



Council of the  
European Union

Brussels, 9 June 2016  
(OR. en)

10012/16  
ADD 6

MIGR 111  
SOC 398  
CODEC 852

#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 9 June 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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No. Cion doc.: SWD(2016) 193 final Part 6/6

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Subject: COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT  
Annexes to the Impact Assessment Accompanying the document Proposal  
for a Directive of the European Parliament and the Council on the  
conditions of entry and residence of third-country nationals for the  
purposes of highly skilled employment

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Delegations will find attached document SWD(2016) 193 final Part 6/6.

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Encl.: SWD(2016) 193 final Part 6/6



Strasbourg, 7.6.2016  
SWD(2016) 193 final

PART 6/6

**COMMISSION STAFF WORKING DOCUMENT**

**IMPACT ASSESSMENT**

**Annexes to the Impact Assessment**

*Accompanying the document*

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

{ COM(2016) 378 final }

{ SWD(2016) 194 final }

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## ANNEX 8

### INTERNATIONAL PERSPECTIVES AND BENCHMARKING

#### 1. THE "GLOBAL RACE FOR TALENT"

Along with globalisation, the intensity of movement of people has increased and economic activity has become more and more interconnected. As our societies are increasingly knowledge-based, they are also more and more reliant on highly skilled workers (HSW). This annex will firstly analyse the global competition for skills, in which the EU needs to be attractive for HSW. Secondly, it will describe different schemes for HSW in the US, Canada, China, Australia, Switzerland, Russia and New Zealand. Thirdly, it will discuss potential impacts on countries of origin when HSW emigrate, highlighting the issue of “brain-drain” and the recruitment of health workers in particular. Four detailed country fiches (US, Canada, Australia and China), are attached at the end of the annex, prepared by an external contractor assigned to carry out a study to support the drafting of the Impact Assessment.

#### *Different factors influence the global competition for skills*

There are a number of circumstances that come into play when assessing the attractiveness of the EU in the global competition for skills. At macro level, economic factors such as the growth rate and economic characteristics determine a destination’s attractiveness. As economic growth has shifted from the advanced economies to middle-income and low-income countries, many traditional destination countries have become less attractive for migrant workers and their families.

Furthermore, at micro level, actual migration decisions are made by individuals taking into account multiple factors. Some are related to migration policies, while others are economic and non-economic factors that do not depend and cannot be altered by migration policy. Economic incentives that can influence the flows of human resources are e.g. opportunities for better salary and career advancement. Factors that are less tangible to migration policies are e.g. language, living standards, GDP, entrepreneurial environment and taxes. There is also evidence that institutional quality and governance effectiveness increases a destination's attractiveness for highly-qualified migrants.<sup>1</sup>

#### *Indicators of EU attractiveness*

In light of the various factors listed in the previous section, any objective measurement of EU attractiveness is difficult to establish. The Gallup World Poll on the opinions and aspirations of people around the globe shows that the EU is more attractive than other developed regions among highly-qualified respondents with a clear intention to migrate. According to the Gallup worldwide survey, 33 % of all highly-educated workers intending to migrate prefer the EU/EEA, compared to 19 % that prefer the United States. However, of all non-EU migrants coming to OECD countries, 48% of low-educated migrants choose a EU27 and 68% of the high-educated ones a non-European OECD destination.<sup>2</sup>

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<sup>1</sup> See for example, Reinhard Weisser, *The impact of international students and post-graduation internal mobility: an analysis of student mobility and retention rate*, OECD 2016, forthcoming.

<sup>2</sup> Flore Gubert, Jean-Noël Senne, *Europe as a Single Labour Market Destination*, OECD, 2016, forthcoming.

## ***Global supply and demand for HSW***

International highly skilled labour migration has been moved up on the policy agenda of medium and high-income countries since the late 1990s. Countries like the United States, Canada, Australia, France, the UK and Germany are net importers of highly-educated workers.<sup>3</sup> A highly-skilled workforce is acknowledged as a fundamental building block of knowledge-based societies and essential in supporting economic and technological development. As a result, the promotion and attraction of so-called STEM<sup>4</sup> skills has become a high priority across both developed and developing countries.

Since the 1990s, international migration among the highly-skilled is characterised by two main trends: increasing flows from Asia towards major OECD countries and an increasing exchange of skilled workers among developed countries.<sup>5</sup> The main sending countries are Asian, led by India, the Philippines and China.<sup>6</sup> Among the top ten sending countries of high-skilled professionals in 2010/11, there are also a number of EU/OECD countries, including the United Kingdom, Germany and Poland.

In 2000, there were 90 million 25-34 year-olds with higher education (tertiary) degrees, of which 51 million were in OECD countries and 39 million in non-OECD G20 countries. By 2010, the total had increased to 130 million, of which 66 million in OECD countries, compared to 64 million in non-OECD G20 countries.

Over the next twenty years the demand for higher education is expected to grow sharply. By 2020, more than 200 million 25-34 year-olds are projected to have higher education degrees across all OECD and G20 countries. Significantly, 40 % of them will be from China and India alone, while the United States and the EU will account for just over 25 %.<sup>7</sup> By 2030, the number of students worldwide is projected to reach 414 million, with China showing by far the highest increase, followed by Brazil and India.<sup>8</sup>

It is important to make the EU attractive also for international students, and consider them as potential future workforce. The EU is the world's most popular destination for international students. There are currently around 1 million non-EU students studying in the EU (in addition to 0,5 million EU students studying in another Member State). Retention rates vary, and are estimated to be between 16 and 29 %.<sup>9</sup>

While future trends of skilled labour migration are difficult to forecast<sup>10</sup>, the global labour market is likely to continue to absorb the increasing supply of highly-educated workers as the demand for employees in “knowledge economy” fields is expected to continue to grow. As a result, highly skilled foreign professionals are ever more sought after and the growing

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<sup>3</sup> See Database on Immigrants in OECD countries (DIOC).

<sup>4</sup> Scientific, technological, engineering and mathematical skills.

<sup>5</sup> OECD, *The Global Competition for Talent. Mobility of the Highly Skilled*, OECD Publishing, Paris, 2008, p. 19.

<sup>6</sup> Between 2001-2011, the three major sending countries of skilled labour remained the same. In 2010/11, India was still the main sender, while China had moved into second position, with the Philippines in third place.

<sup>7</sup> OECD, *Education Indicators in Focus-No 36*, 2012/05, OECD Publishing, Paris, 2012.

<sup>8</sup> Commission Communication of 11 July 2013, *European higher education in the world*, COM(2013) 499 final.

<sup>9</sup> Reinhard Weisser, *The impact of international students and post-graduation internal mobility: an analysis of student mobility and retention rate*, OECD 2016, forthcoming.

<sup>10</sup> Given the projected changes in the rapidly growing size of the global talent pool and its changing composition and the expected increased economic weight and domestic demand for highly skilled labour of China and India.



internationalisation of the highly-skilled labour market has led to an increasing global competition for talent.<sup>11</sup>

Europe is therefore in an increasingly fierce competition with an increasing number of other economies to attract workers with the skills it needs. Around 25 % of migrants currently in the EU are highly-educated compared to more than 35 % in non-EU OECD countries.<sup>12</sup> In Europe, 22 % of the migrants that arrived between 2006 and 2011 were between 25 and 29 years old, and 53 % were between 25 and 39 years old.<sup>13</sup> Furthermore, a bulk of migrants is found among the (prime-age) working population, aged 25-64, that accounts for almost three fourths of the total stock. However, the EU27 tend to attract low-educated migrants while non-Europe OECD countries tend to be more selective for the high-educated migrants. More than 60 % of non-European low-educated migrants choose a European destination and more than 60 % of the high-educated ones a non-European OECD destination.<sup>14</sup>

Recent surveys on immigration intentions point to a relatively strong attractiveness of the EU for highly-educated potential migrants, compared notably to the United States.<sup>15</sup> Also in the public consultation carried out for the purposes of the Blue Card review, potential and actual migrants indicated a strong attractiveness of several Member States, notably Germany (32 %), France (11 %), the Netherlands (8 %) and the United Kingdom (7 %), on par with the United States (30 %), Canada (27 %), Norway (14 %) and Australia (11 %).<sup>16</sup> The EU as a whole rates high on factors of attractiveness such as its welfare and healthcare system, level of wages and job opportunities. However, the EU appears much less successful both in retaining talents and in converting its attractiveness into higher numbers of highly-skilled migrants being admitted.

## 2. OVERVIEW OF INTERNATIONAL COMPETITOR SCHEMES

Most OECD countries are net beneficiaries of international mobility, with inflows exceeding outflows. The United States, Canada, Australia and France in particular, have experienced strongly positive net inflows of tertiary-educated migrants.<sup>17</sup>

From a mere quantitative perspective, international competitive schemes for HSW such as those in Canada and the United States, attract more HSW than the EU Blue Card and parallel national schemes for HSW. However, relative to population, labour migration to the United States is much lower than the EU OECD average. The US' labour force is around two-thirds of that of the EU and it has relatively low labour migration rates (around one fourth of the EU rate, per 1000 inhabitants), yet it admits around 200 000 skilled labour migrants every year (permanent green cards for extraordinary talents — EB-1 — and H-1B visas for temporary specialised work). Labour migration to Canada, New Zealand and Australia (all of which apply selective labour migration programmes, with limited access to permanent migration for

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<sup>11</sup> Rinne, U., *The Evaluation of Immigration Policies*, IZA Discussion Paper Series, IZA DP No.6369, Bonn, 2012.

<sup>12</sup> Jean-Noël Senne and Anda David, 'General Context and Contribution of Labour Migration in Europe', OECD 2016, *forthcoming*.

<sup>13</sup> OECD/European Union, *Matching Economic Migration with Labour Market Needs*, OECD Publishing, Paris, 2014.

<sup>14</sup> Jean-Noël Senne and Anda David, 'General Context and Contribution of Labour Migration in Europe', OECD 2016, *forthcoming*.

<sup>15</sup> Based on Gallup Surveys 2011-2014 analysed by Jean-Noël Senne and Anda David in 'Europe as a Single Labour Market Destination', OECD 2016, *forthcoming*.

<sup>16</sup> See Annex 2.

<sup>17</sup> OECD, *The Global Competition for Talent*, Policy Brief - February 2009, OECD Publishing, Paris, 2009.

low-educated migrants or those in low-skill occupations) is around twice the EU average relative to the size of their labour markets. This reflects these countries' commitments to ensuring that a substantial part of new entries to the skilled labour force stems from migration. Within the EEA, Switzerland has relatively low inflows of non-EEA permanent-type migration, and the levels of free movement for employment are much higher (at least ten times the level of third-country labour migration). A substantial share of free movement is for skilled employment.<sup>18</sup> The following section will describe and analyse the migration schemes, including those for HSW, in the United States, Canada, China, Australia, Russia, Switzerland and New Zealand. Each subsection will describe the legal framework, present key statistics and analyse the effectiveness of the respective schemes. At the end of the annex, country fiches produced by an external contractor are included, focussing on the United States, Canada, China and Australia.

## **2.1. United States**

According to the Gallup worldwide survey, 33 % of all highly-educated workers intending to migrate prefer the EU/EEA, compared to 19 % that prefer the United States. As regards labour migration, the United States applies a demand-driven policy. Highly skilled migrant workers can enter the US labour market on temporary grounds or as lawful permanent residents (with the so-called Green Card). Workers are more often admitted on temporary visas, from which they may subsequently acquire permanent resident status. In practice, this means that most labour migrants enter the United States through sponsorship by an employer, and their right to remain in the country depends on continued employment by their sponsor (or on securing a new one). This selection mechanism aims to ensure that migrants cannot enter in the absence of a concrete demand for their skills and abilities.

### ***The Permanent immigration system***

Holders of the Green Card are known as lawful permanent residents (LPR). LPR status is mainly granted on the basis of so-called 'family-sponsored preference' and 'employment-based preference'. Employment-based preferences consist of five categories of workers (and their spouses and children). Only EB1 and EB2 workers can be considered as highly skilled or qualified workers, as per the EU Blue Card definition<sup>19</sup>. Employment First Preference (EB1) include: (1) Persons with extraordinary ability in sciences, arts, education, business, or athletics<sup>20</sup>; (2) Outstanding internationally recognized professors and researchers with at least three years' experience in teaching or research; (3) Multinational managers or executives who have been employed for at least one of the three preceding years by the overseas affiliate, parent, subsidiary, or branch of the US company employing the HSW. Employment Second Preference (EB2) covers professionals with advanced degrees<sup>21</sup> or aliens of exceptional

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<sup>18</sup> Jonathan Chaloff, *Labour Migration Policy Development in the EU: Policy Features and Influence of Directives*, p 3, OECD 2016, forthcoming.

<sup>19</sup> The definition includes: (1) evidence of higher education qualifications: any diploma or other evidence of formal qualifications issued by a higher education institution attesting the successful completion of a post-secondary education programme of at least three years; (2) when provided by national law: by at least five years of professional experience of a level comparable to higher education qualifications relevant for the profession/sector.

<sup>20</sup> Applicants in this category must have extensive documentation showing sustained national or international acclaim and recognition in their fields of expertise. Such applicants do not have to have specific job offers, as long as they are entering the U.S. to continue work in the fields in which they have extraordinary ability.

<sup>21</sup> Professionals with advanced degrees concern those who hold degrees beyond a baccalaureate degree, or a baccalaureate degree and at least five years progressive experience in the profession.

ability<sup>22</sup>. The permanent immigration system allocates 140 000 visas annually for high-skilled immigrant and their families.

In 2013, 158 466 persons accessed LPR status through the employment-based preference.<sup>23</sup> This represented 16 % of the total LPR flow of that year.<sup>24</sup> Out of the total of employment-based preference LPRs, 28,6 % are allocated to each of the first three employment preferences; EB1 and EB2 included.<sup>25</sup> The visas are allocated according to a cascading system, i.e. when the number of visas available under the highest preference category are not used, they can be used for the next preference category. Generally, there are more EB1 visas available than used. The first preference (EB1 priority workers) accounted for 24 % of new employment-based LPRs. Most of the unused EB1 visas (extraordinary ability visas) in 2013 were used in the second preference (EB2 professionals with advanced degrees) which represented 39 % of new employment-based preference LPRs.

### ***H-1B visa***

The H-1B visa is the most comparable to the EU Blue Card. H-1B visas are temporary (three-year, one-time-renewable) visas issued to high-skilled foreign workers. It requires the migrant worker to hold a higher education degree (or its equivalent) and to be sponsored by a US employer. The employer must submit a Labor Condition Application (LCA) to the Department of Labor<sup>26</sup> There is no labour market test under this category, whereas this is the case under other entry routes. In terms of salary requirements, the Labor Condition Application (LCA) requires employers to attest that they will pay H-1B workers the higher of (1) actual wage level they pay other employees with similar experience and qualifications or (2) the prevailing wage. The prevailing wage is determined based on the position in which the applicant will be employed and the relevant geographic location (among other factors). The US Department of Labor (DOL) maintains a database with applicable current prevailing wage levels based on occupation and work location. In principle, H-1B dependent firms are required to hire equally qualified US workers, and to refrain from laying off similar US workers. However there can be exceptions to this principle. Firms are not prohibited from displacing US workers as long as they pay the H-1B workers a minimum of USD 60 000 per year or the workers have a relevant master's degree. Furthermore, the employer has to give public notice at the place of employment about their wish to hire an H-1B worker. In terms of rights, the H-1B does not offer as extensive rights as the EU Blue Card. While H-1B workers may be accompanied or joined by a spouse and unmarried children under the age of 21, these family members may not engage in employment under this visa and must change status to a category for which employment is authorized. An H-1B holder may not be granted permanent residency independently, but the employer may sponsor the applicant for permanent residency immediately under another scheme. H-1B holders are the main applicants for EB-3 employment visa, which is grants permanent residency to professionals or other type of workers including HSW. In case of unemployment, the HSW may not stay in the country to search for a job.

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<sup>22</sup> Persons with exceptional ability in sciences, arts, or business. Exceptional ability means having a degree of expertise significantly above that ordinarily encountered in these fields.

<sup>23</sup> Monger, R. and Yankay, J., *Annual Flow report, U.S. Lawful Permanent Residents: 2013*, Office of Immigration Statistics policy directorate, May 2014.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> U.S Citizenship and Immigration Services, *H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models*.

In 2014, the H-1B visas were capped at 65 000. In general, the annual quota for H-1B visas is filled in the first months of the year, and no new H-1B visas are issued thereafter. A problematic effect of applying such numerical limits is that when these are reached rapidly, admissions become less selective and highly qualified candidates may be turned away because there are no visas left. There are however exemptions for HSW in STEM fields and non-profit organisations (such as universities, research labs and think tanks) that are not subject to H-1B caps. In reality, the total number of H-1B visas issued is thus much higher than the official cap.

As mentioned above, the H-1B visa allows foreigners to enter the US for a specific limited stay but it also allows employers to apply immediately for permanent resident status for their sponsored foreign-born employee. According to another 2012 study, 90 % of employment-based Green Cards (permanent visas) were granted to individuals who originally entered the US as foreign students and temporary workers, many of whom held H-1B and L visas.<sup>27</sup> The temporary-to-permanent resident transition amongst highly qualified migrants is a key characteristic of the US immigration system.

Recent policy debates in the United States have focused on the need to make permanent status more easily accessible to successful students and skilled workers. Employers have pushed for this especially in STEM fields (science, technology, engineering and maths).<sup>28</sup> Legislators have proposed a piecemeal approach to immigration reform, and Congress is currently considering the following legislation concerning highly skilled migrants<sup>29</sup>:

- *Immigration Innovation Act*: A bipartisan bill introduced in the Senate in January 2015 that would almost double the number of visas for temporary high-skilled workers (H-1B visas), from 65 000 to 115 000, and eliminate annual per-country limits for employment-based Green Cards.
- *Start-Up Act*: A bipartisan bill introduced in the Senate in January 2015 (three prior versions had been introduced) that proposes to create an entrepreneur visa for self-employed immigrants and a STEM visa for US-educated workers with advanced degrees in science, technology, engineering or mathematics, and to eliminate per-country caps on employment-based immigration visas.

### ***Key statistics***

A significant portion of immigrants to the US, especially recent arrivals, tend to be highly educated, with 37 % of those of working age having at least a college degree, compared to 26 % in the EU. In 2013, 2.1 million persons were issued temporary (non-immigrant) visas (excl. tourists), an increase of five percentage points compared to 2012. A significant share of those consisted of speciality occupations (H-1B), which accounted for 153 223 issuances in 2013 (see USA Country fiche in annex). H-1B visas went mostly to nationals of India (64 %) and China (10 %). About half (54 %) of all approved H-1B visa applications for initial employment were filed abroad. Demand for H-1B visas was strong in both 2013 and 2014, with the annual cap of 65 000 being reached in the first week of filing. Most permanent

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<sup>27</sup> CRS Report 7-5700, *Immigration of Foreign Nationals with Science, Technology, Engineering, and Mathematics (STEM) Degrees*, Congressional Research Service, 11 May 2012 cited in Koslowski, R., *Selective migration policy models and changing realities of implementation*, International Migration Vol. 52 (3) 2014.

<sup>28</sup> Martin, P., *Attracting Highly Skilled Migrants: US Experience and Lessons for the EU*, Robert Schuman Centre for Advanced Studies, European University Institute, Florence, 2012.

<sup>29</sup> Renswick, P., *The U.S. Immigration Debate*, The Council on Foreign Relations (CFR), New York, 2015.

migration to the US is for family reasons, which accounted for 735 000 people or 74 % of the total immigration in 2014.<sup>30</sup> Permanent residence, through employment-based Green Cards, was mostly given to migrants who had already been admitted as temporary workers (140 000). The number of new arrivals who were granted permanent resident status was 21 000 in the same year (2013).<sup>31</sup>

## 2.2. Canada

### *Legal and policy framework*

Canada has put in place multiple schemes supporting the entry of different categories of skilled workers. This section will first look at the permanent programs, including the Express Entry system introduced in 2015. Secondly, it will describe the temporary schemes. Thereafter, some key statistics will be presented.

