include highly skilled workers. However, the latter group already experiences fewer problems on the EU labour market, so that the effects will be modest. A fall in the supply of low-wage third-country workers labour may provide a small incentive to invest in innovation. |
| Consumers and households | + | Reduction in unfair competition for EU workers, better living conditions for third-country workers households, especially when they are allowed to move to other jobs and other Member States, which may increase competition for third-country workers labour and raise their wages. |
| Specific regions and sectors | + | The directive will have a bigger impact in urban areas where the effects of the rights gap of third-country workers is felt more strongly. |
| Third countries and international relations | + | Increase in the net inflow of incomes from abroad on the balance of payments of third countries as the possibilities for the reimbursement of public social security contributions and the export of pensions increase. |
| Public authorities | - | Increase in the costs of enforcement, support, monitoring and evaluation associated with new legislation. Increase in the financial costs of social security and public services as more third-country workers claim rights and access. |
| Macroeconomic environment | 0 | No significant impact expected. |
| Social impacts | | |
| Employment and labour markets | 0 | Better protection for third-country workers lowers their competitive advantage on the EU labour market, possibly resulting in an increase in undeclared work or illegal employment and an increase in the demand for cheap, unskilled third-country workers labour. On the other hand, they will be granted access to other segments of the labour (sectors, occupations, Member States), thus increasing their opportunities for gainful employment. |
| Standards and rights related to job quality | 0 / + | third-country workers are already granted equal treatment with respect to working conditions in most Member States, but this option may strengthen these standards and rights throughout the EU. |
| Social inclusion and protection of particular groups | + | Substantial improvement in the rights and entitlements, access to public services, inclusion and protection of third-country workers. Improvement in protection of EU workers against unfair competition uncertain. |
| Equality of treatment and opportunities, non-discrimination | + | Equal treatment will be ensured, although there are clear limits to equality of treatment and opportunities In particular additional rights will be granted to immigrant women, who may face specific problems linked to their gender. |
| Governance, participation, good administration, access to justice, media and ethics | 0 | The fundamental rights of third-country workers are already protected in all Member States, while political rights will not be covered in this directive. |

| | | |
|--|---|---|
| Access to and effects on social protection, health and educational systems | + | Significant improvement in access to public services, such as health care, education, and housing. |
| Environmental impacts | | |
| Renewable or non-renewable resources | 0 | There may occur a decrease in the immigration of third-country workers into the EU, but this is not expected to significantly affect the environment. |
| Land use | 0 | |
| Mobility and the use of energy | 0 | |

5.3. Likely unintended impacts

The impact on the labour market as regards the number of third country workers deserve special attention on order to see whether the (partial) removal of the rights gap lead to an increase in the number of immigrants:

Granting more rights can be a pull factor but one should look at the full picture. On the **supply side** migrants are to decide to come to the EU **mainly because of higher wages**. As a result of granting social rights in Member States where it is not already granted can only be a partial and additional pull factor in addition to the wage one which prevails. In addition by predicting such decisions the **human phenomena** can also not be ignored.

On the **demand side** - as recalled earlier - giving more rights to migrants will make them more expensive and less attractive on the labour market. Since migrants can only be admitted to the Member States (among other criteria) if they have a job offer, decline in demand can lead to decline in the number of admissions. Such an impact would create a **level playing field with "domestic workers"** (own nationals and EC citizens) by using internal sources.

It can not be excluded that the extension of rights to third country workers could give rise to employing third country nationals illegally or in an **undeclared** way. Such impacts **are subject to the control of Member States** and on Community level are to be tackled by other provisions such as the recent **Commission proposal on sanctions against employers** of illegally staying third country national or the **Return directive**.

Finally it is worth recalling the **reinforced control function of a single permit** enabling a better management of migration.

To conclude given that the options would not change national legislation on the conditions of admission (as option 4 would only touch the procedural aspect and even there would only simplify it with a one-stop-shop concept and as option 5 although regulating labour market access but can not regulate volumes of admission) they would unlikely attract more third country migrants and may actually exert downward pressure on their number in the EU lowering demand for their labour without prejudice to the exogenous²⁴ trend in third country immigration.

²⁴ The exogenous change involves an alteration of a variable that is autonomous, i.e., unaffected by the workings of the model.

5.4. Financial and administrative costs of policy options

Legislation imposes costs on business and households as well as on government itself. In our assessment of the financial and administrative costs of the various policy options, we will consider the following costs:

- *Administrative costs*: The Guidelines define administrative costs as “the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Information is to be construed in a broad sense, i.e. including costs of labelling, reporting, monitoring and assessment needed to provide the information and registration.” These costs will be considered for the European Commission, Member State governments, local governments, employers, and third country workers. No information obligations will be imposed on third-country governments.
- *Net implementation costs* incurred by governments at different levels (EU, Member State national governments, local government), including content obligations resulting from legislation, for example when firms need to reorganise internally to be able to meet legal requirements. These costs include the financial effects of legislation on public and private parties, specifically:
 - *Social security outlays*, when TCW are granted equal access to social security (public cost).
 - *Expenditure on public services*, such as education, health care, and housing, as TCW are allowed equal access (public cost).
 - *Reimbursement of public social security contributions, transfer to other pension schemes, and export of public pensions once they are paid*, as TCW claim equal treatment in Member States that provide this possibility to their own citizens (public cost).
 - *Working conditions* as TCW claim an equal level of health and safety in the workplace (private cost).

First, we make a qualitative assessment of the nature and direction of the costs for different actors. The direction is indicated as follows:

- –, -- : Reduction in costs relative to the current situation
- 0 : No significant change in costs relative to the current situation
- +, ++ : Increase in costs relative to the current situation

In addition, for the implementation costs and the administrative costs, we have distinguished between:

- *One-time costs* incurred as part of the activities necessary to implement new legislation or new programmes.

- *Recurrent costs* associated with the change in organisations and activities that is brought about by the new legislation and programmes.

A more detailed quantitative assessment will only be performed for the preferred option. In addition, the extent of this assessment will depend on the availability and quality of data.

Assessment of administrative burdens: change in the level of activities relative to the current situation

| | <i>Option 1</i> | <i>Options 3a, 3b, 5</i> | <i>Option 2</i> | <i>Option 4</i> |
|--------------------------|---------------------------------------|---|---|--|
| | <i>No change</i> | <i>Directive</i> | <i>Communication, coordination, and cooperation</i> | <i>Single application procedure and single residence/work permit (Directive)</i> |
| European Commission | 0 no additional resources required | + monitoring and annual reporting; full ex post evaluation at the latest after 3 years (recurrent) | + periodic evaluation and annual reporting (recurrent) drafting and updating work programme (recurrent) | + periodic evaluation and reporting (recurrent) |
| Member State governments | 0 no additional resources required | 0 / + reporting on transposition and implementation (one-time; 26 MS) + monitoring and annual reporting (recurrent; 26 MS) information obligations related to procedural safeguards (recurrent; individual cases) | + periodic evaluation and annual reporting (recurrent; 26 MS) | 0 / + reporting on transposition and implementation (one-time; 26 MS) + monitoring and annual reporting (recurrent; 26 MS) - single procedure may result in costs savings in providing information on decisions to grant, reject or renew permits and costs savings in information obligations related to procedural safeguards (recurrent; individual cases) |
| Local government | 0 no additional resources required | 0 / + information obligations depend on national implementation/ organisation of legislation (recurrent; local communities in 26 MS) | 0 / + information obligations depend on national implementation/ organisation of legislation (recurrent; local communities in 26 MS) | 0 no additional resources required |

| | <i>Option 1</i> | <i>Options 3a, 3b, 5</i> | <i>Option 2</i> | <i>Option 4</i> |
|-----------|---------------------------------------|--|---|--|
| | <i>No change</i> | <i>Directive</i> | <i>Communication, coordination, and cooperation</i> | <i>Single application procedure and single residence/work permit</i> <i>(Directive)</i> |
| Employers | 0 no additional resources required | 0 no additional resources required | 0 no additional resources required | – cost savings due to simplification and standardisation of procedures (recurrent; individual cases) |
| TCW | 0 no additional resources required | 0 / + possible increase in numbers that apply for access and entitlements (TCW previous not eligible or illegal); TCW may be required to deliver proof of language proficiency to gain access to education and training, educational qualifications, contracts, etc. depending on national implementation (recurrent) | 0 no additional resources required | 0 / – single procedure may result in cost savings with respect to information provided by applicant to competent authorities (including fees) (recurrent) |