### *Permanent Residence Programs*

To date, Canada grants permanent residence under two streams: the Family Class and the Economic Class. Under the Economic Class, the skilled migration programs for permanent residence are the Federal Skilled Trades Program (FSTP), the Federal Skilled Worker Program (FSWP) and the Canadian Experience Class (CEC). These programs assess applicants based on a range of 'human capital factors', such as age, education, language proficiency and work experience. Applicants who possess the sought-after characteristics earn points under a points based system at a later stage. Skilled work experience and minimum language proficiency in English and/or French are the minimum requirements across all programs. However, applicants are not always required to have a formal job offer or Canadian work experience, although such features might increase their prospects of success, depending on the program through which they apply.

These programs place greater emphasis on the skilled work experience of candidates than on their formal educational attainment, and therefore all include minimum requirements on skilled work experience. While the educational requirements are low or non-existent for the FSTP, FSWP and CEC, candidates can gain additional points for their education during the Express Entry stage if they have either a Canadian post-secondary diploma or equivalent foreign credentials that are supported by an Educational Credential Assessment (ECA).<sup>32</sup>

The Federal Skilled Worker Programme (FSWP) covers more than 80 % of all admissions for economic purposes and is specifically designed to attract HSW.<sup>33</sup> The selection of labour migrants under the FSWP is based on a points based system. While the FSWP is capped, the number of permits issued has increased in recent years. With 5 000 permits issued in 2013, it was increased to 25 000 in 2014, i.e. more than five times as many. Moreover, the number of

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<sup>30</sup> OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 258.

<sup>31</sup> US Department of Homeland Security.

<sup>32</sup> The ECA certifies that their educational level is equivalent to Canadian post-secondary level. Note that education can be important for meeting the minimum number of points in Express Entry but is more important for moving into the pool of candidates, which is filled by the top candidates only.

<sup>33</sup> CanadaVisa, *Canada Federal Skilled Worker (Professional) Immigration*.

occupations that are open to foreign workforce more than doubled, from 24 in 2013 to 50 in May 2014.<sup>34</sup>

### *Express Entry*

Canada uses a centralised online application system for all permanent residence applications (Express Entry) and online application processes for the temporary residence applications (TFWP and IMP, see below). Express Entry was introduced in the beginning of 2015. All applicants to the economic stream must make an initial application through the Express Entry system. This is used as a 'first filter' for establishing whether applicants are eligible for one or more of the three federal programs (FSWP, FSTP, CEC), or the Provincial Nominee Program (PNP).<sup>35</sup> Those who fulfil the eligibility criteria are then moved into a 'pool of candidates', where they are ranked using the (points-based) Comprehensive Ranking System.<sup>36</sup> Only those candidates who are ranked above a certain threshold are issued with an Invitation to Apply (ITA) for permanent residence, at which point they can begin the application process for the individual programs. There is no defined quota for Express Entry applications and candidates are free to make applications whenever they wish. However, this does not mean that all applicants for Express Entry receive an invitation to apply (see statistics below).

As previously mentioned, the features that are attributed most weight within the ranking systems are, firstly, the candidates' human capital, assessed based on their age, level of education, official language proficiency and Canadian work experience and, secondly, a pre-existing job offer (supported by a Labour Market Impact Assessment) or the provincial nomination (if held). However, applicants may also gain some additional points for other features, such as the language proficiency of their spouses or common-law partners and the transferability of their skills. Citizenship and Immigration Canada (CIC) aims to process 80 % of the applications through Express Entry within 6 months. After receiving the ITA, candidates have 60 days to apply for permanent residence and fulfil the entry criteria specified under the individual program requirements. For more details, see *Summary table of entry requirements* in the attached Country Fiche on Canada.

The Express Entry application management system was adopted partly in response to the excess supply of eligible candidates. Due to the many eligible applicants, the CIC faced backlogs and was forced to take either a 'first come, first served' approach (entailing long processing times) or to consider other policy tools, which all had their own draw-backs. By introducing Express Entry as a 'first filter' selecting the most appropriate candidates from a 'pool', the government could control and select intake more effectively. Another reason for introducing Express Entry was to reduce processing times. Indeed, while it is still too early to draw final conclusions, the CIC seems to be on track to meet the official target of processing 80 % of applications within six months.<sup>37</sup> Furthermore, the ranking system is considered transparent and is widely known and understood. Significant efforts have also been made by the CIC to engage employers in the system (via e.g. employer liaison network, Employer

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<sup>34</sup> For more details, see attached Country Fiche on Canada.

<sup>35</sup> The PNP is a system of provincial/territorial nomination of immigrants. Only the federal programs will be presented in this analysis.

<sup>36</sup> This takes into account factors such as skills and experience; whether they have a job offer; whether they have a nomination from a province or territory. Extra points are available for a job offer backed by a Labour Market Impact Assessment (LMIA) and/or provincial nominations.

<sup>37</sup> See Country Fiche: Canada, in annex.

Portal, Job Bank). While the system seems to work well, it remains early to assess the full impact of Express Entry.

### ***Temporary Residence Programs***

There are two temporary residence schemes for skilled workers: the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP). Applications through the TFWP must always be supported by a job offer and a positive Labour Market Impact Assessment (LMIA). The IMP, being largely regulated by international agreements, does not require LMIA. Workers under the TFWP normally receive employer-specific work permits, whereas IMP workers generally have greater labour market mobility.

Under the TFWP, there are two forms of entry: the 'high-wage' and 'low-wage' stream. Most migrant workers under the TFWP are low-skilled. Under the high-wage stream, employers must obtain a positive LMIA, also sometimes referred to as a 'confirmation letter' from Employment and Social Development Canada (ESDC), proving that the worker is needed for a specific position.<sup>38</sup> Employers can use either the Temporary Foreign Worker Web Service or a paper application form to apply for the LMIA. The cost of each LMIA (for each position requested) is CAD 1 000. The temporary worker must then apply for a work permit, using their LMIA-supported confirmation letter (provided by the employer). LMIA's remain valid for six months. Unless the position is of a limited duration, employers must submit a Transition Plan showing how they will recruit and train Canadians and how they will support the TFWs to become permanent residents. These activities must be undertaken over the course of the employment period.<sup>39</sup> If employers are inspected, or apply for an additional LMIA later on under similar circumstances, they will have to report on their progress concerning the commitments they made in the Transition Plan. For more details on the numbers of temporary work permit holders in 2013, see Country Fiche: Canada in annex.

### ***Rights***

All foreign nationals working in Canada (both temporary and permanent) must be granted equal labour rights and benefit from the same working conditions as native Canadians. Once they become permanent residents, skilled foreign workers face no longer any restrictions to their labour market access or mobility. For permanent residence programs, provincial and territorial governments have the responsibility to uphold a certain level of labour standards (applicable on equal terms as to native Canadians and immigrants with a right to permanent residence). For temporary foreign workers, Employment and Social Development Canada (ESDC) is responsible for following up with employers who may be subject to inspection.

### ***Key statistics***

The expansion of economic migration programmes in Canada has led to a change in the categories of migrants entering the country. In the mid-1980s, 50 % of migrants were admitted based on family preferences, 30 % were economic migrants and 18 % were refugees. By 2009, these proportions changed to 38 %, 47 % and 9 % respectively. In 2013, this pattern was yet more pronounced: out of the 258 953 permanent residents admitted, 148 181 (57 %) were under the economic class of migration programs, whereas 81 831 (32 %) came under the

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<sup>38</sup> Employment and Social Development Canada, Temporary Foreign Workers, *Streams for High-wage or Low-wage Positions*.

<sup>39</sup> Employment and Social Development Canada, Temporary Foreign Workers, *Stream for High-wage positions*.



family class and 28 941 (11 %) came as refugees.<sup>40</sup> However, it should be noted that the group of migrants under the economic class also includes dependents.

In 2013, migrants in Canada continued to be well qualified: 46 % (75 000) of permanent residents between 25 and 64 years of age had completed post-secondary studies with a bachelor's, master's or doctorate degree as their highest level of education, a 10 % increase from 2012 (68 000).<sup>41</sup>

The number of applicants for the permanent economic programs currently exceeds the number of available places. Between 1 January and 6 July 2015, 41 218 of those who applied through Express Entry were deemed to fulfil the conditions for one or more permanent economic programs. However, only 12 017 (11 % of all applicants and 29 % of those in the pool) have been issued with an invitation to apply for permanent residence.

Data on work permits issued by nationality is not available, but the same kind of data does exist on candidates invited through the Express Entry scheme. As of 6 July 2015 the top ten countries of citizenship were: India (2 687 invited candidates), the Philippines (2 514), United Kingdom (951), Ireland (682), China (531), United States (521), South Korea (327), France (258), Australia (257) and Mexico (249). It should, however, be noted that invited candidates do not necessarily gain permanent residence.

### **2.3. China**

#### *Legal and policy framework*

In the past decades, China has undergone significant political, economic, and demographic changes that have influenced migration both to and from the country. In 2011, the country was ranked as the fourth largest country of emigration in the world by the World Bank. In addition to large flows of emigrants leaving in search of better opportunities elsewhere, and the recurrent, more traditional flows of internal migration, a new trend of immigration into China is emerging. This phenomenon is partly driven by the country's rapid economic growth as well as its demographic transition. At a time of increasing labour demand, the growth of the Chinese labour force is slowing down, which in turn increases pressure on wages and the China's aging population.<sup>42</sup>

In June 2012, the new Exit and Entry Administration Law (*Chujing Rujing Guanli Fa*) was passed. It entered into force in July 2013 and replaced both the Law on the Control of the Exit and Entry of Citizens and the Law on the Control of the Entry and Exit of Aliens. Under this law, four categories of visas exist: diplomatic visas, courtesy visas, issued to foreigners who are given courteous treatment due to their status, service visas, issued to foreigners entering China for official service reasons, and ordinary visas. As part of China's efforts to attract highly skilled and talented workers, the new Exit and Entry Law added 'attracting talent' as one of the purposes of the ordinary visa.<sup>43</sup> This talented person visa, the so called R-visa, is a residence permit valid up to 5 years, 4 years longer than regular working visas, valid for 1 year only. Eligible TCNs are highly qualified workers or much-needed talent. Exactly how these two categories are defined is left to the discretion of the government departments

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<sup>40</sup> Government of Canada, *2014 Annual Report to Parliament on Immigration*, 2014.

<sup>41</sup> OECD, *International Migration Outlook 2015*, p 194.

<sup>42</sup> Skeldon, R., *China: An emerging destination for economic migration*, Migration Information Source, Migration Policy Institute, 2011.

<sup>43</sup> Exit and Entry Administration Law, Article 16.



responsible for administering the system. In terms of salary, equal pay conditions are not specified; foreign applicants tend to receive higher salaries than their Chinese counterparts. Recipients can bring their spouse, parents, spouse's parents and any children under the age of 18 with them on the same visa. The R-visa offers equal rights to social security (healthcare, pension, workplace insurance, and education for children) as Chinese nationals, and the right to buy one residential property.

The R-visa is complemented by a national scheme called the Thousand Talents Plan (TTP), an incentive scheme launched in 2008 with the aim of attracting 2 000 highly talented individuals to China within its first 5 to 10 years. The rights granted by the R-visa are comparable to the EU Blue Card. In addition, the scheme provides generous financial incentives such as a resettlement subsidies and subsidies and research grants from local governments. For more details on these financial incentives, see attached Country Fiche: China, in annex.

As for the R-visa there are no published guidelines spelling out in which specific fields or for which roles applications are encouraged, but participants move to China as either 'researchers' or an 'entrepreneurs' and applicants are supposed to work in the fields of innovation, science and research. The national TTP is further complemented by various similar schemes at regional level and applicants admitted under these schemes are likewise granted an R-visa.<sup>44</sup>

R-visa holders appear to fall under the same employment law as regular working visa holders. They may change employers as long as their former employer provides them a letter of release and they have a formal job offer from their new organisation. If they do not receive a letter of release, they have to leave the country within 30 days and are then required to apply for a new visa if they wish to return to China. The same applies to those whose employment is terminated, but who are unable to find new employment. The law does not appear to place restrictions on the kind of position that a HSW may fill, but if they cease to work in an area deemed to be in need of high-skilled talent they will no longer be eligible for the R-visa. Upon renewal they would then only be able to apply for a one-year residence permit.

### ***Key Statistics***

In 2011, China's high-skilled workforce amounted to an impressive 31.2 million individuals.<sup>45</sup> Nevertheless, the country is likely to face a shortage of 8 million graduates by 2020, due mostly to growing demand for HSW.<sup>46</sup> Relative to the size of China's native workforce, the number of foreigners working in China (either on an R- or a regular working visa) is very low, making up less than 1 % of the labour supply. This is especially obvious for HSW. Even according to the most generous estimates, TCNs only make up 0, 01 % of the country's high-skilled workforce.

At the time of the 2010 census, of a work force of 802 million, only 134 889 were foreigners on working visas. Publicly available data does not give any detailed information on recipients or uptake of the R-visa. However, given the unclear application procedures and requirements, it is likely that a significant proportion of recipients have entered China via the TTP scheme (which brings participants to China on an R-visa). The number of TTP participants can

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<sup>44</sup> See Country Fiche: China, in annex.

<sup>45</sup> China Daily, *China's workforce goes more skilful*, 2012.

<sup>46</sup> McKinsey China, *The \$250 billion question: Can China close the skills gap?*, Insights – Talent and Leadership, 2013.

therefore be used as a proxy for R-visa recipients, in order to get a general idea of how many TCN HSWs are moving to China under the R-visa.

The TTP scheme has exceeded its target of attracting 2 000 individuals during the first 5 to 10 years of its implementation. During the first 6 years it has brought 4 180 HSW to China. Furthermore, figures show that during the first 5 years of the program, 1 306 of TTP participants, i.e. roughly one-third, became permanent residents. For more details on the uptake of permits under the TTP scheme, see the attached Country Fiche in annex.

### ***Success of the scheme***

In comparison to the EU Blue Card, the effects of the R-visa and its associated schemes have been limited. Overall numbers of foreign HSW moving to and settling in China as a result of the introduction of the scheme are significantly lower than the number of TCN HSW taking up work in the EU as a result of the Blue Card scheme, both in absolute terms and as a proportion of the HSW workforce. Up until now, the Chinese schemes have not had a significant impact upon labour shortages in the country.

It seems that, initially, the advantages offered by the TTP program have persuaded some foreign HSW to move to China on a long-term basis. Whether or not this has contributed to technological breakthroughs or the enhancement of China's high-tech sector and other emerging industries (the stated purpose of the TTP), however, is yet to be ascertained, as the impact of the program has not yet been assessed.

## **2.4. Australia**

In 1996, Australia shifted from a human capital model targeting highly skilled migrants, to an approach more sensitive to skills shortages and labour market needs. In 2008/09, the government carried out a review on permanent skilled migration and approved a more demand-driven approach based on employment being arranged prior to arrival. The aim of this reform was to enable migration to better respond to national skills shortages and to ensure a better labour market integration of migrants.

### ***Legal and policy framework***

The Australian permanent immigration program is divided into two distinct streams: the Migration Programme for Skilled and Family Migrants and the Humanitarian Programme for Refugees. Within the Migration Programme for Skilled and Family Migrants, the skill stream is linked to the needs of the national labour market, while the family stream aims at facilitating the entry of family members wishing to join their relatives in Australia. Together, the programmes contribute to the national goal of sustained population growth, in a context of great diversity: in 2011 26 % of Australia's population were first generation immigrants. This rate is substantially exceeding those of other major immigrant-receiving countries. In 2011 and 2012, the Skilled Stream accounted for 68 % of the total permanent migration intake.<sup>47</sup> In 2014, the OECD reported that the Skilled Stream accounted for about two-thirds of the migration visas issued in 2012.<sup>48</sup>

The late 1990s saw a shift in policy focus that culminated in a series of policy reforms. Further criteria were introduced in order to ensure better employment outcomes for migrants,

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<sup>47</sup> Australian Government, Department of Immigration and Citizenship, *2011-12 Migration Program Report*.

<sup>48</sup> OECD, *International Migration Outlook 2014*, OECD Publishing, Paris, 2014.

such as a nominated skills list, tighter English language requirements, and more stringent rules concerning the recognition of overseas qualifications. Following a first wave of reforms, effective as from 1 January 2009, skilled migrants sponsored by an employer were given higher processing priority over independent migrants. Priority processing was also granted to migrant with skills considered to be in critical shortage within the Australian labour market (including medical and IT professionals, engineers, and construction workers). Furthermore, the age distribution among skilled migrants is influenced by the requirement to be below 50 years of age.

In 2010, the government announced a phasing-out of the Critical Skills List, which had only been introduced in 2009. A new ‘more targeted’ Skilled Occupations List (SOL) entered into force in July 2010, including 181 identified shortage occupations. It is important to note that the Skilled Occupations List includes a variety of professions, both highly skilled (such as nuclear engineers and surgeons) and medium-skilled (such as plumbers and joiners). Likewise, the Consolidated Sponsored Occupations List (CSOL) includes both highly skilled professions and medium and low-skilled professions (like flower growers and pig farmers). It is updated annually by the Department of Immigration and Citizenship in consultation with employers and unions.<sup>49</sup> Independent skilled migration applicants must hold relevant qualifications in occupations listed on the SOL. In 2011-12, the top five professions for the Skill Stream were accountants, cooks, software and applications programmers, software engineers and program developers.

To date, the selection of labour migrants is a shared undertaking of government and business. The Skill Stream migration programme is divided into several categories. Some categories require a points-based assessment whereas other categories do not. The categories that do not require a points-based assessment are the following:

- The **Temporary Skilled Visa** (*subclass 457*) allows skilled people to work for an approved sponsor for up to 4 years. It is the most comparable to the EU Blue Card. The migrant is required to work in one of the occupations included on the SOL, have a sponsored employer, show evidence of recent relevant skills and experience, and have a level of English proficiency in accordance with the occupational requirements (for example to secure vocational registration).<sup>50</sup> After two years of employment in the same position, an employer can sponsor a subclass 457 visa holder through the Temporary Residence Transition stream, thereby allowing the migrant worker to switch category to permanent resident status. A high proportion of applicants that switch category this way are international graduates of Australian universities, who first secured employment through the 457 visa.<sup>51</sup> It should be noted that, since 2012, degree-qualified international students have been guaranteed the right to stay and search for employment in Australia for 2-4 years upon course completion (with 4 years allocated to those holding a postgraduate degree).

The categories that do require a points-based assessment are the following:

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<sup>49</sup> Australian Government, Department of Immigration and Border Protection, *The Skilled Occupation List*.

<sup>50</sup> Most Australian professional and trade regulatory bodies require specific English language levels as a condition to ensure registration to practice, most ranging from International English Language Testing System Band 6 to Band 8 (for example IELTS Band 6 for professional engineers, Band 7 for all medical and allied health practitioners, and higher levels for lawyers). See Country Fiche: Australia in annex.

<sup>51</sup> See Country Fiche: Australia, in annex.