Assessment of administrative burdens: data needed for assessing the level of costs

| | <i>Options 3a, 3b, 5</i> | <i>Option 2</i> | <i>Option 4</i> |
|--------------------|--|---|---|
| | <i>Legislation in the form of a Directive</i> | <i>Communication, coordination, and cooperation</i> | <i>Single application procedure and single residence/work permit In a form of a Directive</i> |
| EU staff resources | Number of FTE involved Average annual salary per FTE | Number of FTE involved Average annual salary per FTE Budgetary reservation for work programme | FTE involved Average annual salary per FTE |
| Member governments | State <i>One-time expenditure:</i> Number of FTE involved in transposition and implementation per MS Average annual salary per FTE <i>Recurrent expenditure:</i> Number of FTE involved in monitoring and reporting per MS Average annual salary per FTE | Number of FTE involved per MS Average annual salary per FTE | <i>One-time expenditure:</i> Number of FTE involved in transposition and implementation per MS Average annual salary per FTE <i>Recurrent expenditure</i> Expected reduction in numbers of staff in application procedure per MS Average annual salary per FTE Material savings (one permit instead of two or more): number of permits and costs per permit |
| Local government | <i>Recurrent expenditure:</i> Number of FTE involved in enforcement and support per community and MS Average annual salary per FTE | Number of FTE involved in informing employers and TCW per community and MS Average annual salary per FTE Material costs of dissemination (paper and Internet) | No data needed |
| Employers | No data needed | No data needed | Net change in the number of applications |

| | <i>Options 3a, 3b, 5</i> | <i>Option 2</i> | <i>Option 4</i> |
|-----|--|---|---|
| | <i>Legislation in the form of a Directive</i> | <i>Communication, coordination, and cooperation</i> | <i>Single application procedure and single residence/work permit In a form of a Directive</i> |
| | | | Cost of an application per employer per MS |
| TCW | Expected increase in number of TCW that apply for access and entitlements per MS Per capita costs of delivering information | No data needed | Net change in the number of applications per MS Per capita costs of delivering information |

Assessment of net implementation costs and costs of content obligations: change relative to the current situation

| | <i>Option 1</i> | <i>Option 3a, 3b, 5</i> | <i>Option 2</i> | <i>Option 4</i> |
|--------------------|--|---|--|--|
| | <i>No change</i> | <i>Directive granting equal treatment for third country workers</i> | <i>Communication, coordination, and cooperation</i> | <i>Single application procedure and single residence/work permit</i> |
| EU staff resources | 0 no additional resources required | + costs of preparing and channelling legislation (one-time) costs of dealing with transposition problems (one-time) new competence for the EU, which requires additional staff and resources for support and policy development (recurrent; not including monitoring, evaluation, and reporting) | + probably limited increase in costs, based on fixed budget with work programme, to organise activities (e.g. workshops, conferences) (recurrent) | + preparation and channelling of legislation (one-time) + new competence for the EU, requiring additional staff and resources for design and implementation of new procedure and permit (part one-time, part recurrent) |

| | | <i>Option 1</i> | <i>Option 3a, 3b, 5</i> | <i>Option 2</i> | <i>Option 4</i> |
|--------------------|-------|---|---|---|--|
| | | <i>No change</i> | <i>Directive granting equal treatment for third country workers</i> | <i>Communication, coordination, and cooperation</i> | <i>Single application procedure and single residence/work permit</i> |
| Member governments | State | 0 no additional resources required | + costs of transposing of EU legislation (one-time) ++ increase in staff and resources to effectively enforce and support on new legislation imposed by the EU (recurrent) | ++ probably considerable increase in costs, based on fixed budget with work programme; costs (significantly) higher than at EU level, partly due to need | + transposition of EU legislation (one-time) implementing the single application procedure and |

| | <i>Option 1</i> | <i>Option 3a, 3b, 5</i> | | | | <i>Option 2</i> | <i>Option 4</i> |
|--|------------------|--|--|---|--|---|--|
| | <i>No change</i> | <i>Directive granting equal treatment for third country workers</i> | | | | <i>Communication, coordination, and cooperation</i> | <i>Single application procedure and single residence/work permit</i> |
| | | <p>0 / +</p> <p>increase in public expenditure on social security as more TCW claim benefits, although national legal restrictions and requirements still apply</p> <p>0</p> <p>TCW already contribute, but face obstacles re receiving benefits; in exceptional cases TCW excluded from specific social security contributions; marginal increase in number of TCW not likely; no significant benefits expected</p> <p>+</p> <p>increase in public expenditure on public services as more TCW claim access</p> <p>+</p> <p>increase in reimbursements and export of pensions, depending on MS legislation</p> | <p>0 / +</p> <p>increase in public expenditure on social security as more TCW claim benefits, although national legal restrictions and requirements still apply</p> <p>0</p> <p>TCW already contribute, but face obstacles re receiving benefits; in exceptional cases TCW excluded from specific social security contributions; marginal increase in number of TCW not likely; no significant benefits expected</p> <p>+</p> <p>increase in public expenditure on public services as more TCW claim access</p> <p>+</p> <p>increase in reimbursements and export of pensions, depending on MS legislation</p> | <p>+</p> <p>increase in public expenditure on public services as more TCW claim access</p> | <p>0 / +</p> <p>increase in public expenditure on public education as more TCW claim access; low additional resources needed in areas equal treatment has already been granted in most MS</p> | | |

| | <i>Option 1</i> | <i>Option 3a, 3b, 5</i> | | | | <i>Option 2</i> | <i>Option 4</i> |
|---------------------------|--|--|---|------------|------------|---|--|
| | <i>No change</i> | <i>Directive granting equal treatment for third country workers</i> | | | | <i>Communication, coordination, and cooperation</i> | <i>Single application procedure and single residence/work permit</i> |
| Local government | 0 no additional resources required | + limited increase in staff and resources for effective enforcement and supporting measures (recurrent) 0 additional costs depend on national implementation, but no significant increase in financial effects is expected | | | | 0/+ low additional costs for informing employers and TCW; no dedicated staff or investments (recurrent) | 0 some consulting work at local and regional level (recurrent) |
| Employers | 0 no additional resources required | + | + | 0/+ | 0/+ | 0 limited but not significant costs of participating in national activities and campaigns (recurrent) | 0 no additional resources required |
| Third-country governments | 0 no additional resources required | 0 no additional resources required | | | | 0/+ additional costs depend on demands placed on third countries by the EU re communication activities towards (potential) TCW and on how new information is embedded in existing structures and strategies (recurrent) | 0 no additional resources required |

6. COMPARING OF OPTIONS

6.1. Summary assessment of the options

In the following table a first summary comparison of the options is presented. This comparison focuses on the achievement of objectives, the financial and administrative costs and the possible risks, uncertainties, and transposition problems.

Table The advantages and disadvantages of the policy options

| | <i>Advantages</i> | <i>Disadvantages</i> |
|---|--|---|
| Option 1 – No change | Autonomous developments may come to similar outcomes in the long run; no costs involved, no transposition problems. | Global objectives are not likely to be accomplished in the short run; rights of many third-country workers remain uncertain. |
| Option 2 – The non legislative option: Communication, coordination, and cooperation | MS gain better access to information and may learn from each other; benchmarking may encourage further convergence; employers may benefit from unprivileged third-country workers. | The rights gap is likely to remain; high risk of social exclusion third-country workers; unfair competition will persist in the future. |
| Option 3a – Legislative option granting equal treatment in a form of a Directive focusing on commonalities (covering rights for which equal treatment has already been achieved by the Member States) | Prevent further deterioration of legal position of third-country workers in the future; divergence of national practices may come into existence autonomously; no implementation costs and transposition problems. | Global objectives are not likely to be realised; disparities between MS remain; only slight improvement in protection of third-country workers. |
| Option 3b – Sub option 3 granting equal treatment in a form of a Directive in all employment related fields including social security | Global objectives are likely to be achieved, especially creating a level playing field; third-country workers are protected in a most optimal way. | EU competence may not extend far enough, national implementation may still create differences in the legal position; substantial national costs of enforcement. |
| Option 4 – Single application procedure and single residence/work permit | Simplification immigration process of third-country workers; creation of more transparency and legal certainty; long-term administrative savings. | Adjustment of national procedures takes time and recourses; transposition problems in the area of technical implementation. |
| Option 5 – The fully fledged legislative option in a form of a Directive regulating access to the labour market | Global objectives are likely to be achieved (objective one fully, objective 2 and 3 only | The global objective to protect the EU labour force from unfair competition will |

| | <i>Advantages</i> | <i>Disadvantages</i> |
|---|-------------------|---|
| and also granting equal treatment for third-country workers | partially) | not be achieved; practical implementation may differ substantially and EU ability to achieve meaningful results limited as many areas remain within MS competence and transposition problems are large. Given the differences and the diverging needs of the MS labour markets, regulating the conditions of access to the EU labour market might not result in achieving the objective. Further a political unfeasibility factor is to be singled out given the experience with the withdrawn 2001 Commission proposal |