- The **Skilled-Independent Visa** (*subclass 189*) is a permanent visa that requires an expression of interest by the applicant, before he or she can apply through SkillSelect. A sponsor is not necessary; however the applicant must select an occupation in the relevant SOL and his or her skills are thereafter assessed by a relevant authority. Moreover, the applicant must be under 50 years of age and be proficient in English. Those who cannot demonstrate the specified English level for their field, and/or those whose qualifications are unlikely to be recognised are not eligible to proceed with their application. Points are granted for the number of years worked in skilled employment, the level of qualifications, qualifications obtained in Australia, working experience in Australia and partner's skills.
- The **Skilled-Nominated Visa** (*subclass 190*) is a permanent visa that requires the applicant to express his/her interest before the start of the application procedure. Furthermore, the applicant has to have a sponsor and be nominated by a state/territory government. The applicant's skills are assessed by the relevant authority against the relevant CSOL occupation, i.e. the one indicated by the applicant.<sup>52</sup> Moreover, the applicant must be under 50 years of age and be proficient in English (same as under subclass 189). Points are granted for years worked in skilled employment, qualifications, qualifications obtained in Australia, working experience in Australia and partner's skills.
- The **Skilled-Regional (Provisional) Visa** (*subclass 489*) is a temporary entry channel that grants residence for up to 4 years and for which the applicant must express interest before being invited to apply. The applicant can be sponsored by either an eligible relative or by a state/territory government and the occupation must be listed either in the SOL or in the CSOL. Moreover, the applicant must be under 50 years of age and proficient in English.
- The **Employer Nomination Scheme** (*subclass 186*) is a permanent scheme for applicants sponsored by an employer. It requires a skill assessment by the relevant authority and 3 years of work experience within a profession listed in the CSOL.
- The **Regional Sponsored Migration Scheme** (*subclass 187*) is a permanent scheme that requires the applicant to be sponsored by a regional employer and to hold a qualification at level 1, 2 or 3 within the Australia New Zealand Standard Classification of Occupations (ANZCO).
- The **Skilled-Independent Visa** (*subclass 189*) requires the applicant to express his or her interest and to be invited to apply in order to be granted permanent residence. A sponsor is not necessary; however the applicant must select an occupation in the relevant SOL.
- The **Skilled-Nominated Visa** (*subclass 190*) requires the applicant to express his or her interest and to be invited to apply in order to be granted permanent residence. It requires the applicant to be nominated by a state/territory government and to select an occupation in the CSOL.
- The **Skilled-Regional (Provisional) Visa** (*subclass 489*) is a temporary entry channel that grants residence for up to 4 years and for which the applicant must express interest before being invited to apply. The applicant can be sponsored by either an eligible relative or by a state/territory government and the occupation must be listed either in the SOL or in the CSOL.

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<sup>52</sup> Australian Government, Department of Immigration and Border Protection, *The Consolidated Sponsored Occupation List*

### *Temporary Skilled Visa (457)*

Other than the permanent skilled migration programme, it is however essential to recognise that the vast majority of skilled applicants now enter Australia as temporary long-stay workers. This is a category with no annual quota and only minimal requirement for labour market testing that reflects the priorities of sponsoring employers.<sup>53</sup> The Temporary Skilled Visa (subclass 457) is the most comparable to the EU Blue Card as it is temporary and sponsor-based. It is of interest to Australian employers in multiple fields as it allows them to select migrants based on their personal attributes and grants relatively speedy access to work in under-supplied sectors and sites for up to 4 years (with scope for extension). Subclass 457 visa plays a vital role in assuring workforce supply in selected fields, including medicine and nursing. From the migrant's perspective, subclass 457 offers attractive benefits such as facilitated priority processing, immediate access to work, the possibility to change employer, and the possibility to switch to a permanent skilled migration permit.

The selection of most applicants was tightened in July 2013, as the skills assessment was reinforced, the English requirements were increased and the sponsor was required to demonstrate that there was actually a vacancy and had to commit to train local workers. In 2013-2014, demand for these visas decreased significantly, and visa grants fell by 22 % to 98 600. For the second year in a row, India was the top source country with 24 500 grants, followed by the United Kingdom and China with 16 700 and 6 200 grants respectively.<sup>54</sup> By June 2014 the number of temporary 457 visa professionals far exceeded the scale of points-tested permanent skilled migrant arrivals in key sectors such as IT, engineering and medicine. By this time, around 50 % of permanent skilled migrants were also selected onshore i.e. among international graduates of Australian universities (for example in accounting and nursing), or among previously temporary foreign workers.<sup>55</sup>

### *SkillSelect*

The dividing line between 'permanent' and 'temporary' migrants has become increasingly blurred over time, but temporary migration continues to dominate. In a typical year up to 130 000 '457' visa primary applicants become permanent residents – exceeding the number of primary applicants in the 128 550 permanent skilled migration quota (where stated numbers include all accompanying family members). Reflecting this trend, a new model to select skilled migrants called the Skilled Migrant Selection Model (SkillSelect) was introduced in Australia in July 2012, following an internal review of the points-based system.<sup>56</sup> The model is an electronic system whereby prospective applicants must first submit an expression of interest (EoI) for an initial review of their skills through the Department of Immigration and Citizenship before being invited to make a visa application<sup>57</sup>. SkillSelect can be used for both temporary and permanent primary applicants. Lodged applications can be screened online, by both prospective employer and state/ territory government sponsors. Applicants can be offered a permanent highly skilled job immediately, or (alternatively) a

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<sup>53</sup> Khoo, S-E., McDonald, P., Hugo, G., *Temporary Skilled Migrants in Australia: Employment Circumstances and Migration Outcomes*, Department of Immigration Multicultural and Indigenous Affairs, Canberra, 2005.

<sup>54</sup> OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2014, p 184.

<sup>55</sup> Hawthorne, L., *The Impact of Skilled Migration on Foreign Qualification Recognition Reform in Australia*, Canadian Public Policy Journal, Volume 41 Issue Supplement 1, 2015.

<sup>56</sup> Department of Immigration and Citizenship, *Introduction of a New Points Test*, DIAC, 2010.

<sup>57</sup> Australian Government, Department of Immigration and Border Protection, *Fact Sheet – Managing the Migration Programme*.

temporary sponsored position at first, while sponsored applicants are fast-tracked thereafter. The applications remain in the ‘pool’ for a defined period of time. If they are not selected within that period, they must submit a new application to ensure that all information is accurate and to prevent processing backlogs.

### ***Key statistics***

In 1996-1997, skilled migration represented 47 % of the Migration Programme. By 2011/2012, this share had risen to 68 %<sup>58</sup>. Since 2009, the share of the employer-sponsored category of the Skill stream has been rising steadily, reaching 37 % of the Skill stream in 2011/2012.<sup>59</sup> From a quantitative perspective, the Skill stream attracts a significant number of applicants, with around 125 000 skilled migrants arriving per year. In 2013/2014, the Skill stream accounted for about two-thirds of the visas issued.<sup>60</sup> For figures of migrants according to different categories of Australia’s immigration skilled stream (2011/2012), see Country Fiche: Australia in annex.

Recent statistics show that temporary migration, for work or study purposes, is increasingly becoming the first step toward permanent settlement in Australia. In 2011-2012, around 40 % of applicants for permanent visas were already residing in Australia, and half of these applicants had a temporary skilled permit.<sup>61</sup> By 2015, this had risen to around 50 %. Immigration policy in Australia distinguishes between on- and off-shore applications, and provides bridging visas between the two. For more details, see Country Fiche: Australia in annex.

During the 2014/15 program year, in the three months (quarterly publication) up to 31 December 2014, 27 660 subclass 457 primary visa applications were lodged. The acceptance rate was very high (92 %) and 25 530 visas were granted. In 2014-15, there were 130 000 primary applicants. On 30 September 2015, 103 860 subclass 457 primary visa holders resided in Australia. Of those individuals approximately half had launched their application onshore and half had done so before their arrival. In 2012-13, 40 450 subclass 457 visa holders were granted permanent residence.

A comparison between the number of Blue Cards and the number of 457 visas reveals that Australia grants almost twice as many high skilled permits in three months as the EU grants in one year. In terms of coverage, the majority of Blue Cards have been issued in Germany, but Australia also suffers from an uneven geographical distribution of migrants, whereby migrants tend to gravitate towards the top four metropolitan cities. To tackle this uneven distribution, Australia has devised specific permits for rural Australia.

## **2.5. Switzerland**

### ***Legal framework***

The Aliens Act was approved by the Swiss voters on the 24 September 2006 and entered into force on the 1 January 2008. The law regulates the access to the Swiss labour market for third-country national HSW. It mainly covers the entry and residence of persons who are

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<sup>58</sup> The most updated statistics available from national official sources date from 2011/2012 (including the national statistical institute and the Department of Immigration and Citizenship sources).

<sup>59</sup> DIAC, *2011–12 Migration Program report*, Canberra, 2012.

<sup>60</sup> OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 184.

<sup>61</sup> Parliamentary Library, *Temporary skilled migration*, 2014.



neither citizens of either the EU or the European Free Trade Association (EFTA), nor asylum seekers.<sup>62</sup>

Switzerland has a dual system of work permits for TCNs. The first concerns citizens from EU and/or EFTA countries, who are generally allowed to come to Switzerland for up to three months to look for work, a period that can be extended to six months if proof of an active job search can be provided. The second concerns third-country nationals. Citizens from these countries must have a binding work contract as well as the appropriate work visa before entering the country. A job offer alone is not enough to ensure that a permit is granted.

Application forms and specific requirements differ from canton to canton, but, in general, non-EU/EFTA citizens need a specific residence permit with authorisation to work in Switzerland. This applies whether the employment contract is with a Swiss or a foreign company and whether the work is paid or unpaid. Whether or not the authorisation to work is granted or not generally depends on existing quotas, educational level and work experience and the outcome of a labour market test.

The B-permit is a residence permit that is granted to persons who have a permanent employment relationship or one lasting for a minimum of 12 months. The permit is valid for five years and is automatically extended for another five years as long as the employment relationship lasts. However, the extension may be limited to one year if the person is unemployed for longer than 12 consecutive months. The B-permits are issued on a quota basis and tie the permit holder to the initial employer. The permits often specify that the holder lives in the canton where the permit is issued, and that he or she cannot leave the canton. Persons wishing to be self-employed can get a B-permit valid for five years if they can prove they have sufficient financial resources while being self-employed. Persons who settle in the country without gainful employment can also be granted a B-permit provided they have sufficient resources.<sup>63</sup>

After an uninterrupted stay of at least 10 years, the TCN may obtain a C-permit, i.e. a permanent residence permit. Nationals from the US and Canada only have to stay for 5 consecutive years to obtain the C-permit. With this permit, the visa holder can change employer freely and live in any canton in Switzerland. Cantons are responsible for issuing permits, subject to federal approval.

### *Quotas*

Switzerland is among the OECD countries with the largest immigrant populations – 27 % of the working-age population are foreign-born. More than 60 % of the migrants come from high-income OECD countries, more than half of whom are from the neighbouring German/French and Italian-speaking countries with which Switzerland shares the same national languages. Among the other immigrants, the majority are from the successor countries of former Yugoslavia and from Turkey.<sup>64</sup>

The issue of immigration is both high on the policy agenda and vividly discussed in the public debate. Against this backdrop, the Swiss government decided on 28 November 2014 to reduce

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<sup>62</sup> 142.201 Ordonnance relative à l'admission, au séjour et à l'exercice d'une activité lucrative (OASA) du 24 octobre 2007 (Etat le 1<sup>er</sup> janvier 2016).

<sup>63</sup> Swissinfo.ch, *Work Permits*, Article published 20<sup>th</sup> August 2013.

<sup>64</sup> OECD, *Jobs for Immigrants Vol 3: Labour Market integration in Austria, Norway and Switzerland*, OECD Publishing, Paris, 2012, p 41.

the number of work permit for inter alia non-EU/EFTA nationals, a decision that took effect on 1 January 2015. The quota for B-permits for TCN workers was set at 2 500 permits in 2015, and will be kept at the same number for 2016. This can be compared with the quotas in 2013 and 2014 that was set at 3 500 in both years. A large number of cantons and business representatives had expressed hopes that the quotas would be increased, yet the Swiss government considered that such an increase would undermine the country's goal of favouring local workers whenever possible.<sup>65</sup>

### ***Key statistics***

In 2014, 152 000 foreigners came to Switzerland for long-term stays, i.e. 2 % less than in 2013. This was the first decline since 2009. Citizens from EU/EFTA countries represented almost three-quarters of the inflow. While 64 % of the EU/EFTA nationals came for employment purposes, the main reason for immigration of non-EU/EFTA citizens was family reunification (47 % of the inflow).<sup>66</sup>

## **2.6. Russia**

One of the main challenges in Russia in terms of migration is the significant brain drain. Almost 1 million people have left Russia in the past decade, out of which 80 % were highly qualified.<sup>67</sup> In 2011, consular statistics estimated that 1.7 million Russian citizens were residing permanently abroad. At the same time, Russia is a main country of destination for citizens of the former Soviet republics. Between 1993 and 2011, more than 13 million individuals arrived in Russia to settle permanently.

### ***Legal framework***

Migration legislation in the Russian Federation emerged in the early 1990s, when the Federal Migration Service (FMS) was established. The dissolution of the USSR and subsequent large-scale migration across what was formerly a unified country led to a need to legislate and regulate many aspects of migration. Against this backdrop, Russia started to develop a migration policy in 2010, with a view to, inter alia, attracting highly qualified labour migration to Russia. A bill to that effect was signed in July 2010, and in 2010/2011, 12 500 highly qualified professionals received work permits on preferential terms.<sup>68</sup>

The law includes a fast-track for the target category, which is the main advantage granted to them. HSWs may apply for a three-year work visa, which can subsequently be extended if the applicant receives an annual salary exceeding the statutory level of RUB 1-2 million (or an equivalent of 25 000-50 000 EUR per year or 6000 EUR per month) from a Russian company. The visa also allows for family reunification. Moreover, the deadline for migrant registration is extended and HSW are granted a grace period of 90 days to choose their place of registration, which can be either a company office or a residential building.<sup>69</sup>

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<sup>65</sup> Bal Corporate Immigration, *2016 quotas on highly skilled foreign workers announced*, News Detail: Switzerland, published 11<sup>th</sup> November 2015.

<sup>66</sup> OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 252.

<sup>67</sup> Focus Migration, *Russian Federation*, Country Profile: Russian Federation, No 20, July 2010.

<sup>68</sup> Migration Policy Centre, *Migration Profile Russia*, June 2013.

<sup>69</sup> World Economic Forum, *Russia Eases Immigration Controls for Highly Skilled Workers*, Repository of Talent Mobility Good Practices.



## Key statistics

Temporary labour migration to Russia continued to grow in 2014. After 2.9 million work permits issued in 2013, more than 3.7 million permits were issued in 2014. About 1.3 million foreigners obtained regular work permits, mostly based on quotas. An additional 159 000 work permits were issued outside of the quota system in 2014, which again represented an increase compared to 2013. The number of special permits for HSWs rose strongly from 26 000 to 34 000. Most HSWs came from countries such as China, Vietnam, Turkey and the Philippines.<sup>70</sup>

### *Permits issued to Highly Qualified Specialists*<sup>71</sup>

2010	1 000
2011	10 000
2012	12 000
2013	26 000
2014	34 000

## 2.7. New Zealand

### *Temporary labour migration*

Throughout the history of New Zealand (NZ), immigration has been a main driver of its national and economic development, and the country continues to receive larger immigration flows than most other OECD countries. Temporary labour migration, the main entry route for labour migrants, has expanded significantly since the late 1990s and has reached a level that is, compared to the size of the population, not matched by any other country within the OECD. New Zealand offers a range of work visas that are all temporary at first, although some can lead to permanent residence. Currently, the single largest component of temporary flows is comprised of Working Holiday Schemes.

Traditionally, the main category of admission for temporary labour migration has been the Essential Skills visa (ES). The firmly established, essential proposition of this visa, often referred to as the 'New Zealanders first' policy of this visa, is to attract only those migrants that fill jobs for which no New Zealander or permanent resident is available. To ensure that priority is given to the local workforce, a labour market test is applied, with the exception of those occupations on the shortage list.<sup>72</sup> The application for a work visa can be lodged either on- or offline. In practice, the process tends to be largely employer-driven. Not only do applicants need to have a job offer before applying, but, where a labour market test must be passed, it is also up to the employer to make the case with Immigration New Zealand. In principle the duration of the visa is equal to the length of the work contract, but it also depends on the skill level of the job. The ES visa can be granted for a maximum period of 1 year for low-skilled jobs (corresponding to ANZCO levels 4 and 5) to 5 years for high-skilled jobs (ANZCO level 1), in which case the annual salary has to be at least NZD 55 000. The visas can be renewed indefinitely, for as long as the employer can demonstrate that no domestic workforce is available. In reality, however, migrants tend to stay on the ES visa only for short periods. Half of those that receive an ES visa for the first time keep it for less than a

<sup>70</sup> OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 242.

<sup>71</sup> OECD, *International Migration Outlook 2011;2012;2013;2014;215*, OECD Publishing, Paris.

<sup>72</sup> OECD, *Recruiting Immigrant Workers: New Zealand*, OECD Publishing, Paris, 2014, p 53.

year. The ES visas also grants labour market access to accompanying family members of primary applicants.<sup>73</sup> If the TCN has an ES visa based on a skilled job, he or she may qualify for residence visa under the Skilled Migrant Category (SMC) (see below).

### ***Permanent labour migration policy***

As regards permanent migration to NZ, the Immigration Amendment Act from 1991 shifted the policy focus from addressing short-term skill shortages to a medium-term human capital model of skilled migration. The previous Occupational stream was replaced by the so-called General Category which selected migrants using a points system instead of the previously used Occupations Priority List. The objective of the government was to make the selection of skilled migrants more transparent and consistent.

The 1991 law also introduced an immigration target in line with similar targets introduced in Canada and Australia, where the target is a goal rather than a limit, meaning that it is possible for overall acceptances to exceed the limit. This limit has since then been raised and the margin of tolerance has been increased. The policy changes implemented in 1991 and favourable economic conditions in the early 90s resulted in a sharp increase in applicants through the General Category, from less than 10 000 in 1992/93 to nearly 35 000 in 1994/95. The number of applications accepted from all immigration streams exceeded NZ's annual immigration target of 25 000 migrants in each of the 4 years following the introduction of the points system in 1991. In 1994 and 1995 actual numbers overshoot the target by more than 100 percentage points.<sup>74</sup> Simultaneously; there was some evidence that the lack of a consistent English language assessment and a general difficulty in getting migrant qualifications recognized by local industry bodies were causing settlement difficulties for skilled migrants and leading to a discount of their qualifications on the NZ labour market. These concerns and the overflow of the General Category lead to a review of the residence schemes in 1994. Following the 1994 review, the General Category was replaced with the General Skills Category (GSC) in 1995. The reform reinforced the English language requirement and extended it to secondary as well as principal applicants.

In 2001, an annual numeric target for permanent residence approvals was set at 45 000, with a goal of accepting about 60 % through the Skilled/Business Stream, 30 % through the Family stream, and 10 % through the international/humanitarian stream.<sup>75</sup> The next major shift in immigration policy took place in 2003. Due to shortages in many industries, it was considered that the current human capital model of the General Skills Category had to be modified. As a result, the government replaced the General Skills Category with the Skilled Migrant Category (SMC) which, with some modifications, is still used today.

### ***Skilled Migrant Category (SMC)***

The Skilled Migrant Category is a permanent residence permit for those that hold a job offer, are coming to NZ for a specific purpose or event, want to gain experience or work after

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<sup>73</sup> New Zealand Immigration, *Work Visa Guide*, (INZ) 1016, December 2015, p 6.

<sup>74</sup> The increases in the number of applications, coupled with an overall improvement in the quality of applicants, resulted in such a large number of applicants exceeding the automatic pass-mark that there were not any spots left over for pool applicants (those with enough points to be considered, but not enough to be automatically accepted). Since Immigration New Zealand was obliged by law to accept these migrants, it lost, in effect, the ability to limit the number of accepted General Category migrants.

<sup>75</sup> OECD, *Recruiting Immigrant Workers: New Zealand*, OECD Publishing, Paris, 2014, p 38.

studying in NZ or want to join a partner and work.<sup>76</sup> Since 2004, the SMC operates via a two-step application process. The TCN worker first has to submit an Expression of Interest (EoI) for a permanent residence permit to the SMC pool. This can be done either on paper or online, although the vast majority chooses the latter option which is also cheaper. No supporting documents are required at this stage. Thereafter, the applicants are ranked using a points-based system.<sup>77</sup> They are awarded points based on their skills, work experience, qualifications, age, and whether they have a job offer. Applicants with over 100 points are thereafter placed in a selection pool. Applicants with 140 points or more are automatically selected. Applicants fewer than 140 points are pre-selected or not according to current quotas and policies, and a certain number of applicants from the pool are then invited to apply for residence through the SMC. Applicants who are selected and have been assessed as having sufficient points are then assessed according to their ability to integrate into society and the labour market. In these situations, holding an offer for a skilled job serves a proxy for settlement and contribution. Migrants without skilled jobs are interviewed to determine their suitability. As a result of the interview, applicants that are selected and apply but who do not have a skilled job offer can be offered job search visas to help them find skilled work in NZ and this way be granted a residence permit.<sup>78</sup>

Following the shift in focus, which partly implied a return to demand-driven policies, the points granted to applicants who already hold a job offer or work contracts increased from 17 % of the pass mark to 54 % of the pass mark. Bonus points are given to migrants who have work experience, needed qualifications or a job offer in a 'future growth area' or an 'area of shortage'. Applicants eligible to claim the maximum number of these bonus points can earn up to 65 points, or 46 % of the auto-pass mark. The points granted for other characteristics were reduced. The importance of age, for instance, was reduced, with the maximum points available falling from 38 % to 21 % of the pass mark. Points for settlement funds and family sponsorship were initially removed entirely, but family sponsorship was reinstated in 2005/06.<sup>79</sup> Further changes to the point system were implemented in 2007. The bonus points awarded for educational qualifications obtained in Australia were increased and the points for qualifications and/or job offers held by the partner of the principle applicants were doubled.

New Zealand's immigration policy has remained relatively unchanged in the recession following the 2007 global financial crisis, which was still less severe than in many other OECD countries. A new immigration act was passed in 2009, which newly differentiated the number of points granted based on the level of the qualification obtained, reducing the bonus points for vocational training received in New Zealand.<sup>80</sup>

### ***Key statistics***

In 2013/2014, 20 300 persons (or 46 % of all residence approvals) were admitted through the SMC, a 12 % increase compared to 2012/2013. This first increase since 2009/2010 could be interpreted as a trickle-down effect of the increase in Essential Skills (temporary) workers. In fact, most principal applicants in 2013/2014 had a job in New Zealand, and 92 % were awarded points for a job or a job offer. India was, with 20 % of the total, the most important country of origin among those admitted to the SMC, followed by the United Kingdom (13 %). Reflecting a long-term trend, the increase from India (up from 17 % in the previous year) is

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<sup>76</sup>Immigration New Zealand, *Working Temporarily in New Zealand*.

<sup>77</sup> OECD, *Recruiting Immigrant Workers: New Zealand*, OECD Publishing, Paris, 2014, p 103.

<sup>78</sup> OECD, *Recruiting Immigrant Workers: New Zealand*, OECD Publishing, Paris, 2014, p 103.

<sup>79</sup> *Ibid*, p 39.

<sup>80</sup> *Ibid*, p 40.

mainly due to the transition of former Indian international students to temporary work and then to permanent residence. In 2013/2014, 26 500 persons were granted work permits in New Zealand under the Essential Skills visa, an increase of 18 % compared to 2012/2013 and the second year increase since the start of the global economic slowdown.<sup>81</sup>

### 3. ANALYSIS AND CONCLUSION

The more Member States have positioned themselves to compete for talent worldwide, the more their labour migration policy frameworks have been adapted to attract skilled migrants and ensure that they stay. This is evident as regards international students, permanent residence, family reunification and naturalisation. Foreign students may initially sustain university enrolment figures, but they are also prospective future workers with the potential to rejuvenate the work force. Thus, most EU countries have looked at various ways to attract them. Moreover, maximizing the retention rate of skilled migrants in the host country requires attractive policy frameworks, allowing a smooth transition towards permanent residency, coupled with good conditions for family reunification.<sup>82</sup>

Comparing the schemes examined in the previous sections, one can identify a number of similarities and differences compared to the EU Blue Card. The following section will compare some key features of the schemes that differ across the countries.

#### *Salary requirements*

Salary thresholds are applied differently across the countries analysed. They can exempt certain applicants from labour market tests (US) or other prerequisites (AUS), or extensions (CAN).<sup>83</sup> The salary thresholds vary widely across the EU Member States, which is why it is difficult to compare the salary threshold of the EU Blue Card directly with international competitors. While the EU Blue Card sets a relatively high threshold, other HSW schemes, for example in Canada<sup>84</sup>, do not apply an explicit salary threshold, but rely on alternative minimum salary requirements instead. In Russia, the HSW has to earn an annual salary of at least RUB 1-2 million per year (or around EUR 6000 per month). The salary threshold in Russia can be compared to the annual salary threshold in LU (71 946 € in 2015). This is however significantly higher than the EU Blue Card salary threshold in RO, which was € 2152,36 in 2015.

#### *Expression of interest system*

CAN, NZ and AUS all use Expression of Interest systems, a tool that is credited with a potential to reduce backlogs and involve employers in the recruitment process. These online tools are usually coupled with Points Based Systems that assess and rank the candidates according to a number of parameters, linked to the needs of the labour market and the migrant worker's potential to integrate. Creating such a system with a pool of talent at EU level could help facilitating access to labour market information; however it would require extensive cooperation and coordination with Member States and employers. The implementation of

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<sup>81</sup> OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 232.

<sup>82</sup> Chaloff, J., *The framework for labour migration in European Union countries and the policy impact of the EU Blue Card Directive*, DELSA/ELSA/MI(2015)3, OECD Publishing, Paris, 2016, p 15.

<sup>83</sup> Chaloff, J., *Understanding salary thresholds as they are applied in the EU Blue Card scheme(s)*, Presentation 7/12/2015, Expert Group Economic Migration Second Meeting, Brussels, 2015.

<sup>84</sup> No explicit salary thresholds apply under the Federal Skilled Worker Program and the Provincial Nominee Program.

such a system at the EU-level could therefore be an option to be explored for the medium or long-term.

### ***Employer sponsorship***

Employer sponsorship is another way of involving employers in the selection of foreign workers, while also boosting compliance with the immigration system, by holding the employer liable for any breaches. Australia for example, puts a greater responsibility on the employer through sponsorship. There are both temporary and permanent employer sponsorship systems<sup>85</sup>.

### ***In-country status changes***

Most EU countries do not allow in-country status changes, and require the applicant to be recruited directly from abroad.<sup>86</sup> This is different from many other schemes studied in this annex, such as CAN, US and NZ. In these countries, there are possibilities to switch between visas through a combined track of permanent and temporary residence permits. This may open up greater opportunities for transitions from e.g. a student visa to an employment visa, as is the case in Australia. In NZ, most HSW have been in the country for some time before they are admitted to the Skilled Migrants Category, and are generally in an employment commensurate with their formal qualification level. Another tool is to offer bridging visas, which is also something that Australia is doing.

### ***Caps and limits***

While all limits to the schemes are capped e.g. in CAN, US, UK, NZ and Switzerland, these countries generally attract more prospective candidates than there are places available. This is not the case for the EU Blue Card. Furthermore, a number of these schemes operate through points-based systems (e.g. CAN and UK), which does not exist on EU-level today. Similar methods would therefore not be suitable within the current European context.

### ***Changes in employment***

International competitors do to a varying extent restrict migrant workers freedom to change employer, occupation and location. In the US, for instance, an H-1B worker who wishes to change employer needs to provide a new petition filed by the prospective employer before the expiration of the visa. In AUS on the other hand, the subclass 457 allows a foreign national to change employer without having to obtain a new visa. Under the Provincial Nominee Program in Canada, Provincial Nominees are expected to live in the province that nominated them, but all permanent residents gain unlimited mobility rights upon entry.

### ***Permanent residency***

The H-1B visa in the US does not grant immediate permanent residence, but the employer may sponsor the applicant for a Green Card. In AUS, it is possible, under certain conditions, to switch from the subclass 457 to a permanent residence permit. In NZ, the transition of

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<sup>85</sup> Temporary Skilled Visa (subclass 457), Employer Nomination Scheme (subclass 186) and Regional Sponsored Migration Scheme (subclass 187).

<sup>86</sup> Chaloff, J., *The framework for labour migration in European Union countries and the policy impact of the EU Blue Card Directive*, DELSA/ELSA/MI(2015)3, OECD Publishing, Paris, 2016, p 4.

foreign workers from temporary visas to permanent residence occurs frequently. It is facilitated through the allocation of additional points under the Skilled Migrant Category.

### ***Family reunification***

While most international competitors grant the right to family reunification, they do not always allow family members to work. The US allows H-1B workers to be accompanied or joined by a spouse and unmarried children under the age of 21. Yet, the H-4 visa they receive, grants no access to the labour market. Consequently, if the family members of an H-1B visa holder wish to work, they are ought to apply for an independent work visa. In AUS, an Australian Spouse Visa allows married and registered partners of Australian permanent residents to enter and/or remain in the country, and accompanying family members have full employment rights. An Australian Spouse visa is initially granted as a temporary visa. After two years, the relationship is reassessed and if deemed genuine a permanent visa will be granted. Dependants of Subclass 457 visa applicants are also eligible to accompany the primary permit holder to Australia. Canadian permanent residents may sponsor Family Class immigrants (spouses or partners, dependent children, parents, grandparents and other close relatives) to become permanent residents. Once they have become permanent residents, they have the right to study and work, but until that moment eligible family members must be sponsored.

## **4. POTENTIAL IMPACTS ON COUNTRIES OF ORIGIN**

'Brain drain' is, like migration itself, part and parcel of human development and history. Talented and skilled people have always been attracted by the prospect of better career opportunities and a higher quality of life. Nevertheless, the European Commission recognises that 'brain drain' can be damaging to developing countries because skilled workers, scientists, engineers and doctors play essential roles in a state's economic growth and development.

The EU's immigration policy aims to be a well-monitored and well-managed system which brings about an added-value and leads to the proverbial 'win-win-win' results, i.e. benefits for receiving countries through meeting labour market shortages, for sending countries through guaranteeing remittances for development, and for migrants themselves through offering employment and control over the use of their wages. The overall objective is to turn 'brain drain' into 'brain gain', both for receiving countries and for countries of origin.

At the same time, it must be noted that brain drain is not caused by the EU migration policy. It is clear, however, that EU migration policies can potentially have an impact on the migration decisions of individuals. The EU Blue Card may reduce human capital, knowledge capital, and hence growth and development prospects, if not accompanied by appropriate policy measures.<sup>87</sup> EU migration policy measures may also offer an opportunity to tackle some of the challenges involved.

### **4.1. The safeguard measures of directive 2009/50/EC**

Research suggests that policies addressing the supply side of the labour market for HSW (such as direct education or skills subsidies) are the least efficient. This is especially the case

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<sup>87</sup> Kancs, A., Ciaian, P., *The EU Blue Card – Managing Migration Challenges and Opportunities for Developing Countries*, Report EUR 27080 EN, Joint Research Centre, European Commission, Brussels, 2015, p 2.

for Least Developed Countries (LDCs) that are small relative to the EU, since these policies can enhance migration while not having a direct impact on the skilled labour stock in the LDC. Only if the LDC is large enough compared to the EU, the supply side policies may increase the stock of skilled labour in the LDC, as skilled migration decreases the international wage rate for skilled labour.<sup>88</sup>

By contrast, policies implemented on the demand side of the labour market are more efficient.<sup>89</sup> In terms of feasibility, these policies targeting the labour market for HSW also appear to be less costly.<sup>90</sup> Indeed, some of the measures foreseen in the EU Blue Card Directive aim at addressing the issue of 'brain-drain' from the demand side by regulating ethical recruitment and encouraging circular migration.

### ***Ethical Recruitment***

Article 3(3) explicitly allows the EU and/or its Member States and one or more third countries to enter into agreements to protect the human resources of the developing countries which are signatories to these agreements. To this end, these agreements may list the professions which should not fall under the Blue Card Directive, in order to ensure ethical recruitment in sectors suffering from a lack of personnel. However it is true that currently, no Member State has entered into such an agreement with a third country.

Furthermore, the Blue Card Directive for highly qualified migrants foresees the possibility for Member States to include a mechanism under which they may reject an application for an EU Blue Card in order to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin, for example the healthcare, education and engineering sectors (Article 8(4)). BE, CY, DE<sup>91</sup>, EL, LU and MT have transposed this Article, but no rejections on these grounds have been reported.

### ***Circular Migration***

The Blue Card directive facilitates circular migration, the mobility of highly qualified third-country workers between the EU and their countries of origin. It gives migrants the possibility of longer 'time-outs', enabling them to return to their country of origin without being penalised with a loss of their residence permit, or expiration of the years of residence that count towards the right to long-term resident status. Firstly, derogations from Long-Term Residents Directive 2003/109/EC extend the maximum period of absence from the territory of the Community that will not lead to an interruption of the continuous residence necessary to be eligible for EC long-term resident status. Secondly, longer periods of absence than those provided for in directive 2003/109/EC are allowed after highly qualified third-country workers have acquired EC long-term resident status.

Circular migration is primarily considered as a spontaneous movement to achieve goals set within the migrant household. While circular migration may not provide a definite pathway to a more prosperous future, it is likely to support subsistence activities in areas of origin. The critical role played by circular migration is that it allows access to a more diverse resource

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<sup>88</sup> Ibid, p 38.

<sup>89</sup> Ibid, p 2.

<sup>90</sup> Ibid, p 39.

<sup>91</sup> DE foresees the option to use this derogation through a regulation (currently not).

base that improves well-being, thereby allows people to survive or even improve their circumstances.<sup>92</sup>

### ***Reporting Requirement***

The Blue Card directive provides specific reporting provisions to monitor the implementation of this Directive, with a view to identifying and possibly counteracting its possible impacts in terms of 'brain drain' in developing countries and in order to avoid 'brain waste'. The Member States have to transmit the relevant data annually to the Commission.

Finally, in addition to the above, some Member States address brain drain and brain circulation through national legislation, bilateral agreements and/or cooperation with countries of origin.<sup>93</sup>

#### **4.2. The impact of directive 2009/50/EC on countries of origin**

Policies specifically focused on circular migration are in their infancy and conclusions cannot be drawn concerning their impact or effects on source countries, destination countries and the migrants themselves.<sup>94</sup> Even though it is hard to estimate the real benefits or damages of 'brain drain' it can be assumed that small LDCs<sup>95</sup> close to powerful economic regions are more likely to suffer from 'brain drain' than larger countries. This type of emigration may put the state's economy at risk, and more directly, may affect the education system as well as the healthcare and engineering sector.

In 2013, 188 out of 12 963 Blue Cards (1,45 %) were granted to citizens of LDCs. The top three LDCs among the countries of origin in 2013 were Yemen (51), Bangladesh (39), and Nepal (30). In 2014, 203 out of 13 722 Blue Cards (1,48 %) were granted to citizens of LDCs. The top three least developed countries of origin in 2014 were Bangladesh (47), Yemen (39) and Nepal (34).

Given the low number of EU Blue Cards currently granted to highly qualified migrants from LDCs, the potential negative impacts of brain drain are likely limited for these countries. Middle-income developing countries (DCs) may, however, be exposed to a somewhat higher risk. In 2013, 9 978 Blue Cards (76,97 %) were granted to citizens of DCs. In 2014, this number increased to 10 455 (76,19 %). Nevertheless, in absolute terms the number of Blue Cards granted to citizens of DCs remains relatively low.

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<sup>92</sup> Skeldon, R., *Going round in circles: Circular migration, poverty alleviation and marginality*, IOM, 2012, p 53.

<sup>93</sup> European Migration Network (EMN), *Attracting Highly Qualified and Qualified Third-Country Nationals*, Synthesis Report, Brussels, 2013, p. 23.

<sup>94</sup> Joint Action Health Workforce Planning and Forecasting, *WP7 Report on Circular Migration of the Health Workforce*, Report-Version -02, Catholic University of Leuven, Belgium, Medical University of Varna, Bulgaria, 2015, p 31.

<sup>95</sup> LDC: least developed country as established by Committee for Development Policy (CDP) of the UN Economic and Social Council (ECOSOC).



## EU Blue Cards by citizenship 2013<sup>96</sup>

				LDCs <sup>97</sup> :	DCs <sup>98</sup> :	OECD
<b>Total<sup>99</sup></b>	<b>12.963</b>			<b>1,45%</b>	<b>76,97%</b>	<b>18,07%</b>
<b>Asia</b>	<b>6.970</b>	<b>Southern Asia</b>	<b>3.314</b>	<b>188</b>	<b>9.978</b>	<b>2.342</b>
		India	2.644		2.644	
		Iran	394		394	
		Pakistan	189		189	
		Bangladesh	39	39	39	
		Nepal	30	30	30	
		Sri Lanka	15		15	
		Afghanistan	3	3	3	
		<b>Eastern Asia</b>	<b>1.511</b>			
		China (including Hong Kong)	1.011		1.011	
		Japan	246			246
		South Korea	180			180
		Taiwan	63			
		Mongolia	10		10	
		North Korea	1		1	
		<b>Western Asia</b>	<b>1.703</b>			
		Syria	547		547	
		Turkey	409		409	409
		Jordan	290		290	
		Israel	96			96
		Lebanon	95		95	
		Georgia	71		71	
		Azerbaijan	62		62	
		Yemen	51	51	51	
		Armenia	47		47	
		Iraq	30		30	
		Saudi Arabia	3			
		United Arab Emirates	1			
		Bahrain	1			
		<b>South Eastern Asia</b>	<b>350</b>			
		Indonesia	120		120	

<sup>96</sup> EUROSTAT: *EU Blue Cards by type of decision, occupation and citizenship* [migr\_resbc1]

<sup>97</sup> Least Developed Country (LDC) as established by Committee for Development Policy (CDP) of the UN Economic and Social Council (ECOSOC).

<sup>98</sup> Developing countries are defined as countries with a GNI of US\$ 11,905 and less (World Bank, 2013). There is no established convention for the designation of "developed" and "developing" countries or areas in the United Nations system. In common practice, Japan in Asia, Canada and the United States in northern America, Australia and New Zealand in Oceania, and Europe are considered "developed" regions or areas. In international trade statistics, the Southern African Customs Union is also treated as a developed region and Israel as a developed country; countries emerging from the former Yugoslavia are treated as developing countries; and countries of eastern Europe and of the Commonwealth of Independent States (code 172) in Europe are not included under either developed or developing regions.