6.2. Multi-criteria assessment

The 6 policy options (4+2 sub option as 3a and 3b are different sub options) will be compared on the basis of four criteria:

- 1) The achievement of global objectives
- 2) The level of administrative burdens
- 3) Social impacts
- 4) Economic impacts

This comparison serves to identify the preferred option.

The following Table presents a summary of the conclusions with respect to the achievement of the three global objectives. Three options are clearly prominent, namely the legislative options 3b, 4 and 5. The remaining options are expected to achieve only minor improvements upon the “no change” scenario of option 1.

It is to be noted – that such a mathematical calculations; translating 0/+/- ratings to numbers which are than used for further calculations - has its limit, since it is than inevitable that impacts will be given the same value albeit their importance can differ and some impacts will be calculated several times since there are correlations between theme.

Table - Will the policy options achieve the global objectives?

| | <i>To provide a level playing field for all legally residing third-country workers on the EU labour market</i> | <i>To improve the functioning of the EU labour market</i> | <i>To protect the EU labour force from unfair competition</i> | <i>Achieving the objectives in total</i> |
|--|--|---|---|--|
| | | | | |

| | <i>To provide a level playing field for all legally residing third-country workers on the EU labour market</i> | <i>To improve the functioning of the EU labour market</i> | <i>To protect the EU labour force from unfair competition</i> | <i>Achieving the objectives in total</i> |
|--|--|---|---|--|
| Option 1 – No change | – | 0 | – | -2 |
| Option 2 – Communication, coordination, and cooperation | 0 | 0 | – | -1 |
| Option 3a – Legislative option equal treatment in a form of a Directive focusing on commonalities | 0 / – | 0 | – | -1,5 |
| Option 3b – granting equal treatment in a form of a Directive in all employment related fields including social security | ++ | + | + | +4 |
| Option 4 – Single application procedure and single residence/work permit | + | + | + | +3 |
| Option 5 – regulating access to the labour market and also granting equal treatment for third-country workers | ++ | +/0 | + | 3,5 |

The following table compares the results of the impact assessment of the six policy options for each likely (unintended) impact, with a distinction between economic and social impacts.

- *Economic impacts:* In economic terms, option 4 performs best, which is especially due to the potential for cost savings made possible by the simplification and standardisation of the application procedure. Options 3b, 4 and 5 produce a number of economic benefits, but they do impose financial and administrative costs on business and public authorities.
- *Social impacts:* Options 3b, 4 and 5 produce substantial positive social impacts, notably with respect to social inclusion, equality of treatment, and access to social protection and public services. Option 4 produces benefits associated mainly with the breakdown of the vicious circle of delays in separate procedures for residence and work permits and with the simplification, streamlining and standardisation of procedures and legislation.

Table Comparison of economic and social impacts per policy option

| Option | 1 | 2 | 3a | 3b | 4 | 5 |
|---|---|---|-------|----|---|---|
| Competitiveness, trade and investment flows | + | + | + | 0 | + | 0 |
| Administrative costs of businesses | 0 | 0 | 0 / – | – | + | – |

| | | | | | | |
|---|------------|-----------|-------------|-------|-------|-------|
| Innovation and research | 0 | 0 | 0 | 0 / + | 0 | 0 / + |
| Consumers and households | 0 / + | 0 / + | 0 / + | + | 0 / + | + |
| Specific regions and sectors | - | - | - | + | 0 / - | + |
| Third countries and international relations | 0 | 0 | 0 | + | 0 | + |
| Public authorities | 0 | 0 / + | 0 / - | - | + | - |
| Macroeconomic environment | 0 | 0 | 0 | 0 | 0 / + | 0 |
| Economic impacts in total | 0,5 | 1 | -0,5 | 1,5 | 3,5 | 1,5 |
| Employment and labour markets | - | - | - | 0 / - | + | 0 |
| Standards and rights related to job quality | 0 | 0 | 0 / + | 0 / + | 0 | 0 / + |
| Social inclusion and protection of particular groups | -- | - | 0 / + | ++ | 0 / + | + |
| Equality of treatment and opportunities, non-discrimination | - | - | - | + | 0 | + |
| Governance, participation, good administration, access to justice, media and ethics | 0 | 0 | 0 | 0 | + | 0 |
| Access to and effects on social protection, health and educational systems | - | - | - | + | 0 / + | + |
| Social impacts in total | -5 | -4 | -2 | 4 | 3 | 3,5 |

We have ranked the policy options according to their performance vis-à-vis achieving the global objectives, economic and social impacts. Table below presents the rankings.

Table Ranking of policy options

| | <i>Achievement of objectives</i> | <i>Social impacts</i> | <i>Economic impacts</i> |
|-----------|----------------------------------|-----------------------|-------------------------|
| Option 1 | -2 | -5 | 0,5 |
| Option 2 | -1 | -4 | 1 |
| Option 3a | -1,5 | -2 | -0,5 |
| Option 3b | 4 | 4 | 1,5 |
| Option 4 | 3 | 3 | 3,5 |

| | <i>Achievement of objectives</i> | <i>Social impacts</i> | <i>Economic impacts</i> |
|----------|----------------------------------|-----------------------|-------------------------|
| Option 5 | 3,5 | 3,5 | 1,5 |

Options 3b, 5 and 4 emerge as the most favourable options. The remaining options emerge as unfavourable. Option 3b has some disadvantages, such as the likely increase in costs associated with the rights of third country workers.

Option 4 has been compared with the other options as a discrete choice, but it is in fact complementary to the remaining options and can be combined with one of the legislative options. This would result in synergies, especially because the social and economic impacts of this option and those of the legislative options are of a different, but complementary nature.

6.3. The political feasibility of option 5

When looking at the advantages and disadvantages of each policy option transposition problems - if relevant - have been referred to. However as regards political unfeasibility in a sense of their adoption chances, whether such an option would be accepted by Member States should be singled out for option 5 in order to justify why - despite of its high score in the course of the impact assessment - it has not been chosen as a preferred option.

The fully fledged legislative option in a form of a Directive regulating access to labour market and also granting equal treatment for third-country workers scored well when ranking the options however its political feasibility raises concerns. As it has been demonstrated throughout the report in order to grant comparable treatment as regards access to the labour market for third country nationals conditions for admission to work (economic needs test etc.) need to be harmonised. This option includes access to the labour market and it seems highly unlikely that a directive that regulates the conditions for the access to the labour market and grants third-country workers rights in this respect would gain political support, especially in a proposal requiring unanimous decision of the Member States. Even the directive on long-term residents (Article 14 of Directive EC/2003/109/EC) allows Member States to impose restrictions on the right of long-term residents seeking to reside and work in another Member State. Another aspect concerns the transitional arrangements for workers from the new EU Member States that limit their first access to the labour market of other EU Member States and that can be maintained until the end of 2013 for Romania and Bulgaria and until the end of April 2011 for the EU-8 Member States. To mitigate the effects of these restrictions, the transitional arrangements oblige EU Member States to give preference to workers from the EU-8 Member States as regards access to the labour market. As primary EC law it would require any instrument of secondary EC law to comply with it as long as the transitional arrangements are applied. This would e.g. exclude secondary legislation that grants third country nationals an automatic access to the labour market of Member States. All the above makes it politically unlikely that similar rights can be granted to third-country workers. The Policy Plan on Legal Migration²⁵ also states that the general framework directive “*will not address admission conditions for economic immigrants*” and that the Community preference principle will continue to be applied. Finally it is to be noted that in 2001 the Commission adopted a proposal for a Directive dealing with “*the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic*

²⁵ COM (2005) 669.

*activities*²⁶. Whilst the other European Institutions gave positive opinions²⁷, discussion in Council was limited to a first reading of the text and the proposal was officially withdrawn in 2006. In view of the above Option 5 is not considered as one of the preferred options.

6.4. The preferred option

Given the outcomes of the comparison of policy options, the preferred option should have the following features:

- The *broad scope* of option 3b granting equal treatment covering all employment related fields – including access to social security, access to vocational training and the recognition and assessment of foreign diplomas and certificates, but not granting rights with regard to access to the labour market and intra-EU mobility,

combined with

- Option 4 foreseeing the introduction of a single application procedure for a single work/residence permit thereby linking equal treatment to a successful application for such a permit (being admitted to the labour market of a Member State).

This approach appears to offer the highest potential for significant benefits in practical and policy terms.

The preferred option therefore should be the combination of Option 3b and 4, as Option 4 is complementary to all the other options, in particular to the legislative ones (Option 3a and 5). However when ranking the options the impact assessment revealed that out of those options, 3b offers the highest potential for benefit in practical and policy terms, it is not necessary to compare Option 4 with other non-preferred options such as Option 1, 2, 3a and 5.

6.4.1. The European added value

The preferred option combines option 3b with option 4.

Option 3b provides for equal treatment for third country nationals who are already admitted to the labour market in all the employment-related fields in a wide sense including access to education/vocational training, mutual recognition and assessment of diplomas and degrees and access to social security benefits, access to public services and the possibility of the reimbursement of public social security contributions as well as the export pensions once they are paid with regard to the first and second pillars of pension funding (state and collective provisions). Providing, in a Community instrument, for equal treatment between own nationals and third country workers in all employment related fields would not only recognise that third country workers contribute as well to the economy through their work and tax payments but it would also reduce unfair competition between own national/EC citizens and third country workers and serve as a safeguard for own nationals and EC citizens against cheap labour and social dumping. In addition, providing for equal treatment in Community

²⁶ COM(2001) 386.

²⁷ Opinions of the: European Parliament of 12.2.2003 (A5-0010/2003); Economic and Social Committee of 16.1.2002 (SOC/084, CES 28/2002); Committee of the Regions of 13.3.2002 (CdR 386/2001).

law grants a common set of rights that would create a level playing field within the EU for all third country workers irrespective of the Member State in which they reside.

Option 4 foresees the introduction of a single application procedure for a single residence/work permit. This would generate added value by breaking the vicious circle created by the interdependence of separate residence and work permits, and reduce the resulting uncertainty for third-country workers as well as for their employers by reducing administrative burdens, simplifying and accelerating procedures and increasing transparency. It is to be noted that the proposal for a single application procedure – providing for a "one-stop-shop" system – is by definition inseparable from the proposal on a single (residence and work) permit.

6.4.2. The principle of proportionality

The proposal combining option 3b with option 4 provides for a minimum requirement in a form of an equal treatment approach to granting rights to third country national in employment related fields. Therefore it does not interfere in the right of Member States to define the content of the actual rights but only provides for non-discrimination in comparison to own nationals.

As to option 4, the proposal provides only for a minimum level of harmonisation as regards the proposed procedural simplifications. It imposes only a general obligation for Member States to provide for a "one-stop-shop" system and a general prohibition to issue or require an application for additional further documents, such as a work permit. This option would therefore not interfere in Member States' internal administrative procedures when handling an application, and leave to Member States in particular the organisational decision how to ensure the necessary coordination between immigration and labour authorities.

Moreover, as far as the format of a single residence/work permit is concerned, it builds on the already existing uniform format for EU residence permits, as laid down in Regulation 1030/2002 of 13 June 2002.

Finally the form chosen for the legislative instrument is a Directive, which gives Member States a high degree of flexibility in terms of implementation.

6.4.3. Advantages and disadvantages of the preferred option

Option 3b – which provides for equal treatment in employment related rights in a wide sense - would ensure to achieve all the global objectives and would protect and integrate third country workers in the most optimal and flexible way. At the same time the pitfalls of the equal treatment approach is that – given the lack of Community competence for harmonisation – the actual rights granted in each Member State would continue to be different from one Member State to another (e.g. with regard to the duration of social benefits). A further disadvantage – as far as access to social security benefits is concerned – is the cost of broadening the personal scope of national social security schemes in those Member States where they are not yet granting social benefits for third country workers (see Annex 3 for the comparison on Member States).

Option 4 – which provides for a single application procedure issued in a single residence/work permit would ensure quicker and more simplified procedures (shorter processing time, less "red tape") for the third country workers and for their employers, leading

to more transparency and legal certainty. Furthermore, one procedure instead of two distinct ones could result in reduction of administrative burden and cost for the national administration in the long run. In practical terms, it means only one "client contact office" instead of two (one for the work permit and another one for the residence permit). Moreover, a single procedure with a single permit avoids the risk of creating discrepancies between two separate permits and allows a clearer overview of the third country national's status and purpose of residence in the Member State. However it has to be stated that, on the part of Member States, close internal coordination between the administrative services involved is needed in order to successfully operate a single application procedure. Furthermore, where the existing procedure will need to be restructured in order to comply with the single application procedure, additional one time costs might occur from employing specialised personnel or from training the existing one. As far as the format is concerned, it is to be emphasized that a single residence/work permit can build on the already existing uniform format for residence permits for third-country nationals (laid down in Council Regulation 1030/2002 of 13 June 2002). This means that Member States would not have to introduce, at their expenses, new permits but use the already existing uniform format in which they would have to include, on a mandatory basis, all relevant information on the access to the labour market (extent, duration of the access etc.).

6.4.4. Additional assessment of the preferred option as a combination of Option 3b and Option 4

Complementarity

The two options can be combined easily into one preferred option as they tackle different issues but they are complementary in their nature contributing to more legal certainty and a better integrated work force.

As far as the links between these options - between migrant rights on the one hand and the single application procedure/single permit on the other - are concerned they both target better migration management through a fair approach. Their objectives are complementary: both contribute to improve the functioning of the labour market. Equal treatment does it by elevating third country workers rights and thereby protecting EC citizens from cheap foreign labour, the single application procedure does it by a quicker, more efficient admission scheme and the one permit does it by increasing transparency of the labour market. A second link between the rights and the single permit is that rights are only granted to those who reside and work legally. The possession of a single permit proves the lawfulness of both residence and work. Finally not only Option 3b on equal treatment part but also the single application procedure in Option 4 grants rights and protects migrants by ensuring a more efficient and transparent admission procedure laying down procedural guarantees for them.

Synergies in their impacts

As two options were picked as the preferred option their merged impact should be better shown by providing a detailed assessment of the impacts of the preferred option.

If options 4 and option 3b are merged, the following combinations may occur:

- Options 4 and 3b have mutual reinforcing impacts.
- Options 4 and 3b exert opposing influences.

- One option has no significant impacts, so that the net impact is determined by the other option.