<sup>99</sup> Regional groupings according to the UN Statistics Division - Standard Country and Area Code Classification

		Malaysia	68		68	
		Vietnam	67		67	
		Singapore	38			
		Philippines	32		32	
		Thailand	25		25	
		<b>Central Asia</b>	<b>92</b>			
		Kazakhstan	39		39	
		Uzbekistan	27		27	
		Kyrgyzstan	18		18	
		Tajikistan	6		6	
		Turkmenistan	2		2	
<b>Americas</b>	<b>1.955</b>	<b>Northern America</b>	<b>982</b>			
		United States	776			776
		Canada	206			206
		<b>South America</b>	<b>655</b>			
		Brazil	265		265	
		Colombia	140		140	
		Venezuela	62			
		Argentina	59		59	
		Peru	47		47	
		Chile	36			36
		Ecuador	22		22	
		Bolivia	14		14	
		Paraguay	5		5	
		Uruguay	4			
		Suriname	1		1	
		<b>Central America</b>	<b>298</b>			
		Mexico	249		249	249
		Costa Rica	18		18	
		Nicaragua	3		3	
		Guatemala	11		11	
		Honduras	9		9	
		Panama	2		2	
		El Salvador	5		5	
		Belize	1		1	
		<b>Caribbean</b>	<b>20</b>			
		Cuba	7		7	
		Trinidad and Tobago	7		7	
		Dominican Republic	2		2	
		Jamaica	2		2	
		Bahamas	1		1	
		Barbados	1		1	
<b>Europe</b>	<b>2.561</b>	<b>Eastern Europe</b>	<b>1.689</b>			
		Russia	994			
		Ukraine	536		536	
		Belarus	143		143	
		Moldova	16		16	
		<b>Southern Europe</b>	<b>870</b>			
		Serbia	412		412	

		Bosnia and Herzegovina	138		138	
		Former Yugoslav Republic of Macedonia, the	116		116	
		Kosovo (under United Nations Security Council Resolution 1244/99)	88		88	
		Albania	89		89	
		Montenegro	13		13	
		Croatia	14			
		<b>Western Europe</b>	<b>2</b>			
		Monaco	1			
		Andorra	1			
<b>Africa</b>	<b>1.214</b>	<b>Northern Africa</b>	<b>859</b>			
		Egypt	450		450	
		Libya	148		148	
		Tunisia	130		130	
		Morocco	88		88	
		Algeria	28		28	
		Sudan	15	15	15	
		<b>Middle Africa</b>	<b>150</b>			
		Cameroon	136		136	
		Gabon	6		6	
		Rwanda	3	3	3	
		Chad	2	2	2	
		Congo	1		1	
		Democratic Republic of the Congo	1	1	1	
		Equatorial Guinea	1	1	1	
		<b>Southern Africa</b>	<b>75</b>			
		South Africa	74		74	
		Swaziland	1		1	
		<b>Western Africa</b>	<b>67</b>			
		Nigeria	36		36	
		Benin	6	6	6	
		Côte d'Ivoire	6		6	
		Ghana	5		5	
		Senegal	4	4	4	
		Mauritania	3	3	3	
		Sierra Leone	2	2	2	
		Togo	2	2	2	
		Guinea	1	1	1	
		Mali	1	1	1	
		Burkina Faso	1	1	1	
		<b>Eastern Africa</b>	<b>63</b>			
		Mauritius	31		31	
		Ethiopia	15	15	15	

		Kenya	8		8	
		Madagascar	4	4	4	
		Tanzania	2	2	2	
		Eritrea	1	1	1	
		Malawi	1	1	1	
		Seychelles	1		1	
<b>Oceania</b>	<b>144</b>		<b>144</b>			
		Australia	106			106
		New Zealand	38			38
<b>Rest</b>	<b>119</b>		<b>119</b>			
		Unknown	119			
		Stateless	-			

### EU Blue Cards by citizenship 2014 (Source: Eurostat<sup>100</sup>)

				<b>LDCs:</b>	<b>DCs:</b>	<b>OECD</b>
<b>Total</b>	<b>13.722</b>			<b>1,48%</b>	<b>76,19%</b>	<b>18,19%</b>
<b>Asia</b>	<b>6.946</b>	<b>Southern Asia</b>	<b>3.332</b>	<b>203</b>	<b>10.455</b>	<b>2.496</b>
		India	2.585		2.585	
		Iran	426		426	
		Pakistan	219		219	
		Bangladesh	47	47	47	
		Nepal	34	34	34	
		Sri Lanka	13		13	
		Afghanistan	8	8	8	
		<b>Eastern Asia</b>	<b>1.420</b>			
		China (including Hong Kong)	998		998	
		Japan	199			199
		South Korea	150			150
		Taiwan	66			
		Mongolia	5		5	
		North Korea	2		2	
		<b>Western Asia</b>	<b>1.739</b>			
		Syria	554		554	
		Turkey	442		442	442
		Jordan	176		176	
		Israel	121			121
		Azerbaijan	107		107	
		Lebanon	105		105	
		Armenia	82		82	
		Georgia	63		63	
		Yemen	39	39	39	
		Iraq	35		35	
		Saudi Arabia	10			
		Oman	2			
		Kuwait	1			
		United Arab	1			

<sup>100</sup> EUROSTAT: EU Blue Cards by type of decision, occupation and citizenship [migr\_resbc1].

		Emirates			
		Bahrain	1		
		<b>South Eastern Asia</b>	<b>358</b>		
		Indonesia	118	118	
		Vietnam	79	79	
		Malaysia	59	59	
		Philippines	39	39	
		Singapore	35		
		Thailand	28	28	
		<b>Central Asia</b>	<b>97</b>		
		Kazakhstan	41	41	
		Uzbekistan	36	36	
		Kyrgyzstan	9	9	
		Turkmenistan	6	6	
		Tajikistan	5	5	
<b>Americas</b>	<b>2.103</b>	<b>Northern America</b>	<b>1.060</b>		
		United States	837		837
		Canada	223		223
		<b>South America</b>	<b>705</b>		
		Brazil	289	289	
		Colombia	144	144	
		Venezuela	74		
		Argentina	65	65	
		Peru	41	41	
		Chile	49		49
		Ecuador	18	18	
		Bolivia	18	18	
		Paraguay	6	6	
		Uruguay	1		
		<b>Central America</b>	<b>306</b>		
		Mexico	269	269	269
		Costa Rica	9	9	
		Guatemala	9	9	
		Nicaragua	2	2	
		Honduras	5	5	
		Panama	5	5	
		El Salvador	7	7	
		<b>Caribbean</b>	<b>32</b>		
		Cuba	14	14	
		Trinidad and Tobago	7		
		Dominican Republic	9	9	
		Jamaica	1	1	
		Bahamas	1		
<b>Europe</b>	<b>3.024</b>	<b>Eastern Europe</b>	<b>2.117</b>		
		Russia	1.175		
		Ukraine	761	761	
		Belarus	163	163	
		Moldova	18	18	

		<b>Southern Europe</b>	<b>905</b>			
		Serbia	402		402	
		Bosnia and Herzegovina	149		149	
		Former Yugoslav Republic of Macedonia, the	169		169	
		Kosovo (under United Nations Security Council Resolution 1244/99)	73		73	
		Albania	103		103	
		Montenegro	9		9	
		<b>Western Europe</b>	<b>2</b>			
		Andorra	2			
<b>Africa</b>	<b>1.336</b>	<b>Northern Africa</b>	<b>1.000</b>			
		Egypt	464		464	
		Libya	156		156	
		Tunisia	260		260	
		Morocco	84		84	
		Algeria	23		23	
		Sudan	13	13	13	
		<b>Middle Africa</b>	<b>115</b>			
		Cameroon	107		107	
		Gabon	4		4	
		Angola	1	1	1	
		Central African Republic	1	1	1	
		São Tomé and Príncipe	1		1	
		Democratic Republic of the Congo	1	1	1	
		<b>Southern Africa</b>	<b>59</b>			
		South Africa	54		54	
		Botswana	3		3	
		Swaziland	2		2	
		<b>Western Africa</b>	<b>84</b>			
		Nigeria	38		38	
		Benin	4	4	4	
		Côte d'Ivoire	2		2	
		Cape Verde	1		1	
		Ghana	13		13	
		Liberia	1	1	1	
		Niger	1	1	1	
		Senegal	9	9	9	
		Mauritania	6	6	6	
		Sierra Leone	2	2	2	
		Togo	3	3	3	
		Guinea	1	1	1	

		Burkina Faso	3	3	3	
		<b>Eastern Africa</b>	<b>78</b>			
		Mauritius	20		20	
		Ethiopia	17	17	17	
		Rwanda	6	6	6	
		Zambia	1		1	
		Zimbabwe	9		9	
		Kenya	15		15	
		Uganda	3		3	
		Somalia	1		1	
		Madagascar	2	2	2	
		Tanzania	4	4	4	
<b>Oceania</b>	<b>207</b>		<b>207</b>			
		Tonga	1		1	
		Australia	162			162
		New Zealand	44			44
<b>Rest</b>	<b>106</b>		<b>106</b>			
		Unknown	82			
		Stateless	24			

### 4.3. The specific sensitivity of brain drain of healthcare workers

The risk of 'brain-drain' is particularly pronounced in the health care sector. According to the WHO, the global number of healthcare workers falls short of global demand. Both developed and developing countries are struggling to cope with the huge challenges posed by the imbalance between increasing demand and faltering supply.<sup>101</sup>

As regards doctors and nurses, most OECD countries have stepped up their education and training efforts since 2000/01 in response to expected shortages in the context of population ageing, (increasing the demand) and the parallel ageing of the medical and nursing workforce (reducing the supply). These efforts have partly slowed down the increase in international recruitment. It appears that within the EU, mobility actually exerted a balancing effect on labour markets by reducing the risks of under-employment within this group in countries sorely hit by the economic crisis.<sup>102</sup>

#### *The WHO Global Code of Practice on International Recruitment of Health Personnel*

Where countries encourage circular migration of health workers, they should take into account the WHO Global Code of Practice (The Code) as a starting point for developing circular migration initiatives. The Code is an example of an initiative to reduce brain drain in the health sector. It is a multilateral framework for tackling shortages in the global health workforce and addresses challenges associated with the international mobility of health workers. The Code does not aim at stopping migration, but rather to guide countries to address some of the aspects of health workforce migration that may have a detrimental impact upon countries, and source countries in particular. It establishes and promotes voluntary principles and practices for ethical international recruitment of health personnel. Key principles governing the Code include the right of all people to the highest attainable standard

<sup>101</sup> Migration and Health Workers – WHO Code of practice and the global economic crisis, p 1.

<sup>102</sup> OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015, p 108.

of health care and the right for any individual, including health personnel, to leave any country and to migrate to any other country that wishes to admit and employ them.<sup>103</sup> Another key principle of the WHO's Code of Practice is to train sufficiently large numbers of health workers in order to curb dependence on immigration. Hence, receiving countries' chief means of expanding the supply of doctors and nurses should be to boost their education and training capacities. Policies by sending countries to improve wages and working conditions can also serve as incentives to come home or not to migrate.<sup>104</sup>

The Code has been adopted by all 192 WHO Member States and already implemented by 24 EU Member States. Several EU policies in the fields of education, development aid and migration policy support the implementation of the WHO Global Code and reinforce Member States' commitment to the Code to help reduce the negative impact of migration flows on fragile healthcare systems. The EU promotes Member States' endeavours to facilitate circular migration of health personnel, so that skills and knowledge can be acquired to the benefit of both source and destination countries.

Overall, 37 countries have taken a range of steps towards implementing the Code. Already, 33 have reported taking actions to communicate and share information on the recruitment of health workers, related migration issues and the Code among relevant ministries, departments and agencies. In some cases, the Code has been translated into the national language (e.g. in Finland, Norway and Thailand). Some changes to relevant laws or policies are being considered. However, only 10 countries say they maintain records of all recruiters authorized by competent authorities to operate within their jurisdiction, and only nine say that good practices are encouraged and promoted among recruitment agencies.<sup>105</sup>

Countries have adopted multiple approaches to raise awareness of the Code and promote dialogue concerning it. For example, the Canadian government is working on disseminating awareness materials for foreign workers entering the country at embassies and high commissions abroad. Norway has reported a number of strategic objectives aimed at addressing its health workforce challenges. The Philippines have adopted a participatory multi-stakeholder assessment process.

As a voluntarily adopted instrument, the Code is still in its early years. Yet, its implementation has stimulated small but encouraging moves from principles to actions.<sup>106</sup> The European Commission has followed these developments closely, has lent its support to the Code and continues to carefully follow its implementation.

## **5. COUNTRY FICHES OF SELECTED COMPETITORS**

This chapter presents in detail the national schemes of four selected international competitors having relevant systems in place to attract highly qualified workers, namely: the United States, Canada, Australia and China. The fiches are prepared by an external contractor (ICF International) as a part of a study to support the Impact Assessment. The contractor remains responsible for the data included in the fiches and the accuracy thereof.

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<sup>103</sup> Migration and Health Workers – WHO Code of practice and the global economic crisis, p 10.

<sup>104</sup> OECD, *International Migration Outlook 2015*, OECD Publishing, Paris, 2015.

<sup>105</sup> Migration and Health Workers – WHO Code of practice and the global economic crisis, p 11.

<sup>106</sup> *Ibid*, p 14.



# National schemes for attracting highly qualified workers

Country Fiche: United States

### Key Points to note:

- The labour market immigration policy in the United States (US) is demand-driven and employer-led.
- Highly qualified third country nationals (TCNs) can enter the US either through temporary admission for employment purposes (temporary workers visas H-1B and O-1) or through lawful permanent residence status (employment-based 'Green Cards').
- The H-1B visa is comparable to the EU Blue Card and is thus discussed in detail.
- To be eligible for an H-1B visa, a TCN must hold a higher education degree (or equivalent) and be sponsored by an US employer.
- No labour market test is applied for the H-1B visa.
- The number of H-1B visas issued is set to a maximum of 65,000 visas annually.
- In the 1990s (economic boom years), the US Congress periodically, and only for a limited period of time, increased the cap, which went as high as 195,000 H-1B visas issued annually.
- As of 2015, the US Congress is debating on new legislation on highly qualified TCNs.

## 1. Overview of the scheme

The United States (US) attract a high level of interest from highly qualified third country nationals (TCNs). The public debate on labour immigration, rather than being dominated by attracting foreign talent, is focused on illegal migration and regularisation issues.

The labour market immigration policy in the US is demand-driven and employer-led<sup>107</sup>. Almost all persons that enter the US for employment purposes, may only enter through an employer sponsor, and their right to remain in the country depends on continued employment with their sponsor (or on securing a new one). Also caps on legal migration influxes are implemented.

Highly qualified TCNs can enter the US either through:

- lawful permanent residence status (employment-based ‘Green Cards’);
- temporary admission for employment purposes (temporary workers visas H-1B and O-1).

### 1.1 Entry through lawful permanent residence status

Entry to the US is possible through employment-based ‘**Green Cards**’ which grant the TCN **lawful permanent residence (LPR)** status. LPR status is mainly granted on the basis of so-called ‘family-sponsored preference’ and ‘employment-based preference’. Employment-based preferences consist of five categories of workers (and their spouses and children). Only the categories EB1 (Employment First Preference) and EB2 (Employment Second Preference) workers can be considered as highly qualified workers (HQWs), as per the EU Blue Card definition<sup>108</sup>. EB1 include:

- Persons with extraordinary ability in the sciences, arts, education, business, or athletics<sup>109</sup>;
- Outstanding professors and researchers with at least three years’ experience in teaching or research, who are recognized internationally;
- Multinational managers or executives who have been employed for at least one of the three preceding years by the overseas affiliate, parent, subsidiary, or branch of the U.S. employer.
- (EB2) cover professionals with advanced degrees<sup>110</sup> or aliens of exceptional ability<sup>111</sup>.

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<sup>107</sup> Papademetriou, D. et al (2009), “Aligning Temporary Immigration Visas with US Labour Market Needs: The Case for a new System of Provisional Visas”, Washington DC: Migration Policy Institute

<sup>108</sup> Higher professional qualifications: (1) evidence of higher education qualifications: any diploma or other evidence of formal qualifications issued by a higher education institution attesting the successful completion of a post-secondary education programme of at least three years; (2) when provided by national law: by at least five years of professional experience of a level comparable to higher education qualifications relevant for the profession/sector.

<sup>109</sup> Applicants in this category must have extensive documentation showing sustained national or international acclaim and recognition in their fields of expertise. Such applicants do not have to have specific job offers, so long as they are entering the U.S. to continue work in the fields in which they have extraordinary ability.

Since 1990, the annual employment-based preference is capped to 140,000 (plus any unused visas in the family-sponsored preferences from the previous year). This cap also covers the family members of the primary worker<sup>112</sup>.

In 2013, 158,466 persons accessed LPR status through the employment-based preference<sup>113</sup>, i.e. 16% of the total LPR flow<sup>114</sup>. Around 28% of the total of employment-based preference LPR is allocated to each of the first three employment preferences, EB1 and EB2 included<sup>115</sup>. The visas are allocated according to a cascading system, i.e. when there is a number of visas available under the highest preference category, they can be used by the next preference category.

The first preference (EB1 priority workers) accounted for 24 percent of new employment-based LPRs. There are more EB1 visas available than used. Most of the unused EB1 visas (extraordinary ability visas) in 2013 were used in the second preference (EB2 professionals with advanced degrees) which represented 39 percent of new employment-based preference LPRs<sup>116</sup>.

## 1.2 Entry via temporary admission for employment purposes

Amongst the temporary workers visas, **the H-1B visa for temporary workers in “specialty occupations”** is a visa of a duration of up to three years. The visa is one-time-renewable. It was included in the Immigration Act of 1990 to help employers deal with what was perceived to be temporary labour market mismatches. It was created to give employers easy access to foreign workers to fill jobs that “*require theoretical and practical application of highly specialized knowledge to perform fully.*” To be eligible for this visa, the HQW must hold a higher education degree or its equivalent and be sponsored by an US employer<sup>117</sup>. Since 1990, the number of H1-B visas to be issued has been capped to 65,000 visas annually. In 2005, the US Congress created an “advanced degrees exemption” excluding from the cap the first 20,000 petitions filed on behalf of beneficiaries with an US master’s degree or higher. Additional exemptions were created for foreign employees of non-profit organisations, educational and research organisations, thus bringing the total annual number of H1-B visas to about 130,000. Due to high demand H1-B visas are allocated by the US Citizenship and Immigration Services (USCIS) on the basis of a random selection of the petitions needed to meet the cap.

**The O-1 visa is for individuals who possesses extraordinary ability** in the sciences, arts, education, business, or athletics, or who demonstrated record of extraordinary achievement in

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<sup>110</sup> Professionals with advanced degrees concern those who hold degrees beyond a baccalaureate degree, or a baccalaureate degree and at least five years progressive experience in the profession.

<sup>111</sup> Persons with exceptional ability in the sciences, arts, or business. Exceptional ability means having a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

<sup>112</sup> There were 18,466 unused numbers in the family-sponsored preferences in 2012. The annual limit was higher in 2013 than 2012 because there were more unused family preference visas in 2012 than in 2011; from Office of Immigration Statistics, *Annual Flow report, U.S. Lawful Permanent Residents: 2013*, May 2014.

<sup>113</sup> Office of Immigration Statistics policy directorate, Randall Monger and James Yankay, *Annual Flow report, U.S. Lawful Permanent Residents: 2013, May 2014*.  
[http://www.dhs.gov/sites/default/files/publications/ois\\_lpr\\_fr\\_2013.pdf](http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2013.pdf)

<sup>114</sup> Ibid

<sup>115</sup> Ibid

<sup>116</sup> ibid

<sup>117</sup> Before an application for a temporary worker visa (H1-B) at an U.S. Embassy or Consulate can be launched, a Petition for a Non-immigrant Worker, Form I-129, must be completed by the prospective employer of the HQW. This form includes fields on the job offer.

the motion picture or television industry and have been recognized nationally or internationally for those achievements. Special visas exist for workers accompanying and assisting O-1 workers (O2) and for spouses and children of O-1 and O2 (O3). This is the only category which doesn't require the HQW to hold a job offer.

H1-B visa allows foreigners to enter the US for a specific limited stay but it also permits employers to apply immediately for permanent resident status for their sponsored foreign-born employee. According a study conducted by the US Congressional Research Service, 90% of employment-based green cards (permanent visas) were awarded to individuals who originally entered the US as foreign students and temporary workers, many of whom hold H1-B and L visas. The temporary-to-permanent resident transition amongst highly-qualified TCNs is a key characteristic of the US labour market immigration system. This being said, this transition is much more difficult, from an administrative point of view, for holders of the O visas or other temporary visas<sup>118</sup>.

Further temporary visas are:

- Visas for intra-company transfers of high-level managers in multinational companies (L1). Profiles of L1 visa holders are, according to an expert interviewed, similar to those coming under a H1-B category. Around 50,000 – 70,000 L category visas are issued on an annual basis. L visas permit corporate transferees to apply for permanent resident status.
- Exchange visitors visas (J1) which concerns professionals in an exchange situation which can last up to several years, i.e. University professors, researchers.

The following sections focus on the H1-B visa, as it was identified as the permit best comparable with the EU Blue Card.

### **1.3 Design of the scheme**

To benefit from a H1-B visa, the foreign national must hold a higher education degree (or its equivalent) and be sponsored by a US employer. The employer must submit a Labour Condition Application (LCA) to the Department of Labour<sup>119</sup>.

There is no labour market test under the H1-B visa category (contrary to other entry routes). However, the Department of Labour requires that employers asking for an H1-B visa must certify in a Labour Condition Application stating that:

- they meet the wage requirement;
- the admission of the temporary foreign worker will not affect the outcome of a labour dispute<sup>120</sup>;

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<sup>118</sup> Koslowski, Rey (2014) "Selective migration policy models and changing realities of implementation", International Migration Vol. 52 (3).

<sup>119</sup> Website of the Department of Homeland Security (2015), "Webpage presenting the overview of Temporary Worker Visas", available at <http://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models> (accessed mid November 2015)

<sup>120</sup> That the employer does not bring in a foreign worker in the case of a Labour dispute with a Trade union / employee.