Options 4 and 3b are *mutually reinforcing* with respect to:

- *Consumers and households*: Option 4 increases legal certainty for third country nationals and their potential employer, while option 3b reduces unfair competition for EU workers and improves the living conditions of third country worker households. [0/+, +]
- *Social inclusion and protection of particular groups*: Option 4 results in greater legal certainty for third-country workers, while option 3b substantially improves the rights and entitlements, access to public services, inclusion and protection of third country workers, while providing better protection of EU workers against unfair competition. [0/+, ++]
- *Access to and effects on social protection, health and educational systems*: Option 3b and 4 both improve access to these public services. Option 4 insofar as such access is linked to lawful residence (enshrined in the single permit) and its application becomes more efficient [0/+, +]

Options 3b and 4 have *diverging impacts* that may or may not cancel each other out with respect to:

- *Competitiveness, trade and investment flows*: Option 4 lowers legal uncertainty by simplifying and standardising procedures and legislation, allowing third country nationals to be gainfully employed more quickly and with greater flexibility. Option 3b, on the other hand, may lower opportunities for employers to use the competitive advantage of underprivileged third country nationals, especially in low-wage, low-skill sectors and occupations. [+ versus 0]
- *Administrative costs savings and implementation costs of businesses*: Option 4 results in organisational cost savings due to the simplification and standardisation of procedures, while option 3b imposes additional costs on employers. While costs and benefits go to the same stakeholders, the net impact may be neutral. [+ versus -]
- *Public authorities*: Option 4 produces long-term organisational savings for public organisations, but option 3b increases the costs of enforcement, support, monitoring and evaluation as well as the financial costs of social security and public services. Further indications are to be found in Annex 11 on the cost calculations. [+ versus -]
- *Employment and labour markets*: Option 4 reduces illegal and undeclared work, mainly by breaking through the vicious circle of delays in separate procedures for residence and work permits by creating a quicker and more efficient procedure. Option 3b on the other hand, can lower demand for legal "foreign" (third country) labour and can give rise to undeclared work [+ versus 0/-]
- *Specific regions or sectors*: Options 4 and 3b may produce impacts in diverging directions but of a different nature. Option 4 reduces illegal and undeclared work, possibly raising labour costs for employers in some sectors. Option 3b will particularly benefit urban areas where the effects of the rights gap of third country workers is felt more strongly. [0/- versus +]

In six areas one of the two options had no significant impact, so that the net impact will be determined by the other option. This net impact was (somewhat) positive in all six areas.

- *Innovation and research*: No significant impact is expected of option 4. Option 3b may result in a decrease in immigration, which could include highly skilled workers, but would also provide a small incentive to invest in innovation. [0/+]
- *Third countries and international relations*: No significant impact is expected of option 4. Option 3b could make it possible to transfer public social security contributions and pensions to third countries, thus increasing the net inflow of incomes from abroad on the balance of payments of third countries. [+]
- *Macroeconomic environment*: No significant impact is expected of option 3b. Option 4 results in a reduction in administrative burdens and greater flexibility in segments of the labour market where third country workers are concentrated. [0/+]
- *Standards and rights related to job quality*: No significant impact is expected of option 4. Option 3b may strengthen the standards and rights with respect to working conditions throughout the EU. [0/+]
- *Equality of treatment and opportunities, non-discrimination*: No significant impact is expected of option 4. Option 3b will ensure equal treatment within the constraints of the Community preference principle and the requirement that, third country workers will in many ways be expected to be able to look after themselves. [+]
- *Governance, participation, good administration, access to justice, media and ethics*: No significant change relative to the current situation is expected of option 3b, since the fundamental rights of third country workers are already protected in all Member States and the directive will not cover political rights. Option 4 will result in simplification, streamlining and standardisation of procedures and legislation. [+]

On balance, the combination of option 3b and 4 produces positive net impacts. The table below summarises the results.

The combined impact of options 3b and 4 as the preferred option

| Impacts | Rating |
|---|--------|
| Economic impacts | |
| Competitiveness, trade and investment flows | 0/+ |
| Administrative costs of businesses | 0 |
| Innovation and research | 0 / + |
| Consumers and households | + |
| Specific regions and sectors | 0 / + |
| Third countries and international relations | + |
| Public authorities | 0 / - |

| Impacts | Rating |
|---|--------|
| Macroeconomic environment | 0 / + |
| Social impacts | |
| Employment and labour markets | 0 / + |
| Standards and rights related to job quality | 0 / + |
| Social inclusion and protection of particular groups | + |
| Equality of treatment and opportunities, non-discrimination | + |
| Governance, participation, good administration, access to justice, media and ethics | + |
| Access to and effects on social protection, health and educational systems | + |
| Environmental impacts | |
| Renewable or non-renewable resources | 0 |
| Land use | 0 |
| Mobility and the use of energy | 0 |

6.4.5. *The scope of the preferred option*

The specific case of reimbursement of pension contributions

Option 3b foresees the possibility to request and obtain the reimbursement of pension contributions upon return to the country of origin. Such provisions however would go against the spirit of the Community social security coordination²⁸ rules. The principle of aggregation of insurance periods entitles - if equal treatment is provided - the third country worker to benefits. The foundation of this principle of aggregation of periods is solidarity between the newly arrived person persons and those who work and pay contributions already some time in the Member State concerned. On the other hand solidarity however also means that a third country worker upon leaving the Member State concerned can not request the reimbursement of the social security contributions he/she paid throughout his/her stay. More specifically, as far as pension contributions are concerned, the application of the principles of export of pensions and aggregation of insurance periods has the consequence that a person will always get a pension from the Member State where he/she paid contributions, even if he/she no longer resides in the territory of that Member State. Moreover, a number of Association Agreements with third countries contain Articles on a limited coordination of the social security systems of the Member States and the associated country concerned. These Articles include provisions on the aggregation of insurance periods acquired in Member States for entitlement to certain benefits, the export of certain benefits (e.g. pensions) to the associated

²⁸ These rules do not harmonise but co-ordinate the social security schemes of EU Member States, i.e. they do not replace the different national social security systems by a single European scheme.

countries members as well as a reciprocity clause with regard to EU-workers employed in the associated country. All agreements require a Decision of the respective Association Council, in order that these provisions take effect. DG EMPL is currently drafting proposals for such Association Council²⁹ Decisions. Therefore apart from these specific bilateral (and fully reciprocal) provisions in the framework of EU Association Agreements – to be dealt with in a form of Association Council Decisions, this proposal should therefore not encompass the possibility of reimbursement of pension contributions as a general rule.

Policy fields where equal treatment should be provided

Consequently the preferred option as regards the obligation to provide for equal treatment could at least contain the following employment related policy fields:

- working conditions, including conditions regarding dismissals and remuneration
- recognition of diplomas, certificates and other qualifications in accordance with the relevant national procedures;
- access to education and vocational training
- access to social security
- export of pensions once paid;
- access to public service in particular assistance afforded by employment offices

6.4.6. Consequences of the preferred option for individual Member States

Equal treatment as expressed in Option 3b

A table below summarises the policy areas which are to be covered by the preferred option but where some Member States have not yet granted equal treatment for third country workers. It is to be noted that such a summary is based exclusively on a questionnaire carried out by the contractor (recalled under 2.2.1 analysing this rights gap and presented in detail in Annex 2) therefore it is neither complete nor validated, nevertheless as such can serve as a useful basis for an overview as to the main changes that each Member State would have to make if the preferred option is followed.³⁰ Working conditions are not put into the table as equal treatment is already granted in that area, except for a couple exceptions for treatment in case of dismissal and termination of a job³¹.

²⁹ Encompassing the Community, the Member States and the third country concerned by the Association agreement.

³⁰ It is further noted that data is not complete as regards Hungary, Poland, Sweden, Malta and Luxembourg as they did not answer to the questionnaire.

³¹ Belgium, Bulgaria and Cyprus indicated no equal treatment in case of the dismissal, and Bulgaria and Cyprus in case of termination and Bulgaria for the right of employed women to protection of maternity.

Policy areas covered by Option 3b where Member States have not yet granted equal treatment for third country workers

| | sickness, health care | disability | old age | survivors | family, children | unemploy- ment | Full access to vocational or academic training | Recognition of diplomas and certificates | Access to foreign placement services |
|----------------|--------------------------|------------|---------|-----------|---------------------|-------------------|---|--|---|
| Belgium | | ● | | | ● | | | | |
| Bulgaria | ● | | | | ● | ● | | ● | |
| Czech Republic | | | | | | ● | ● | | |
| Denmark | ● | ● | ● | | ● | | ● | | |
| Germany | | | | | ● | ● | ● | | |
| Estonia | | | | | | | | | |
| Ireland | | | | | | | ● | | |
| Greece | | | | | | | | | |
| Spain | | | | | | | | | |
| France | | | | | | ● | ● | ● | |
| Italy | | ● | ● | | | | | ● | |
| Cyprus | | | | | | ● | ● | ● | |
| Latvia | | | | | ● | ● | | ● | |
| Lithuania | | | | | | ● | | ● | |
| Luxembourg | | | | | | | | | |
| Hungary | | | | | | | | | |
| Malta | | | | | ● | | | | |
| Netherlands | ● | ● | ● | | ● | ● | | ● | |
| Austria | | | | | | ● | ● | | |
| Poland | | | | | | | | | |
| Portugal | | | | | | | | | |
| Romania | | | | | | | | ● | |
| Slovenia | | | | | | | | | |
| Slovakia | | | | | | | | ● | |
| Finland | ● | | | | ● | ● | | | |
| Sweden | ● | ● | | ● | ● | | | | |
| United Kingdom | ● | ● | | | ● | ● | | | |

6.4.7. Assessment of the administrative and implementation costs of the preferred option

Quantitative analysis

The administrative and implementation costs and the benefits can be summarised as follows:

An increase in the payment of social security benefits to third country workers and in the expenditure on public services for third country workers in Member States where equal treatment has not yet been fully granted.