- the employer gives public notice at the place of employment about their wish to hire a H1-B worker.

The Department of Labour checks whether the LCA is complete and the three requirements are met. Once the LCA is accepted by the Department of Labour, the employer is able to submit a completed 'Form I-129' or Petition for a Non-immigrant Worker – which is the application form for the temporary visa for the qualified worker - to USCIS. Once the Form I-129 petition has been approved, the prospective H-1B worker who is outside the United States may apply with the US Department of State (DOS) at a US embassy or consulate abroad for an H-1B visa. The prospective H-1B worker must then apply to US Customs and Border Protection (CBP) for admission to the US in H-1B classification. There are several steps in the visa application process. The order of these steps and how the TCN completes them may vary from one US Embassy or Consulate to another. Consular officers have the discretion to require an interview of any applicant. There is a non-refundable visa application fee of \$190<sup>121</sup>.

The Immigration and Nationality Act (INA) requires that the hiring of a foreign worker will not adversely affect the wages and working conditions of US workers comparably employed. To comply with the statute, the Department's regulations require that the wages offered to a foreign worker must be the prevailing wage rate for the occupational classification in the area of employment<sup>122</sup>. Since 2010, employers can obtain this wage rate by submitting a request to the National Prevailing Wage Centre (NPWC), or by accessing other legitimate sources of information such as the Online Wage Library, available for use in some programs<sup>123</sup>.

There are four visa processing application centres in the US. Additional fees can be paid to speed decision-making on an application. Immigration lawyers can also be paid by employers to conduct the visa application process (approx. \$5-7,000). In some cases the prospective employee has to bear the costs<sup>124</sup>.

H-1B holders are upon dismissal from employment immediately considered as illegally present in the US, unless an application for another temporary visa is currently pending<sup>125</sup>.

Spouses have no access to the labour market, unless they successfully apply themselves for a new H-1B visa. This is an important difficulty for HQWs<sup>126</sup>.

#### 1.4 Statistical overview

The number of H-1B visas issued was capped in legislation to 65,000 H1-B. In the 1990s (economic boom years), the US Congress periodically, and only for a limited period of time, increased the cap, which went as high as 195,000.

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<sup>121</sup> Website of the US Department of State – Bureau of Consular Services, available at <http://www.travel.state.gov/content/visas/en/employment/temporary.html#overview> (accessed mid November 2015)

<sup>122</sup> Website of the US Department of Labor, available at <http://www.foreignlaborcert.doleta.gov/pwscreens.cfm> (accessed mid November 2015)

<sup>123</sup> *ibid*

<sup>124</sup> Interview with Dimitri Papademetriou on 30 November 2015

<sup>125</sup> Lucy Haley, "The Challenges to Lawmaking With Respect to Highly Qualified Immigration: A Comparison of the European Union and United States", *European Union Law Working Papers - No. 8*, Stanford Law School and University of Vienna School of Law, 2012.

<sup>126</sup> Interview with Dimitri Papademetriou on 30 November 2015

It has been extremely difficult to reach an agreement in the US Congress on the change in the cap number, despite pressure from certain employers, especially in STEM (science, technology, engineering and math) fields<sup>127</sup>. As a result, exemptions, as a default solution, have been created, thus allowing highly qualified workers to be granted an H1-B visa. In 2005 for example, an extra 20,000 H-1B visas were allowed for those with advanced degrees mainly in STEM fields<sup>128</sup>. Foreign nationals working for non-for-profit organisations (this includes universities, research labs, think tanks) are also not subject to H1-B caps.

Considering all of the existing exemptions, the total number of H-1B visas issued is in reality close to double the official cap at 65,000, as shown in the table below. The table presents the main class of temporary visas issued to highly qualified or qualified TCNs. Most TCNs were from Asia, specifically from India (108,817 in 2014)<sup>129</sup>.

*Table 1. Number of temporary visas issued to foreign nationals - 2012-2014*

	2012	2013	2014 <sup>130</sup>
<b>Temporary workers in specialty occupations (H1-B)</b>	<b>135,530</b>	<b>153,223</b>	<b>161,369</b>
Workers with extraordinary ability or achievement (O-1)	10,590	12,359	12,706
Intra-company transferees (L1)	62,430	66,700	71,513
Temporary visitors for business (B1)	35,341	41,956	44,880

*Source: US Department of State, Bureau of Consular Affairs, available at <http://travel.state.gov/content/visas/en/law-and-policy/statistics/non-immigrant-visas.html> (accessed mid November 2015)*

The table below presents the total number of persons who received lawful permanent resident status from 2010 to 2013 and how many, out of those, obtained it via the employment-based preferences, and specifically via the First Preference (EB1): Priority workers and Second Preference (EB2): Professionals with advanced degrees or aliens of exceptional ability.

The table also shows whether LPR status was obtained via a status adjustment process or directly upon arrival to the US.

*Table 2. Persons obtaining lawful permanent resident status by type and major class of admission: fiscal years 2010 to 2013 - new arrivals and adjustments of status included*

Type and class of admission	2010	2011	2012	2013
<b>Total Persons obtaining lawful permanent resident status</b>	<b>1,042,625</b>	<b>1,062,040</b>	<b>1,031,631</b>	<b>990,553</b>
<b>Total Employment-based preferences</b>	<b>148,343</b>	<b>139,339</b>	<b>143,998</b>	<b>161,110</b>
EB1 : Priority workers	41,055	25,251	39,316	38,978
EB2 : Professionals with advanced degrees or aliens of exceptional ability	53,946	66,831	50,959	63,026
<b>Out of which: total adjustment of status</b>	<b>136,010</b>	<b>124,384</b>	<b>126,016</b>	<b>140,009</b>

<sup>127</sup> Martin, P. (2012) Attracting Highly Skilled Migrants: US Experience and Lessons for the EU. Robert Schuman Centre for Advanced Studies.

<sup>128</sup> Kaushal, N. and Fix, M. (2006), "The Contributions of High-Skilled Immigrants", Migration Policy Institute Insight, July 2006, No. 16

<sup>129</sup> Non-immigrant Visa Issuances by Visa Class and by Nationality <http://travel.state.gov/content/visas/en/law-and-policy/statistics/non-immigrant-visas.html>

<sup>130</sup> Data as of 09/30/2014.

EB1 First: Priority workers	39,070	23,605	37,799	37,283
EB2 Second: Professionals with advanced degrees or aliens of exceptional ability	52,388	65,140	49,414	60,956
<b>Out of which: total new arrivals</b>	12,333	14,955	17,982	21,101
EB1 First: Priority workers	1,985	1,646	1,517	1,695
EB2 Second: Professionals with advanced degrees or aliens of exceptional ability	1,558	1,691	1,545	2,070

*Source: U.S. Department of Homeland Security*

## 1.5 Comparative overview of the national scheme and the EU Blue Card

The United States is one of the countries which attracts the most interest from highly qualified TCNs, for cultural and economic (prospects) reasons. Canada and Australia are the main competitors to the US in terms of attracting TCNs who otherwise might have migrated to the USA. This is also due to the fact that both countries aim specifically to attract close to two thirds of TCNs through the employment category.

The Blue Card system provides for more protection for the foreign workers: it allows for family reunification and unlike the H1-B programme, it gives EU Blue Card holders dismissed by their employers a three months period for them to secure new employment. Also, unlike under the H1-B programme, EU Blue Card holders are not dependent on their employers to apply for long-term residence<sup>131</sup>.

## 2 Evaluation of the US schemes for attracting highly qualified workers

### 2.1 Advantages

The temporary-to-permanent resident transition which is a key characteristic of the qualified US labour market immigration system has the advantage of allowing immigration services and employers to use information about economic and other forms of integration during the initial, temporary residence period in order to decide on permanent residence<sup>132</sup>.

### 2.2. Disadvantages

The qualified US legal labour migration system is known to be complex and constraining.

The system has been criticized as giving too much power to employers. The bonus on applying for permanent resident status is on employers who send the application for their sponsored foreign-born employee.

A study by the Robert Schuman Centre for Advanced Studies in 2012 indicated that the employer-led H-1B program has the potential of leading to abuses of workers hard to detect

<sup>131</sup> Lucy Haley, "The Challenges to Lawmaking With Respect to Highly Qualified Immigration: A Comparison of the European Union and United States", European Union Law Working Papers - No. 8, Stanford Law School and University of Vienna School of Law, 2012.

<sup>132</sup> IOM Labour Shortages and Migration Policy 2012.



and correct: “since many H-1B visa-holders hope to be sponsored by their employers for immigrant visas, they rarely complain, giving DOL few opportunities to investigate.”<sup>133</sup>

Similarly, the *prevailing wages* concept is a hard one to implement as its accuracy relies on proprietary information on wages from employers<sup>134</sup>. The labour department therefore relies on figures which may not be close enough to reality to establish when an employer is underpaying the worker. In addition there is no obligation to increase the worker’s wage during the maximum duration of three years of the H-1B visa. Also, an immigrant who changes employers – or accepts a raise or promotion from a current employer – will have to start over the application to LPR status<sup>135</sup>.

The lottery system for the allocation of the H1-B visas was designed by default. It is a reflection of unresolved issues between the supply of visas and the demand for workers by employers and the US Congress’ unwillingness to create flexible quotas. It incentivizes employers to apply for more visa applications than they need. This creates a higher administrative burden for employers and the lawyers they employ to file those applications before 1 April.

This system creates a fundamental problem: admissions are random rather than selective, and very highly qualified candidates may be turned away simply because they were not selected due to the random nature of the selection<sup>136</sup>.

The cap system, which has not changed much since the 1990s, does not allow fluctuating economic needs to be reflected and addressed in the migration system. There is a political deadlock preventing the cap system to be revisited: the Republican Party and large companies are in favour of attracting a higher number of HQWs, whilst labour unions and some engineering professions supported by key senators from both political parties are against raising the cap. Whilst some employers argue that labour shortages persist in the STEM fields, those are occupations where unemployment rates are low (3-4%) but considered nonetheless significant. In addition, this issue has been politically tied to the issue of the regularization of millions of illegal migrants in the US<sup>137</sup>.

### 2.3. Recent developments

At present, the US Congress is currently considering the following legislation on highly qualified TCNs<sup>138</sup>:

- Immigration Innovation Act: A bipartisan bill introduced in the US Senate in January 2015 that would almost double the number of visas for temporary high qualified TCNs (H-1B visas), from 65,000 to 115,000, and eliminate annual per-country limits for employment-based green cards.

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<sup>133</sup> Martin, P. Attracting Highly Skilled Migrants: US Experience and Lessons for the EU. Robert Schuman Centre for Advanced Studies, 2012.

<sup>134</sup> Interview with Dimitri Papademetriou on 30 November 2015.

<sup>135</sup> Puneet Arora, Congress must address employment-based Green Card backlog, THE HILL (July 28, 2011) <http://thehill.com/blogs/congress-blog/civil-rights/174049-congress-must-address-employment-based-green-cardbacklog>, cited in Lucy Haley, “The Challenges to Lawmaking With Respect to Highly Qualified Immigration: A Comparison of the European Union and United States”, European Union Law Working Papers - No. 8, Stanford Law School and University of Vienna School of Law, 2012.

<sup>136</sup> IOM Labour Shortages and Migration Policy 2012.

<sup>137</sup> Interview with Dimitri Papademetriou on 30 November 2015

<sup>138</sup> “The U.S. Immigration Debate”, Author: Danielle Renwick, The Council on Foreign Relations, <http://www.cfr.org/immigration/us-immigration-debate/p11149>

- **Start-Up Act:** A bipartisan bill introduced in the Senate in January 2015 (three prior versions had been introduced) that proposes creating an entrepreneurs visa for TCNs and a STEM visa for US-educated foreign-born workers with advanced degrees in science, technology, engineering or mathematics, and eliminating per-country caps on employment-based immigration visas.

Difficulties in building a consensus across partisan lines make it unlikely for either bills to go through at least until the next presidential elections<sup>139</sup>.

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<sup>139</sup> Interview with Dimitri Papademetriou on 30 November 2015

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# National schemes for attracting highly qualified workers

Country Fiche: Canada

## Key Points to note<sup>140</sup>:

### *Permanent residence programs:*

- *There are three federal-level programs that support the permanent residence of skilled migrants: the Federal Skilled Trades Program (FSTP), the Federal Skilled Worker Program (FSWP) and the Canadian Experience Class (CEC). These include a points-based assessment of candidates' 'human capital factors', such as age, education, language proficiency and work experience.*
- *Since 1 January 2015, all applicants for the three programs must apply through 'Express Entry', an online 'filtering and ranking' stage. The highest-ranked candidates then receive an Invitation to Apply (ITA) to individual programs.*
- *Having skilled work experience and minimum language proficiency in English and/or French are conditions of entry for all programs (FSWP, FSTP and CEC).*

### *Temporary residence programs*

- *There are two temporary residence schemes for skilled workers: the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP).*
- *Applications through the TFWP must always be supported by a job offer and a positive Labour Market Impact Assessment (LMIA). The IMP is mostly regulated by international agreements and applications do not require LMIA's.*
- *Most entrants under the TFWP are low-skilled, although there is a 'high-wage' stream within the scheme. Workers under the TFWP normally receive employer-specific work permits, whereas IMP workers generally have greater labour market mobility.*

### *Key points:*

- *Under Express Entry (EE), the government has high control over intake. There are no longer any caps for new applicants to permanent residence programs.*
- *Although having a job offer is not necessary to apply through EE, individuals with pre-arranged employment are far more likely to gain entry to Canada. The new system of EE gives the employers and provincial governments' greater role in the process.*

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<sup>140</sup> While this research was being conducted, the government department responsible for immigration, Citizenship and Immigration Canada (CIC), was renamed as Immigration, Refugees and Citizenship Canada (November 2015). This change is in the process of being applied to the CIC website and resources, but is not yet complete. For ease, the acronym 'CIC' has been used throughout this document.

- *It is too early to assess the full impacts of Express Entry. However, according to Citizenship and Immigration Canada (CIC), this acts as a "means of selecting those best placed to succeed" and having a "managed migration system" is one of the strengths of Canada's approach to skilled migration<sup>141</sup>.*
- *In terms of unemployment rates, 'landed immigrants' appear relatively well-integrated into the labour market. However, the underemployment of skilled immigrants (i.e. entry in low-income/low-skill jobs) can be an issue (hence the emphasis on employer involvement under EE).*
- *The target to process 80% EE applications in six months seems on track.*
- *Amongst high-skilled permanent residents, roughly half have previous work experience as temporary workers in Canada<sup>142</sup>.*

## 2. Overview of the scheme

The economic stream of Canada's migration system is built on a points-based assessment of candidates, considering a range of human capital factors to determine immigrant eligibility and impacted by a range of additional variables, such as employer or provincial nomination. Since the introduction of the points system in 1967, Canada has sought to ensure that immigration coincides with the country's evolving needs and interests<sup>143</sup>.

Skilled migration programs that support **permanent residence** include the Federal Skilled Trades Program (FSTP), the Federal Skilled Worker Program (FSWP) and the Canadian Experience Class (CEC). These programs assess applicants against a range of 'human capital factors', such as age, education, language proficiency and work experience. Having skilled work experience is a condition of entry for all three programs. Applicants are not always required to have a formal job offer or Canadian work experience, although such features dramatically strengthen the chances of their application being successful, depending on the program through which they apply. Since 1 January 2015, all applicants for permanent residence under the skilled migration programs must apply through Canada's new online application management system, 'Express Entry'<sup>144</sup>, rather than applying directly to individual programs. Express Entry serves as an additional 'filtering and ranking' stage, introduced to respond to an excessive supply of applicants for the places available<sup>145</sup>.

In addition to the permanent residence programs, there are **two temporary schemes** through which skilled workers can enter Canada: the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP). Applications through the TFWP must always be supported by a job offer and a positive Labour Market Impact Assessment (LMIA) (see below for more details). In contrast, the IMP is mostly regulated by international agreements and applications are exempt from the requirement for LMIA's. The majority of entrants under the TFWP are low-skilled, although there is a stream for 'high-wage' workers.

<sup>141</sup> Citizenship and Immigration Canada (CIC). Phone interview, 20 Nov 2015.

<sup>142</sup> Estimate by CIC. Phone interview, 20 November 2015.

<sup>143</sup> Challinor, A.E. (2011), "Canada's Immigration Policy: a focus on Human Capital", Migration Policy Institute, available at <http://www.migrationpolicy.org/article/canadas-immigration-policy-focus-human-capital>

<sup>144</sup> <http://www.cic.gc.ca/english/express-entry/index.asp>

<sup>145</sup> CIC. Phone interview, 20 November 2015. See full interview citation in references at the end.

## 2.1 Design of the scheme

### *Permanent residence programs*

All applicants to the economic stream of the permanent residence programs (FSWP, FSTP and CEC) must make an initial application through the Express Entry system. This is used as a 'first filter' for establishing whether applicants are eligible for one or more of the three federal programs (FSWP, FSTP, CEC), or the Provincial Nominee Program (PNP)<sup>146</sup>. Those who fulfil the eligibility criteria will be moved into a 'pool of candidates', where they will be ranked using the Comprehensive Ranking System (points-based)<sup>147</sup>. Only those candidates who are ranked highly enough will be issued with an Invitation to Apply (ITA) for permanent residence, *at which point* they can begin the application process for the individual programs mentioned above (FSWP, FSTP and CEC).

During the ranking of candidates through Express Entry, the features that receive the most weight are the candidates' core human capital factors (age, level of education, official language proficiency and Canadian work experience) and (if held) an offer of arranged employment (supported by a Labour Market Impact Assessment) or the provincial nomination. However, applicants may also gain some (minor) points for a range of additional features, such as the language proficiency of their spouse or common-law partner and the transferability of their skills<sup>148</sup>. The CIC aims to process 80% applications through Express Entry within six months. After receiving the ITA, candidates have 60 days to apply for permanent residence, and fulfil the entry criteria specified under individual programs (see below).

### *Temporary residence programs*

There are two forms of entry for the Temporary Foreign Worker Program: the 'high-wage' and 'low-wage' stream<sup>149</sup>. Only the procedure for the 'high-wage' stream is presented here, as this is more likely to cover the skilled category of workers.

Under the high-wage stream, employers must obtain a positive Labour Market Impact Assessment (LMIA) from Employment and Social Development Canada (ESDC), proving that the worker is needed for a specific position<sup>150</sup>. A positive LMIA shows that there is a need for a foreign worker for a specific position, and that no Canadian worker is available to take up the position. A positive LMIA is occasionally referred to as a confirmation letter. Employers can use either the Temporary Foreign Worker Web Service or a paper application form to apply for the LMIA. The cost of each LMIA (for each position requested) is CAN \$1000. The temporary worker must then apply for a work permit, using their LMIA-supported confirmation letter (provided by the employer). Once an LMIA is issued, it is valid for six months. Employers can only apply for the TFWP with a valid LMIA.

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<sup>146</sup> The PNP is a system of provincial/territorial nomination of immigrants. Only the federal programs will be presented in this analysis. For more information on the PNP, see <http://www.cic.gc.ca/english/immigrate/provincial/>

<sup>147</sup> This takes account skills and experience factors; whether they have a job offer; whether they have a nomination from a province or territory. Extra points are available for a job offer backed by a Labour Market Impact Assessment (LMIA) and/or provincial nominations.

<sup>148</sup> For more information, see the Express Entry Comprehensive Ranking System: <http://www.cic.gc.ca/english/express-entry/grid-crs.asp#a1>

<sup>149</sup> The high-wage stream covers those earning at or above the provincial/territorial median hourly wage.

<sup>150</sup> Government of Canada Website, Employment and Social Development Canada; [http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/high\\_low\\_wage/low\\_wage/index.shtml#tab5](http://www.esdc.gc.ca/eng/jobs/foreign_workers/high_low_wage/low_wage/index.shtml#tab5)



As part of the high-wage stream, unless the position is of a limited duration, employers must submit a Transition Plan showing how they will recruit and train Canadians and how they will support the TFWs to become permanent residents. These activities must be undertaken over the course of the employment period<sup>151</sup>. In future, if employers are inspected or apply for an additional LMIA in similar circumstances, they will have to report back on their progress against the commitments they made in the Plan.