Cost savings in the application procedure and issuing of residence and work permits, which relate to administrative costs (a reduction in labour input to process applications and inform applicants), economic savings (due to a reduction in processing times), and additional tax revenues (as third country workers can become gainfully employed at an earlier stage).

Annex 11 provides details on the methodology of assessing the administrative and implementation costs of the preferred option.

The following provides a summary view of the costs and benefits as aggregated on European level. On aggregate the administration costs amount to c. €155 million and the implementation costs to c. €4,770 million for a total of c. €4,925 million. The benefits total between €1,190 million and €2,370 million, depending on the assumptions used in the calculation.

Summary of the costs and benefits (€million)

| | <i>administration costs</i> | <i>implementation costs</i> | <i>benefits and costs savings</i> |
|--|-----------------------------|-----------------------------|-----------------------------------|
| TCW rights | | | |
| general | 1 to 2 | | |
| social security | 136.2 | 4,018.6 | |
| education, vocational | 11.7 | 573.2 | 32 |
| education, academic | n/a | | |
| education, recognition and assessment of foreign diplomas and certificates | n/a | | |
| access to public services, health care | 5.1 | 176.7 | |
| access to public services, housing | 0.1 | 3.6 | |
| access to public services, placement services | n/a | | |
| access to public services, services of general economic interest | n/a | | |

³² Expenditure on continuing vocational education also generates additional value added and employment in the educational sector, so that the implementation costs also have a distinct benefit.

| | <i>administration costs</i> | <i>implementation costs</i> | <i>benefits and costs savings</i> |
|---|-----------------------------|-----------------------------|-----------------------------------|
| possibility of the reimbursement of public social security contributions, the transfer to other pension schemes, and the export of pensions | n/a | | |
| Single application procedure and single residence/work permit | | | |
| administrative cost savings | | | 820–1,640 |
| employees' taxes and social security contributions (benefit to government) | | | 58–114 ^{a)} |
| additional net earnings of TCW ^{b)} | | | 312–616 ^{a)} |
| Total | | | |
| | 154-155 | 4,772.1 | 1,190–2,370 |

^{a)} Assuming a 15-day reduction in the legal deadline for a decision on an application.

^{b)} Includes employer's taxes and social security contributions.

These quantitative conclusions should be used with extreme caution, considering the various assumptions that underlie the estimates. In addition, the Member States that will have to encounter cost when completing their system of equal treatment of third country workers rights and those that will incur the benefits of the single application procedure are not always the same. The Member States can be divided into four categories of financial impact, depending on their need to extend third country workers rights and introduce a single application procedure:³³

No significant impact: Member States with a single application procedure but without the need to extend third country workers rights: EE, EL, ES, LU, PL, PT.

Net costs: Member States that will have to extend third country workers rights but already have a single application procedure: DE, FR, IT, CY, NL, FI, SE.

Net benefits: Member States that will not have to extend third country workers rights but do not have a single application procedure: IE, RO, SI, SK.

Balance between costs and benefits: Member States that will have to extend third country workers rights and do not have a single application procedure: AT, BG, BE, CZ, LT, LV, UK.

We do not expect a significant change in our conclusions when the rights for which costs were not calculated would be included.

Qualitative analysis

³³ For Denmark and Malta, we have no conclusive information on the existence of a single application procedure.

In addition to direct effects on the public expenditure some qualitative analysis is summarised in the following table on the possible but not quantifiable budgetary, fiscal and social costs or benefits which can be expected from a more orderly, better management migration and an improved socio-economic performance of migrants.

Consequences

| | budgetary | fiscal | social |
|---|--|---|--|
| more orderly managed migration | + cost savings of more efficient application procedure | + earlier activation of third country workers translates into higher tax revenues | + less uncertainty for third country workers encourages their integration into EU labour market and society |
| improved socio-economic performance of immigrants | - participation in education will increase + burden on public housing and health care will decrease | + higher tax revenues and social security contributions as incomes of third country workers household increase | + better social integration, especially of women; lower unemployment, undeclared work and crime |
| possible decline in the number of third country workers | + lower burden on public services | - lower tax revenues | 0 no significant impact expected |
| possible increase in undeclared work and illegal employment | - higher enforcement costs | - lower tax revenues and social security contributions per third country workers | - impacts on inclusion, crime and security, undeclared work and unfair competition for EU nationals |

The improved socio-economic performance of migrants

As indicated in the table above the directive (on the basis of the preferred option) could have a positive impact on the socio-economic performance of third country workers, thus raising their contributions to taxes and social security while lowering their use. Therefore the costs of extending specific rights to third country workers may be mitigated by their additional tax revenues and social security contributions due to an increase in immigration or an improvement in the socio-economic performance of third country workers. Whether or not the preferred option will generate this effect, depends on the answer to two questions:

Will the number of third country workers increase?

Will they pay additional taxes and contributions?

The number of third country workers

It was stated earlier that the (partial) removal of the rights gap will most likely not lead to an increase in the number of third-country immigrants. Changes in third country workers rights are not expected to have a significant impact on the supply of migrants, who mainly decide on the basis of potential wage gains and for many of whom European wages will remain exceptionally high. On the other hand, an extension of the rights and entitlements of third country workers may make them less attractive to EU employers, possibly resulting in a decline in demand for their labour and, consequently, a decline in the number of admissions.

Additional taxes and contributions

All legal third-country workers in the EU already pay the same taxes and social security contributions as national workers. The literature provides no indication otherwise. In a number of Member States workers are required to contribute to social security schemes for a specific period before becoming eligible for the benefits (especially with respect to unemployment benefits), thus establishing the possibility of payment without benefit.

Closing the rights gap may have an additional impact. An improvement in the legal status of third country workers may have a positive impact on the social and economic performance of migrants. Better access to vocational training or the recognition of diplomas can result in less brain waste and more effective use of labour and could also enable third country workers to earn a higher income. Such a tendency could reduce pressure on social security, since the socio-economic performance of third country workers directly influences the level of their contributions to social security and tax revenues as well as the extent to which they use the benefits of the social security system and public services.³⁴

In a study on the fiscal effects of migration in the UK, Gott and Johnston summarise the findings of several international studies.³⁵ Their own study shows a net positive contribution of migrants in the UK of £2.5 billion in 2002 (payment of tax revenues and social security contributions minus receipt of benefits). In Germany this net contribution was estimated at c. €20 billion and in Spain at 5€ billion³⁶. The Spanish report on Immigration and the Spanish Economy recalled that immigration has helped to reduce mismatch and structural unemployment in the labour market. As indirect effect of immigration the report further noted that expectations of migrants in higher income lead to higher consumption expenditure and

³⁴ For example: “Research reveals that foreign nationals’ social security contributions and wage taxes were about 24% below the national average due to their on average lower income. Given above-average incidence of unemployment among migrants [...], unemployment benefits paid out to foreign nationals are somewhat higher than for nationals. Moreover, the former have on average higher birth rates than Austrian nationals, which translates into a higher share of family-related transfer payments to them. On the other hand, since foreign nationals’ entitlement to unemployment benefits is restricted, [...]most of them are not able to access long-term benefits... Furthermore, foreign workers have to pay into a public housing fund, generally without being able to draw benefits from these contributions” Source: EIROOnline, “Labour immigration examined”, February 2005 (<http://www.eurofound.europa.eu/eiro/2005/01/feature/at0501206f.html>).

³⁵ Ceri Gott and Karl Johnston, “The migrant population in the UK: fiscal effects”, RDS Occasional Paper No 77 (UK Home Office, Research, Development and Statistics Directorate, 2002).

³⁶ P 2 of the report on Immigration and the Spanish Economy 1996-2006 (Oficina Economica del Presidente).

indebtedness in the short term. In Sweden and in the Netherlands³⁷ the balance was negative. In Sweden the socio-economic performance of immigrants was affected by the high proportion of asylum seekers and refugees. The Dutch report attributed the negative balance not only to a lagging performance but also to the fact that the Dutch system is too generous due to collective arrangements.³⁸

7. MONITORING AND EVALUATION

Indicators to monitor progress made towards the objectives of the initiative have been identified on the basis of the specifics of the preferred policy option.

The subsequent monitoring and evaluation of the preferred policy option are important to assess its efficiency and effectiveness in addressing the underlying problems and meeting policy objectives. The table below includes a proposed list of indicators that could be used to assess the progress and effectiveness of the preferred option in achieving the main policy objectives. Also, a detail on the sources of information that could be used for collecting information in order to measure the proposed indicators is given.

| Main objectives | Potential Indicators | Sources of Information |
|---|---|--|
| I) Responding to the request first expressed in Tampere to grant comparable rights, establishing the principle of equal treatment for third-country workers across the EU, particularly to protect them from abuse and inadequate working conditions and to grant them basic benefits. | <p>Number by MS of successful prosecutions against employers for abuses on third-country workers or inadequate working conditions suffered by third-country workers</p> <p>Estimates of the numbers of illegally-employed third-country workers³⁹</p> | <p>Member States authorities involved in the administration of justice, home affairs and migration policy at national level</p> <p>National statistics Bureau</p> <p>Surveys at international, EU and national level (i.e. European Migration Network)</p> |
| II) Improving the functioning of the EU labour market. | <p>Number by MS of third-country workers admitted to EU compared to the situation before the EU intervention.</p> <p>Estimated extent of the sector shortages at EU level (job vacancies rate in specific sector occupations according to employers' requests)</p> <p>Employment and unemployment rate of medium/low educated thirdcountry workers</p> <p>Mobility rate of third-country workers for employment reasons (at NUTTS 1 level)⁴⁰</p> | <p>EUROSTAT (if adequately adapted according to the proposed Regulation on Community statistics on migration and international protection)</p> <p>Surveys at EU and national level (i.e. European Migration Network)</p> <p>LFS</p> |

³⁷ Hans Roodenburg, Rob Euwals, Harry ter Rele: Immigration and the Dutch Economy, June 2003, CPB Netherlands Bureau for Economic Policy Analysis.

³⁸ p. 79 and p. 80 of the report.

³⁹ The indicator would aim at monitoring and assessing the policy contribution to the illegal migration (i.e. third-country workers would be incentivate to enter EU legally given the rights attached to such a legal status).

⁴⁰ The indicator would aim at monitoring and assessing if a more secure legal status would encourage immigrant to go where their work is really needed within national labour market.

| Main objectives | Potential Indicators | Sources of Information |
|--|--|---|
| III) Protecting the EU labour force from unfair competition in the labour market. | Employment and unemployment rate of medium/low educated EU nationals ⁴¹ Salary level of third-country workers employed in a specific job/assignment compared to salary level of EU nationals employed in the same job/assignment Perception of EU citizens toward third-country workers | Surveys at EU and national level (i.e. European Migration Network) LFS EUROSTAT (if adequately adapted according to the proposed Regulation on Community statistics on migration and international protection) Eurobarometer |
| 1) To have a common understanding at EU level of the group of third-country workers that legally resides in the EU but has not yet acquired long-term resident status. | Transposition at level of all MS of a common EU legal definition on third-country workers Resources dedicated to the implementation of the common EU policy Information campaigns promoted | EU level monitoring MS Monitoring reports EURLEX and similar information sources at national level DG JLS |
| 2) Determining the a common set of specific rights of third-country workers | Transposition at level of all MS of a common EU legislative act on rights of third-country workers Degree of harmonization between MS in terms of common set of rights granted to third-country workers Comparison between MS of the third-country workers's perceptions of rights granted to them | EU level monitoring MS Monitoring reports EURLEX and similar information sources at national level DG JLS Regular follow up surveys of third-country workers |
| 4) Safeguarding the position of EU nationals and long-term residents against the possible consequences of competition from cheap and exploited foreign labour. | Salary level of third-country workers employed in a specific job/assignment compared to salary level of EU nationals/LTR employed in the same job/assignment EU and LTR workers' perception of competition from cheap and exploited foreign labour | Surveys at EU and national level (i.e. European Migration Network) Regular follow up surveys of EU and LTR workers |
| 5) Increasing the transparency of the common EU labour market for third-country workers by reducing disparities between Member States in the rights granted to third-country workers and improving the information available to (potential) third-country workers | Comparison between MS of the third-country workers's perceptions of rights granted to them Information campaigns promoted (Potential) third-country workers reached by information campaigns promoted | Regular follow up surveys of third-country workers EU level monitoring MS Monitoring reports |

As far as monitoring and evaluation arrangements are concerned they could take on the one hand the form of a Commission report three years after the transposition deadline of the Directive and Member States reporting system on the other. Member States could further be - in the framework of a reporting system - obliged to communicate to the Commission and the other Member States through the network established by Decision 2006/688/EC statistics on the volumes of third-country nationals who have been granted, renewed or withdrawn a single permit during the previous calendar year, indicating their nationality and their occupation.

The Commission report could be based on the national implementation of the Directive and on the basis of the national reporting and on the follow up of the above presented indicators

⁴¹ The indicator would aim at monitoring the absence of job displacement of EU national HSW.

using the specified source of information. As far as the Member States reporting system is concerned, Member States can be obliged through the Directive to communicate correlation tables to demonstrate implementation of the provisions of the Directive in their national legislation.

Following that Commission report, the Commission should decide whether proposals for amendment should be put forward in order to best respond the defined objectives.

References

Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration (2005), in Zusammenarbeit mit dem efms –Europäisches Forum für Migrationsstudien. In: Strukturdaten der ausländischen Bevölkerung Stand 2004. Berlin

Berlage, L. (2004) *Mobiliteit over de grenzen heen, een economische analyse van internationale migratie.* Leuvense standpunten 2004/105
[<http://www.econ.kuleuven.be/CES/les/Les105.pdf>]

Cholewinski, R. (2004) *The Legal Status of Migrants admitted for Employment. Committee of experts on the legal status and rights of immigrants.* Council of Europe Publishing. Geneva: International Labour Organization

Citizenship and Immigration Canada (2006) *Annual Report to Parliament on Immigration 2006.* Ontario: Citizenship and Immigration Canada

Citizenship and Immigration Canada (2005), *Facts and Figures 2005: Immigration Overview of Permanent and Temporary Residents*
[<http://www.cic.gc.ca/english/resources/statistics/facts2005/index.asp>]

Clarke, James, Jennifer Hogarth, and John Salt (2004), “Migration policies and trends: international comparisons”, Final report to the Home Office (Migration Research Unit; University College London, April 2004)

Commission for labor cooperation (2003) *The rights of non-standard workers: a North American Guide* Washington DC: Commission for labour cooperation

Commission for labor cooperation (2003) *Guide to labor and employment laws for migrant workers in North America.* Washington DC: Commission for labour cooperation

Congressional Budget Office (2006) *Immigration Policy in the United States.* Washington DC: CBO

Council of Europe (2000) *Diversity and cohesion: new challenges for the integration of immigrants and minorities.* Strasbourg: Council of Europe Publishing

CPB Notitie (2004) *Arbeidsmigratie uit de Midden- en Oost-Europese lidstaten.* Den Haag: CPB

Dagevos, J. and A. Odé (2007). *Het heden en de toekomst van nieuwe groepen in Nederland. Divergerende integratiepatronen.* In: Nederland migratiesamenleving 2005: Studiecongres. Den Haag: Adviescommissie voor Vreemdelingenzaken

Department of Homeland Security (2005) *Yearbook of immigration statistics.* Washington DC: U.S. Department of Homeland Security, Office of Immigration Statistics

Discrimination in the European Union. (January 2007) Special Eurobarometer 263 / Wave 65.4 – TNS Opinion & Social. Brussels: European Commission

Drbohlav, D. (2005) *The Czech Republic: from liberal policy to EU membership*. Washington DC: Migration Policy Institute