In order for the foreign national to apply for a temporary work permit through the International Mobility Program, employers first need to submit an Offer of Employment form and compliance fee (CAN \$230) through the 'Employer Portal'. Since February 2015, employers of foreign nationals are required to fill in the new compliance form (IMM5802), making declarations about the employee. After an offer of employment has been successfully added to the Employer Portal, an employment ID number will be provided to the employer, who will pass this on to foreign national to include in their work permit application form<sup>152</sup>.

## 2.2 Application procedure

The following table provides an overview of the entry requirements for the main federal programs in Canada for skilled migration. Full details of the precise entry requirements for individual programs are given in the **Annexes** at the end of this document. In addition, the Annexes include the 'Comprehensive Ranking System' of Express Entry, which is used as a first filter before individuals are judged against the entry requirements of individual programs.

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<sup>151</sup> Government of Canada Website, Employment and Social Development Canada; [http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/high\\_low\\_wage/high\\_wage/index.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/high_low_wage/high_wage/index.shtml)

<sup>152</sup> Government of Canada Website, International Mobility Program: Employer-specific work permits with Labour Market Impact Assessment exemptions; <http://www.cic.gc.ca/english/resources/tools/temp/work/admissibility/specific.asp>



**Table 1: Summary table of entry requirements**

Name of program						
Entry requirements	Federal Worker Program (permanent)	Skilled Program	Federal Skilled Program (permanent)	Trade	Canadian Experience Class (permanent)	Temporary Foreign Worker Program (temporary)
High skills requirements	E		E		E	N (employers' responsibility)
Minimum language proficiency (English and/or French)	E		E		E	N (employers' responsibility)
Minimum educational requirements	E		A (certificate of qualification in the skilled trade issued by territorial or provincial body)		A	N (employers' responsibility)
Formal job offer	A (although to be valid it must be supported by LMIA and fulfil conditions)		A (although to be valid it must be supported by LMIA and fulfil conditions)		A (although to be valid it must be supported by LMIA and fulfil conditions)	E (must always be supported by LMIA and fulfil conditions)
Labour market impact assessment (LMIA)	A (LMIA is essential if job offer is used to support entry)		A (LMIA is essential if job offer is used to support entry)		A (LMIA is essential if job offer is used to support entry)	E (always essential to support job offer)
Canadian work experience	A		A		E	N
Skilled work experience	E		E		E	N
Upper salary threshold	N		N		N	N
Other conditions	Candidates must fulfil 'admissibility requirements' <sup>153</sup> Applicants must plan to live outside the province of Quebec. The province has its own rules for choosing immigrants who will adapt well to living there <sup>154</sup> .					n/a

**Key:** E = essential; A = advantageous; N = not needed. Note that the International Mobility Program is excluded from this table, due to the diversity of the sub-programs it covers.

### *Language, education and skilled work experience Permanent residence programs*

All applicants for permanent residence under FSTP, FSWP and CEC are expected to fulfil minimum language requirements in English and/or French. Candidates must prove their ability in listening, speaking, reading and writing by taking a language test through CIC, assessing their level based on the Canadian Language Benchmark (CLB). The precise

<sup>153</sup> Amongst others, applicants may be deemed inadmissible for security reasons (e.g. espionage, subversion, terrorism), human or international rights violations, criminal convictions, health grounds, financial reasons (e.g. lacking the resources to support themselves and their family members) etc. For a full list, see <http://www.cic.gc.ca/english/information/inadmissibility/who.asp>

<sup>154</sup> More info at Government of Canada Website, Home, Immigration and citizenship, Immigrate, Quebec-selected skilled workers; <http://www.cic.gc.ca/english/immigrate/quebec/index.asp>

language requirements depend on the program through which candidates apply. The expected language proficiency of applicants for the Federal Skilled Worker Program is higher than that for the Federal Skilled Trades Program. However, the language requirements for Canadian Experience Class depends on the skill type of their Canadian work experience<sup>155</sup>.

Canada's skilled migration programs for permanent residence place greater emphasis on the skilled work experience of candidates than on their formal educational attainment. All of the main permanent residence programs (Federal Skilled Worker Program, Canadian Experience Class and Federal Skilled Trades Program) have minimum skilled work experience requirements (see full details in Annex table at the end of this document). Despite the low/non-existent educational requirements for the FSTP, FSWP and CEC, candidates under all these programs can gain additional points for their education during the Express Entry stage if they have either a Canadian post-secondary certificate, diploma or degree or an equivalent foreign credential that is supported by an Educational Credential Assessment (ECA)<sup>156</sup>.

Furthermore, one of the core entry conditions for FSTP candidates is that they have **either** a provincial certification, **or** a valid job offer, covering one of eligible skilled trades (all NOC skill type B). As of November 2015, these trades are: industrial, electrical and construction trades (Major Group 72); maintenance and equipment operation trades (Major Group 73); supervisors and technical jobs in natural resources, agriculture and related production (Major Group 82); processing, manufacturing and utilities supervisors and central control operators (Major Group 92), chefs and cooks (Minor Group 632), and butchers and bakers (Minor Group 633)<sup>157</sup>.

### *Temporary residence programs*

Under the Temporary Foreign Worker Program, employers have responsibility for ensuring that the workers they sponsor have the appropriate level of training, education and experience to perform the role for which they are being recruited<sup>158</sup>. As explained in the table above, the International Mobility Program does not set a common minimum requirement across sub-programs when it comes to education, work experience, skills, etc. For intra-company transferees coming through the IMP, it is possible for them to transfer to a position in a specialised knowledge capacity (amongst other things)<sup>159</sup>.

### *Job offer and salary threshold*

### *Permanent residence programs*

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<sup>155</sup> Government of Canada Website, Home, Immigration and citizenship, Immigrate, Express Entry, Candidate, Eligibility, Language requirements — Skilled immigrants (Express Entry); <http://www.cic.gc.ca/english/immigrate/skilled/language.asp>

<sup>156</sup> The ECA certifies that their educational level is equivalent to Canadian post-secondary level. Note that education can be important for meeting the minimum number of points in Express Entry but is more important for moving into the pool of candidates, which is filled by the top candidates only

<sup>157</sup> Government of Canada Website, Home, Immigration and citizenship, Immigrate, Express Entry, Candidate, Eligibility, Determine your eligibility – Skilled trades; <http://www.cic.gc.ca/english/immigrate/trades/apply-who.asp#noc>

<sup>158</sup> Government of Canada Website, Employment and Social Development Canada, Home, Jobs and Training, Temporary Foreign Workers, Stream for Low-wage Positions; [http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/high\\_low\\_wage/low\\_wage/index.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/high_low_wage/low_wage/index.shtml)

<sup>159</sup> According to the group Pro-link Global, in 2014, "the "Specialized Knowledge" requirement [was] strengthened to requiring an employee to hold both proprietary knowledge and an advanced level of expertise, both of which must be considered "unique and uncommon" within the industry". <https://pro-linkglobal.com/canada-significant-changes-throughout-canadian-temporary-foreign-worker-programs/>

Unlike the Blue Card, applications to the permanent residence programs do not require candidates to have a formal job offer. However, it is a fundamental asset for candidates, as it makes them much more likely to receive an Invitation to Apply (ITA) for permanent residence<sup>160</sup>. Specifically, in Express Entry, 600 out of 1200 points in the Comprehensive Ranking System are based upon having either "arranged employment with a positive Labour Market Assessment" or a provincial or territorial nomination. According to CIC, without a valid job offer, applicants may not score enough points for entry, as they could lose additional points based on age, education level, etc.<sup>161</sup>. Indeed, part of the rationale for introducing Express Entry was to put employers and the provincial/territorial authorities "front and centre" under the new system<sup>162</sup>. Furthermore, having a valid job offer is a specific way for candidates to demonstrate eligibility for the FSTP.

In order to be valid for points, job offers **must** be supported by a positive Labour Market Impact Assessment (LMIA) from Employment and Social Development Canada. They must also fulfil some core criteria under each individual program, as outlined below. There is no LMIA fee for permanent residency applications.

Federal Skilled Worker Program and the Canadian Experience Class	Federal Skilled Trade Program
<p><b>Valid job offers must be:</b></p> <p>Permanent, non-seasonal, full time;</p> <p>Supported by a positive LMIA; and</p> <p>One of the following skill types: Skill Type 0 (managerial occupations), Skill Level A (professional occupations) or B (technical occupations and skilled trades) on the Canadian National Occupational Classification (NOC) list.</p>	<p><b>Valid job offers must be:</b></p> <p>For at least one year of full-time work;</p> <p>Supported by a positive LMIA; and</p> <p>At Skill Level B (technical occupations and skilled trades) in one of the eligible occupations under the National Occupational Classification (NOC)<sup>163</sup>.</p> <p>They must also have wages and working conditions comparable to those offered to Canadians working in the occupation.</p>

There are no minimum salary requirements for the FSTP, FSWP or CEC, although applicants who are not currently authorized to work in Canada or who lack a valid job offer from an employer in Canada must prove that they have sufficient funds to support themselves and

<sup>160</sup> In Express Entry, 600 out of 1200 points in the Comprehensive Ranking System are based upon having either "arranged employment with a positive Labour Market Assessment" or a provincial or territorial nomination. According to CIC, without a valid job offer, applicants may not score enough points for entry, as they could lose additional points based on age, education level, etc. CIC. Phone interview, 20 November 2015

<sup>161</sup> CIC. Phone interview, 20 November 2015

<sup>162</sup> Demetri Papademetriou, President of Migration Policy Institute (MPI) Europe, Phone call, 17 December 2015.

<sup>163</sup> As explained above, these are: industrial, electrical and construction trades (Major Group 72); maintenance and equipment operation trades (Major Group 73); supervisors and technical jobs in natural resources, agriculture and related production (Major Group 82); processing, manufacturing and utilities supervisors and central control operators (Major Group 92), chefs and cooks (Minor Group 632), and butchers and bakers (Minor Group 633)

their family on arrival. The amounts range from \$CAN 11,931 for a family of 1 to \$CAN 31,574 for a family of 7 or more<sup>164</sup>.

### *Temporary residence programs*

As explained above, employers wishing to bring skilled foreign workers into Canada temporarily must generally submit a formal job offer to the CIC, when applying under the TFWP. Although it differs by sub-program, this is generally also true of the IMP. However, job offers through the TFWP must be LMIA-supported, whereas this is not a requirement for the IMP. Furthermore, job offers under the TFWP must be full-time positions (minimum 30 hours of work each week)<sup>165</sup>.

Through the TFWP, employers must commit to paying the TFW at least the 'prevailing wage' for the occupation and work location of the job<sup>166</sup>. If they pay the foreign national a wage that is above the prevailing wage, this must be in the same range as the wages of their current equivalent employees. Generally speaking, IMP represents a collection of several different programs and there is no common salary threshold. However, all ICT applicants must receive at least the provincial/territorial prevailing wage for their specific occupation<sup>167</sup>.

## **2.3 Rights granted under the scheme**

All foreign nationals working in Canada (both temporary and permanent residents) should have the same working standards and equal labour rights to residents born in Canada. Once permanent residents, skilled foreign workers do not face any restrictions to their labour market access or mobility.

For permanent residence programs, provincial and territorial governments have responsibility for enforcing labour standards (applicable on equal terms to those born in Canada and landed immigrants, i.e. immigrants with a right to permanent residence). The CIC would only get involved when working with its provincial counterparts. For temporary foreign workers, ESDC has responsibility for following up with employers, who may be subject to inspection.

The length of the work permit issued to temporary foreign workers tends to depend on the judgement of Service Canada and the ESDC. Workers under the TFWP normally receive employer-specific work permits<sup>168</sup>, whereas IMP workers generally have open work permits, which give them greater mobility and do not tie them to specific employers. In some cases, IMP entrants will have 'open restricted permits', which do not limit them to particular employers but may restrict the occupations or locations in which they can work.

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<sup>164</sup> Government of Canada Website, Home, Immigration and citizenship, Immigrate, Express Entry, Candidate, Eligibility Proof of funds – Skilled immigrants (Express Entry); <http://www.cic.gc.ca/english/immigrate/skilled/funds.asp>

<sup>165</sup> However, an offer of employment is not needed if employers are hiring a temporary worker with an open work permit.

<sup>166</sup> Under the Temporary Foreign Worker Program, the prevailing wage rate is the median hourly wage (or annual salary) for the work location and occupation, as published on Job Bank.

<sup>167</sup> Pro-Link GLOBAL Website; <https://pro-linkglobal.com/canada-significant-changes-throughout-canadian-temporary-foreign-worker-programs/>

<sup>168</sup> Government of Canada Website, Employment and Social Development Canada; [http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/reform/index.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/index.shtml)

According to the CIC, there are different kinds of 'settlement services' for foreign nationals, but these tend to be fairly limited for high-skilled entrants. For instance, they already have to meet the minimum language requirements before they come (at least average level language skills in English and/or French), so access to language training is fairly limited. Experience shows that they do not normally require access to other kinds of support. Indeed, the majority of integration support goes to refugees or those needing other kinds of social assistance. As opposed to formal governmental provision, support is normally offered through a system of grants and contributions to service-providing organisations.

## 2.4 Statistical overview

The 'economic class' under Canada's permanent residence programs have the primary objective of ensuring the entry and integration of highly-skilled people into the country<sup>169</sup>. The expansion of the economic class in Canada has led to a change in the types of immigrants entering. In the mid-1980s, 50% of immigrants were admitted based on family preferences, 30% were economic migrants and 18% were refugees. By 2009, these proportions changed to 38%, 47% and 9% respectively. In other words, the largest single bloc of entrants were skilled persons. In 2013, this pattern was yet more pronounced: of the 258,953 permanent residents admitted in this year, 148,181 (57%) came under the economic class of migration programs, whereas 81,831 (32%) came under the family class and 28,941 (11%) came as refugees, for humanitarian and compassionate grounds or in an 'other' way<sup>170</sup>. However, it is worth noting that the economic class also includes dependents.

Since the establishment of the Express Entry system on 1 January 2015, there are no longer any caps in place for the permanent economic immigration programs, although those previously in place for the FSTP and FSWP are being applied to pre-2015 candidates<sup>171</sup>. Under the new system, the government has a high level of control over intake, as it can determine the frequency of draws/rounds from the 'pool of applicants' and the number of invitations issued. According to CIC, Express Entry acts as a "means of selecting those best placed to succeed or economically establish"<sup>172</sup>.

In 2014, there were 165,089 economic immigrants (permanent residents) to Canada, of which 28,773 were skilled workers (principal applicants) and a further 38,712 were skilled workers who applied as spouses and dependents. Overall, men were slightly more likely to enter as skilled workers, although women were more likely to be amongst the skilled applicants who applied as spouses and dependents. Of the 28,773 skilled workers (principal applicants), 11,293 were female and 17,480 were male. Of the 38,712 skilled workers (spouses and dependents), 17,514 were male and 21,197 were female<sup>173</sup>.

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<sup>169</sup> CIC. Phone interview, 20 November 2015.

<sup>170</sup> Government of Canada Website, Departments and agencies, Citizenship and Immigration Canada, Publications and manuals; <http://www.cic.gc.ca/english/resources/publications/annual-report-2014/index.asp#sec-1>

<sup>171</sup> In other words, those who applied prior to 1 Jan 2015 are being processed according to the requirements that were in place when the application was received. Between 1 May 2014 and 31 December 2014, the government was applying a cap of 25,000 new applications for the FSWP, 8,000 applications for the CEC and 5,000 applications for the FSTP. <http://www.cicnews.com/2014/04/breaking-news-reopening-federal-skilled-worker-program-043382.html#sthash.EFUznUqI.dpuf%22>

<sup>172</sup> CIC. Phone interview, 20 November 2015.

<sup>173</sup> Government of Canada Website, Departments and agencies, Citizenship and Immigration Canada, Research and statistics; <http://www.cic.gc.ca/english/resources/statistics/facts2014/permanent/02.asp>

There are strong signs that Canada's programs for economic immigration attract far more interest from highly-skilled workers than there are places available. As shown by the table below, nearly 37% (41,218) of those who applied through Express Entry between 1 January and 6 July 2015 were deemed eligible to enter the 'pool of candidates', meaning these individuals fulfil the conditions for one or more economic programs. However, only (12,017) (11% of all applicants, 29% of those in the pool) had so far been issued with an invitation to apply for permanent residence<sup>174</sup>.

**Table 2: Overview of applications through Express Entry (covering FSWP, FSTP, CEC and PNP, 1 January - 6 July 2015)**<sup>175</sup>

Applications received ('Express Entry' profiles created)	Number of individuals not eligible through Express Entry	Number of individuals active in the 'pool of candidates'	Number of individuals in Express Entry invited to apply for permanent residence	Number of applications for permanent residence received	Number of permanent residence applications approved for principal applicants / Number of permanent residence visas issued for principal applicants and their dependents.
112,701	48,723	41,218	12,017	7,528	655 / 844

This aggregate data covers Federal Skilled Worker Program (FSWP); Federal Skilled Trades Program (FSTP); Canadian Experience Class (CEC); and a portion of the Provincial Nominee Programs (PNP). Some program-specific data is available on the number of invitations: of the 12,928 ITAs issued, 5,534 were for the CEC, 4,809 were for the FSWP, 1,887 were for the FSTP and 698 were for provincial nominees<sup>176</sup>. However, it is not known if which of these recipients were amongst those who applied for or gained permanent residence.

Data by nationality on issued work permits is not available, although there is data on invited candidates through the Express Entry scheme (again, note that invited candidates do not necessarily gain permanent residence). Through Express Entry, the top ten countries of citizenship of invited candidates, as of 6 July 2015, were India (2,687 invited candidates), Philippines (2,514), UK (951), Ireland (682), China (531), US (521), South Korea (327), France (258), Australia (257) and Mexico (249).<sup>177</sup>

Expenditure by program reflects that the Federal Skilled Workers Program is by far the largest permanent residence program, followed by the Provincial Nominee Program and the Canadian Experience Class. In the year 2014-2015, the FSWP accounted for around 47% of

<sup>174</sup> However, some of those in the pool may receive an invitation at a later stage.

<sup>175</sup> Government of Canada Website, Departments and agencies, Citizenship and Immigration Canada, Reports and statistics; <http://www.cic.gc.ca/english/resources/reports/ee-midyear-2015.asp>

<sup>176</sup> "The number of candidates invited is lower than the number of invitations sent because some candidates have received more than one invitation. Express Entry candidates may decline an invitation, return to the Express Entry pool and may be eligible to receive another invitation." <http://www.cic.gc.ca/english/resources/reports/ee-midyear-2015.asp>

<sup>177</sup> Government of Canada Website, Departments and agencies, Citizenship and Immigration Canada, Reports and statistics; <http://www.cic.gc.ca/english/resources/reports/ee-midyear-2015.asp>



program expenditure. By way of contrast, the Federal Skilled Trades Program represented only 1.2% of actual program expenditure in this period.

**Table 3: Actual Program Expenditures (CAN \$)**

1.1 Permanent Economic Residents		2013-14	2014-15
6901	Federal Skilled Workers	19,685,862	25,400,719
6902	Federal Skilled Trades	-	647,866
6909	Canadian Experience Class	2,457,886	4,424,254
6905	Provincial Nominees	4,159,670	5,327,161
-	<b>Other programs</b> <i>Quebec Skilled Workers</i> <i>Live-in Caregivers</i> <i>Federal Business</i> <i>Quebec Business</i> <i>Immigrant</i>	14,685,937	17,975,827
	<b>TOTAL</b>	<b>40,989,355</b>	<b>53,775,827</b>

Source: Maureen Collins, Assistant Director of the CIC. Email. 30 November 2015.

Comparing the employment situation of those born in Canada and 'landed immigrants' (i.e. with a right to permanent residence) suggests that landed immigrants are relatively well-integrated into the labour market, although they are slightly less likely to be employed and are slightly more likely to be unemployed than the total population and those born in Canada.