Ederveen, S. e.a. (2005) *Bestemming Europa: immigratie en integratie in de Europese Unie*. Europese verkenning 2. Bijlage bij de Staat van de Europese Unie 2005. Den Haag/Voorburg: SCP/CBS

EIM Onderzoek voor Bedrijf & Beleid (2004) *Monitor etnisch ondernemerschap 2004*. Zoetermeer: EIM Onderzoek voor Bedrijf & Beleid

EMN report (2005) *The Impact of Immigration on Europe's Societies: United Kingdom Country Study*.
[<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=8D0614381678FA0691A06C693D17EA09?directoryID=16>]

EMN report (2004) *The Impact of Immigration on Europe's Societies: Ireland Country Study*.
[<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=8D0614381678FA0691A06C693D17EA09?directoryID=16>]

EMN report (2004) *The Impact of Immigration on Europe's Societies: Portugal Country Study*.
[<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=8D0614381678FA0691A06C693D17EA09?directoryID=16>]

EMN report (2004) *The Impact of Immigration on Europe's Societies: Greece Country Study*.
[<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=8D0614381678FA0691A06C693D17EA09?directoryID=16>]

EMN report (2004) *The Impact of Immigration on Europe's Societies: Italy Country Study*.
[<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=8D0614381678FA0691A06C693D17EA09?directoryID=16>]

EMN report (2005) *The Impact of Immigration on Europe's Societies: The Netherlands Country Study*.
[<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=8D0614381678FA0691A06C693D17EA09?directoryID=16>]

EMN report (2005) *The Impact of Immigration on Europe's Societies: Sweden Country Study*.
[<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=8D0614381678FA0691A06C693D17EA09?directoryID=16>]

EMN report (2005) *The Impact of Immigration on Europe's Societies: Germany Country Study*.
[<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=8D0614381678FA0691A06C693D17EA09?directoryID=16>]

EMN report (2004) *The Impact of Immigration on Europe's Societies: Austria Country Study*.
[<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=8D0614381678FA0691A06C693D17EA09?directoryID=16>]

EMN report (2005) *Impact of immigration on Europe's societies. Synthesis report*. [<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=8D0614381678FA0691A06C693D17EA09?directoryID=16>]

EMN report (2004), "*Remittances and Immigrants: Global Context and Italian Case*". [<http://emn.eurodyn.com/Downloads/prepareShowFiles.do;jsessionid=24D7ED748EB05BD24217DD583CB3C960?directoryID=84>]

Entzinger H., and R. Biezeveld (2003) *Benchmarking in Immigrant Integration*. Rotterdam: Erasmus Universiteit Rotterdam

Entzinger, H. (1994) Changing policy Approaches and Scenario's for the Future. In: *Immigrant Ethnic Minorities in the Dutch Labour Market* (editors: H. Entzinger, J. Siegers and F. Tazelaar). These Publishers Amsterdam.

European Commission (2005) *Annual Report on Asylum and Migration 2005*. Brussels: European Commission

European Commission (2003) *Annual Report on Asylum and Migration 2003*. Brussels: European Commission

European Commission (2006) *Second EU survey on workers' remittances from the EU to third countries*. Summary Report. Brussels: European Commission

European Industrial Relations Observatory (EIRO) (2005) *Minimum wages in Europe*. [<http://www.eurofound.europa.eu/eiro/2005/07/study/tn0507101s.html>]

Eurostat (2005), European Union Labour Force Survey 2005

Eurostat (2005), *Europe in Figures 2005*

Eurostat (2006), "Earnings disparities across European countries and regions. A glance at regional results of the Structure of Earnings Survey 2002", *Statistics in Focus – Population and social conditions* 7/2006

Eurostat (2007), "Main features of the services sector in the EU", *Statistics in Focus – Industry, trade and services* 19/2007

Fermin, A. and S. Kjellstrand (2005) *Study on immigration, integration and social cohesion*. Commissioned by: EC, Employment and Social Affairs DG, EUR /Focus Consultancy Ltd

Geddes, A. and A. Balch (2002) *The political economy of migration in an integrating Europe: Patterns, trends, Lacunae and their Implications*. Working paper 2002/6. The political economy of migration in an integrating Europe (PEMINT). Liverpool: University of Liverpool

GHK (2007), "Impact assessment on a Community instrument laying down sanctions for employers of third-country nationals with no or limited rights to work that are exceeded" (April 2007)

Grieco, E. and K.A. Hamilton (2004) *Realizing the potential of migrant “Earn, learn, and return” strategies: does policy matter?* Prepared for the Center for Global Development’s 2004 Commitment to Development Index. Washington DC: Migration Policy Institute

Groningen Growth and Development Centre and the Conference Board (2007), Total Economy Database, January 2007, <http://www.ggdc.net>

Guardia Diez, N. and K. Pichelmann (2006) *European economy; labour migration patterns in Europe: recent trends, future challenges*. European Economy. Economic Papers. No. 256. September 2006. Brussels: European Commission

Howse, K. (2006) *The benefits of migration for an ageing Europe*. In: Ageing Horizons 4, 2006, pp. 12-18. Oxford: Oxford Institute of Ageing

Iglicka, K. (2005) *EU membership highlights Polands migration challenges*.. Washington DC: Migration Policy Institute

ILO (2006) *International labour migration and development: the ILO perspective*. 61st Session of the General Assembly of High-Level Dialogue on International Migration and Development, New York, 14-15 september 2006

IOM (2005) *World Migration 2005: Costs and Benefits of International Migration*. Geneva: International Organization for Migration

Jandl, M., Kraler, A. and Stepien, A., (2003) *Migrants, Minorities and Employment. Exclusion, Discrimination and Anti-Discrimination in 15 Member States of the European Union*. Report submitted by the International Centre for Migration Policy Development (ICMPD) on behalf of the European Monitoring Centre on Racism and Xenophobia (EUMC). Vienna: International Centre for Migration Policy Development

Juhasz, J. (2003) *Hungary: transit country between East and West*. Washington DC: Migration Policy Institute

Krieger, H. (2004) *Migration trends in an enlarged Europe*. Dublin: European Foundation for the Improvement of Living and Working Conditions

Munz, R. (2004) *Migration, labour markets and migrants’ integration in Europe: a comparison*. Paper for the EU-US seminar on Integrating immigrants into the workforce, Washington DC June 28-29, 2004. Hamburg: Hamburg Institute of International Economics

OECD (2005) *Migration, remittances and development*. OECD publishing

OECD (2004) *Trends in international migration 2004*. OECD publishing

OECD (2007) Economic Outlook 81 database

Okólski, M. (2006) *Costs and benefits of migration for Central European countries*. Working Papers no. 7/65. Warsaw. Warsaw University, Centre of Migration Research

Rekai, P. (2002) *US and Canadian Immigration Policies; Marching Together to Different Tunes*. In: C.D. Howe Institute Commentary, no. 171. Toronto: C.D. Howe Institute.

Roodenburg, H., Euwals and R. ter Rele, H (2003) *Immigration and the Dutch Economy*. Den Haag: CPB

Smick, E. (2006) *Canada's immigration policy*. Council on Foreign Relations. [<http://www.cfr.org/publication/11047/>]

Spencer, S. (2005) *The challenge of integration in Europe*. In: *Managing Migration: A Policy Agenda for Economic Progress and Social Cohesion*. Washington: Migration Policy Institute (forthcoming 2005)

United Nations Development Programme. Human Development Report 2005; International cooperation at a crossroads: Aid, trade and security in an unequal world. New York: United Nations Development Programme

U.S. Census Bureau (2007) *Statistical Abstract 2007* [<http://www.census.gov/prod/www/statistical-abstract.html>]

Van Dalen, H.P. (2001) *Immigratie: vloek of zegen voor de Nederlandse economie*. In: *Bevolking & Gezin 3, 2001*, pp. 3-36. Den Haag: Nederlands Interdisciplinair Demografisch Instituut (NIDI)

Versantvoort, e.a. (2006), *Evaluatie werknemersverkeer MOE-landen*. Rotterdam: Ecorys (EE13828)

Zegers de Buijl, R. (2000) *Documenting discrimination against migrant workers in the labour market; A comparative study of European Countries*. Geneva: International Labour Organization (ILO)