**Table 4: rates of those aged 15 and over, October 2015<sup>178</sup>**

	Total population	Population born in Canada	Population of landed immigrants	Population of those born in Canada with university degree	Landed immigrants with university degree
Employment (%)	61.3 <sup>179</sup>	62.9	58.8	76	70.6

Interestingly, landed immigrants with no degree, certificate or diploma face similar (slightly lower) levels of unemployment than those born in Canada (landed immigrants: 11.4%; born in Canada: 11.6%). However, there are large gaps between those with a higher level of educational attainment; landed immigrants with a university degree face a rate of unemployment (7.2%) that is more than twice that of those born in Canada (3%).

Overall, higher levels of educational attainment correlate with lower levels of unemployment for each of the groups presented (total population, landed immigrants and population born in

<sup>178</sup> Government of Canada Website, Statistics Canada, available: <http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=2820105&&pattern=&stByVal=1&p1=1&p2=31&tabMode=dataTable&csid=>

<sup>179</sup> Government of Canada Website, Statistics Canada; <http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=2820087&&pattern=&stByVal=1&p1=1&p2=31&tabMode=dataTable&csid=>

Canada). The only exception to this is landed immigrants with a university degree, who appear to fare worse than those only with a post-secondary certificate or diploma.

**Table 5: Unemployment rates of those aged 25 to 54, 2014**

	All education levels	No certificate or diploma	degree, or High school graduate	Post-secondary certificate or diploma	University degree
Unemployment rate (%)					
Total population	5.8	11.4	6.5	5.1	4.6
Landed immigrants	7.4	11.4	7.8	6.5	7.2
Born in Canada	5.2	11.6	6.2	4.8	3.0

It is important to note that *unemployment* is not the only issue that highly skilled immigrants may face, however. Studies have attested to the significant phenomenon of underemployment of immigrants in Canada – in other words, their employment in jobs that are not commensurate with their skills and qualifications. For instance, a 2008 study revealed that 42% of immigrants (25-54) held educational qualifications that were not necessary for the jobs they held.<sup>180</sup> Entrants with tertiary education who entered within the last five years are particularly likely to go into low-skill, low-income occupations<sup>181</sup>. Many factors can lead to skilled immigrants being unemployed or underemployed, such as difficulties in having their qualifications recognised, employer preferences for Canadian-born applicants, lack of Canadian work experience or language skills on the part of applicants, discrimination, lack of employer awareness and others<sup>182</sup>. To some degree, these challenges explain why the new system of Express Entry places greater emphasis on employer or provincial nomination of candidates: to avoid a waste of human capital<sup>183</sup>.

Some earlier data is available on *temporary permit holders*, as presented in the table below. This shows that in 2013 it was more common for foreign nationals to enter through the International Mobility Program than the TFWP. The profile of entrants appears to be different; approximately a third of those coming in through the TFWP were highly qualified workers (HQW), whereas a majority of workers that enter through the IMP are believed to be high-skilled. Potentially due to Canada's emphasis on skilled migration, a higher number of foreign nationals came in through the IMP (137,533) than the TFWP (83,740)<sup>184</sup>.

<sup>180</sup> Cited in Challinor, A.E. (2011), "Canada's Immigration Policy: a focus on Human Capital", Migration Policy Institute, available at <http://www.migrationpolicy.org/article/canadas-immigration-policy-focus-human-capital>

<sup>181</sup> Challinor, A.E. (2011), "Canada's Immigration Policy: a focus on Human Capital", Migration Policy Institute, available at <http://www.migrationpolicy.org/article/canadas-immigration-policy-focus-human-capital>

<sup>182</sup> See Penny Becklumb, Law and Government Division, Sandra Elgersma, Political and Social Affairs Division (Revised 8 October 2008), Recognition of the Foreign Credentials of Immigrants. <http://www.parl.gc.ca/Content/LOP/researchpublications/prb0429-e.htm#fn21>

<sup>183</sup> Demetri Papademetriou, President of Migration Policy Institute (MPI) Europe. Phone call. 17 December 2015.

<sup>184</sup> Indeed, the president of the CFIB argued that access to the TFWP has become more restricted in recent years. CFIB. Phone interview. 19 November 2015.



**Table 5: Temporary work permit holders, 2013<sup>185</sup>**

Program	Number of entrants (all skills level), 2013	Number of high-skilled entrants, 2013	Details on citizenship of holders	Extra details
<b>TFWP<sup>186</sup></b>	83,740 entrants with work permits	27,672 high-skilled entrants with a work permit	Of the TFW work permit holders with permits signed in 2013, the top countries of citizenship were: Philippines (30,193), Mexico (21,842), US (10,701), Jamaica (9,116), India (5,906), Guatemala (5,326), UK and colonies (4,449), France (2,223), Republic of Korea (2,204), Ireland (1,559).	-
<b>IMP</b>	137,533	Unavailable, most are considered to be high-skilled	Of the IMP work permit holders whose permits were signed in 2013, the top countries of citizenship of holders were: US (30,399), France (19,971), India (14,251), UK and colonies (10,189), Australia (9,840), Ireland (7,076), Japan (6,723), Philippines (6,703), Germany (6,386), Republic of Korea (5,885)	Of the 137,533 foreign nationals who entered as temporary residents through the IMP program in 2013, 28,073 came through international arrangements (e.g. Bilateral agreements), 107,856 came for "Canadian interests" (i.e. because they offer social, cultural or economic benefit to Canada) and 1,604 were permanent resident applicants.

The TFWP sets a limit on the proportion of low-wage TFWs (10%) that can make up an employer's workforce, but these do not apply to high-wage workers or the IMP.

### **Comparative overview between the national scheme and the EU Blue Card**

Canada has a long history of assessing potential immigrants on the basis of 'human capital factors'. By taking a points-based approach and considering a range of attributes alongside each other, the system widens the potential talent pool, as well as leaving the government greater flexibility to select the candidates it deems best-placed to have economic success in the country.

**Table 6: Comments against the objectives of a 'successful' scheme**

<sup>185</sup> Government of Canada Website, Employment and Social Development Canada; [http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/reform/index.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/index.shtml)

<sup>186</sup> Government of Canada Website, Employment and Social Development Canada; [http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/reform/index.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/index.shtml)

Objectives of scheme	Comments on the Canadian programs
<p><b>Increase the number of TC HQWs arriving in the country</b></p>	<p>Given the number of applicants, increasing the number of HQW is not a precise objective of Canada's programs; instead the focus is on ensuring that the 'correct' workers are selected to enter. To some degree, the need to consider the quality of the applicant pool arose from concerns about the underemployment and slower upwards mobility of migrants with higher education<sup>187</sup>.</p> <p>The Express Entry application management system was adopted partly in response to the excessive supply of people eligible to apply to Canada. Because the supply of applicants under the previous system was too great, the CIC faced backlogs and were forced to take either a 'first come, first served' approach (entailing long processing times) or to consider other policy tools (for example, a system of caps and occupational filters on federal programs, which would be highly dependent on having up to date labour market information). Through introducing Express Entry as a 'first bar' selecting the most appropriate candidates from a 'pool', the government can control intake more effectively. In an interview, the CIC argued that Canada's "managed migration system" represents one of the system's strengths.</p>
<p><b>Labour market shortages in HS sectors are filled by foreign nationals</b></p> <p><b>Contributing to the national economy's competitiveness</b></p>	<p>All applications through the Temporary Foreign Worker Program must be supported by a Labour Market Impact Assessment, aligning the profile of entrants to the needs of the labour market. Furthermore, when job offers are used to support permanent residence applications, these must also include a positive LMIA.</p> <p>In December 2012, a relevant Parliamentary Standing Committee warned of labour and skills shortages in these areas: A. Sciences, technology, engineering and mathematics occupations; B. Occupations in the Information and Communications Technology field; C. Health occupations; D. Skilled trades<sup>188</sup>. Employer witnesses from these occupations gave evidence to the Standing Committee, attesting to the importance of migration programs in supporting them to recruit workers to fill shortages, whilst also highlighting the need for long-term skills training programs for Canadian residents.</p> <p>Some issues raised in the report (2012) of the Committee in integrating foreign nationals into HS sectors with shortages were: lack of knowledge/awareness of newcomers of the requirements of the position available; difficulties and delays in validating foreign educational credentials; and language issues<sup>189</sup>. However, it is worth noting that there have been reforms to the TFWP and permanent immigration programs since 2012, and the Federal Skills Trade Program (first launched July 2012) has had more time to become established.</p> <p>Skills and labour shortages continue to be an issue in Canada. According to the CFIB Business Barometer, the percentage of business owners concerned about the shortage of skilled labour has risen over the period 2009-2014<sup>190</sup>. This is a particular issue for small independent business owners<sup>191</sup>. According to the Digital Adoption Compass Community, the ICT sector is particularly reliant on the entry</p>

<sup>187</sup> Demetri Papademetriou, President of Migration Policy Institute (MPI) Europe. Phone call. 17 December 2015.

<sup>188</sup> Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (December 2012), 41<sup>st</sup> Parliament, First Session, 'Labour and Skills Shortages in Canada: Addressing Current and Future Challenges'. Note that the report also warned of shortages in low-skilled occupations.

<sup>189</sup> Ibid, pp.37-41.

<sup>190</sup> CFIB (December 2014), Taking the Temporary Out of the TFW Program, pp. 3-6.

<sup>191</sup> Ibid.

Objectives of scheme	Comments on the Canadian programs
	<p>of high-skilled workers to fill shortages; over a third of the ICT workforce are immigrants (a higher share than in other sectors)<sup>192</sup>. A "conservative forecast" of the ICTC is that 182,000 more workers will be needed in the ICT sector by 2019<sup>193</sup>.</p> <p>Employers see the immigration of high-skilled workers as "critical" for responding to shortages<sup>194</sup>. According to the president of the CFIB, Canada's programs work quite well to address skills shortages, although more could be done to support 'bridging aspect' of migration programs (see below). In his opinion, the creation of Express Entry has been an important move towards increasing the involvement of employers in Canada's migration policy. Likewise, the ICTC argued migration programs have moved towards becoming labour market-driven with the introduction of Express Entry and the enhanced ability of provinces and employers to focus on their needs. However, it is too early to assess the full impacts.</p>
<b>Attractiveness of the scheme</b>	<p>As shown above, the supply of applicants for the permanent economic programs exceeds the number of places available.</p> <p>Between 1 January and 6 July 2015, 41,218 of those who applied through Express Entry were deemed to fulfil the conditions for one or more permanent economic programs. However, only 12,017 (11% of all applicants, 29% of those in the pool) had so far been issued with an invitation to apply for permanent residence. To some extent, this may imply a 'creaming off effect' of the invitation to apply<sup>195</sup>.</p> <p>Employers are also quite positive about the Express Entry scheme and the level of input they have<sup>196</sup>.</p> <p>The target to process 80% Express Entry applications within six months appears to be on track.</p>

### *Pathways to permanent residence within the systems*

The CIC estimates that, amongst high-skilled permanent residents, roughly half have previous work experience as temporary workers in Canada (estimated)<sup>197</sup>. According to the CIC, historic research indicates that permanent residents with previous work experience were more successful, as they had "already had an opportunity to establish themselves in the labour market" and "to establish a reputation with the employer or in the sector", as well as having "made the decision to attempt to become a permanent resident based on their desire and experience having lived in Canada on a temporary basis"<sup>198</sup>. The Canadian Experience Class program is clearly targeted at such individuals.

<sup>192</sup> Digital Adoption Compass Community Website ; <http://www.digcompass.ca/labour-market-outlook-2015-2019/highlights/>

<sup>193</sup> Estimate based on ICTC research; cited in: ICTC. Phone interview. 3 December 2015.

<sup>194</sup> ICTC, Phone interview, 3 December 2015.

<sup>195</sup> Demetri Papademetriou, President of Migration Policy Institute (MPI) Europe. Phone call. 17 December 2015.

<sup>196</sup> Phone interviews with CFIB (19 November 2015) and ICTC (3 December 2015).

<sup>197</sup> CIC. Phone interview, 20 November 2015.

<sup>198</sup> CIC. Phone interview, 20 November 2015.

The Canadian Federation of Independent Business has recommended that the 'bridging aspect' could be a useful part of the national immigration structure. To demonstrate this, the CFIB cited the example of the Provincial Nominee Program (PNP), which enables provincial governments to support the permanent residence of workers that support their regional labour market needs. According to the CFIB, there are signs that this is effective; research in Manitoba shows that if people immigrate to a particular region, they are likely to stay there, bringing longer-term benefits and spreading the immigrant population across the country. The CFIB believes that this should be the model for the future, putting people onto the pathway towards permanent residence through a new 'Introduction to Canada' visa<sup>199</sup>.

#### Specific advantages and disadvantages of the Canadian schemes

##### *Advantages:*

- In Canada, there are multiple schemes supporting the entry of different categories of skilled workers
- Despite existence of multiple schemes, there is a centralised online application system for all permanent residence applications (Express Entry) and online application processes for the TFWP and IMP
- Extensive efforts have been made by the CIC to engage employers in the system (employer liaison network, Employer Portal, Job Bank). For example, representatives from the Canadian Federation of Independent Business (CFIB) and the Information and Communications Technology Council (ICTC) are relatively positive about, and aware of, the new system of Express Entry, believing that it gives employers a greater role in the system<sup>200</sup>.
- The attractiveness of Canada's schemes leaves the government well-placed to choose the best candidates to respond to its skills/labour shortages.
- Express Entry serves as a key filter for applicants, removing the need for caps on occupations.
- One reason for the introduction of Express Entry was to improve processing times. It is early to assess, but early evidence is favourable. So far, the CIC seems to be on track to meet government target of processing 80% of applications within 6 months<sup>201</sup>.
- Emphasis on minimum levels of *skilled work experience* in the permanent residence programs, as opposed to meeting minimum educational requirements, fulfilling a salary threshold or having a binding job offer. This may enable a wider pool of skilled candidates to apply, although not to gain entry (except in certain circumstances, such as through a skilled trade or with a provincial nomination).
- Language requirements for Express Entry mean that few individuals who gain permanent residence require language training<sup>202</sup>.
- No restrictions to labour market access of skilled foreign workers once they are permanent residents.

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<sup>199</sup> For more information, see CFIB (December 2014), Taking the Temporary Out of the TFW Program.

<sup>200</sup> Phone interviews with CFIB (19 November 2015) and ICTC (3 December 2015).

<sup>201</sup> CIC. Phone interview, 20 November 2015.

<sup>202</sup> CIC. Phone interview, 20 November 2015.

- There is an option for 'bridging open work permits' for temporary foreign workers who are close to having their permanent residence applications approved

**Final observations:**

- It is too early to assess full impacts of Express Entry scheme.
- According to the president of the CFIB, the concept of Job Bank, Employer Portal is a good idea, but is less successful in the more 'passive' sense, i.e. employers are unlikely to 'mine' the list of applicants and are more far likely to support the applications of pre-selected candidates<sup>203</sup>. The ICTC representative also made similar remarks<sup>204</sup>. This reflects the fact that not all skilled workers who are eligible for permanent economic programs will receive an ITA through Express Entry. Some employers believe that there should be an expedited process for bringing in skilled workers to fulfil urgent needs. For instance, the pilot Facilitated Process for IT workers from the 1990s (now abolished) fast-tracked IT workers' applications, and some ICT employers would like to see something similar re-introduced<sup>205</sup>. More may need to be done to engage small and medium enterprises in the immigration processes<sup>206</sup>.

**Table 7: In-depth entry requirements for skilled migration programs**

Program name	Detailed entry requirements
Federal Skilled Worker Program (permanent residence)	<p>Candidates must first receive an Invitation to Apply (ITA) through Express Entry, judged against the extensive ranking criteria described above.</p> <p>To be eligible for the FSWP, candidates must fulfil these conditions:</p> <ul style="list-style-type: none"> <li>■ Skilled work experience of at least one year full-time (1,560 hours total / 30 hours per week), which was paid; within the last 10 years, and at skill type 0, or skill levels A or B of the 2011 National Occupational Classification (NOC);</li> <li>■ Minimum language requirements in English and/or French (CLB 7, proven by CIC test)</li> <li>■ Minimum educational attainment of either a Canadian secondary (high school) or post-secondary certificate, diploma or degree or a completed foreign credential that is supported by an Educational Credential Assessment (ECA) report.</li> </ul> <p>Assuming they meet all the detailed entry requirements for FSWP, they will then be ranked against a points-based selection criteria (maximum 100 points). The selection factors<sup>207</sup> are:</p> <ul style="list-style-type: none"> <li>■ Their language skills in English and/or French;</li> <li>■ Their education;</li> <li>■ Their work experience;</li> <li>■ Their age;</li> <li>■ Whether they have a valid (LMIA-supported) job offer; and</li> <li>■ Their adaptability (how well they are likely to settle in Canada).</li> </ul> <p>To qualify, FWSP applicants must receive the pass mark of 67 out of 100 and fulfil the admissibility requirements.</p>
Federal Skilled Trades Program (permanent)	<p>Candidates must first receive an Invitation to Apply (ITA) through Express Entry, judged against the extensive ranking criteria described above.</p> <p>To be eligible for FSTP, candidates must fulfil these requirements<sup>208</sup>:</p>

<sup>203</sup> CFIB. Phone interview, 19 November 2015.

<sup>204</sup> ICTC. Phone interview, 3 December 2015.

<sup>205</sup> ICTC. Phone interview, 3 December 2015.

<sup>206</sup> ICTC. Phone interview, 3 December 2015.

<sup>207</sup> Government of Canada Website, Immigration and Citizenship; <http://www.cic.gc.ca/english/immigrate/skilled/apply-who.asp>

Program name	Detailed entry requirements
	<p>Either have an offer of full-time employment for a total period of at least one year <b>or</b> a certificate of qualification in that skilled trade issued by a provincial or territorial body;</p> <p>Have valid third-party language test results (that show they meet the minimum language threshold),</p> <p>Have at least two years of full-time experience in a skilled trade within the five years before they apply, and</p> <p>Meet all job requirements for the skilled trade as set out in the National Occupational Classification (NOC).</p>
Canadian Experience Class (permanent)	<p>Candidates must first receive an Invitation to Apply (ITA) through Express Entry, judged against the extensive ranking criteria described above.</p> <p>To be eligible for CEC, candidates must fulfil these requirements<sup>209</sup>:</p> <ul style="list-style-type: none"> <li>■ Have at least 12 months of full-time (or an equal amount in part-time) skilled work experience in Canada in the three years before application;</li> <li>■ have gained the work experience in Canada with the proper authorization;</li> <li>■ meet the required language levels needed for your job for each language ability (speaking, reading, writing and listening)<sup>210</sup>;</li> <li>■ plan to live outside the province of Quebec.</li> </ul> <p>Note that the self-employed are not eligible.</p> <p>Skilled work experience must be in one of the following areas: Managerial jobs (NOC skill level 0); Professional jobs (NOC skill type A); Technical jobs and skilled trades (NOC skill type B)</p>
Temporary Foreign Worker Program (temporary)	<p>Employer must obtain a positive Labour Market Impact Assessment (LMIA) from Employment and Social Development Canada (ESDC), proving that the worker is needed for a specific position. The temporary worker must then obtain a copy of the confirmation letter and apply for a work permit.</p> <p>The TFWP was reformed in 2015, meaning that the provincial or territorial median hourly wage is now used to set program requirements, rather than the National Occupational Classification (NOC) skill levels<sup>211</sup>. Employers must now apply for the TFWP under one of two streams: the Stream for High-wage positions or the Stream for low-wage positions<sup>212</sup>.</p>
International Mobility Program (temporary)	<p>The IMP acts as a collection of several different programs, regulated by international agreements. There is not a common minimum requirement across the IMP (education, experience, etc.), as these factors depend on the purpose and features of the sub-program in use<sup>213</sup>. One common feature of IMP applications is that they never require a LMIA from the ESDC.</p> <p>Generally speaking, workers that enter through the IMP are expected to bring "broader economic, cultural or other competitive advantages for Canada"<sup>214</sup>. The IMP is normally used to bring in high-skilled workers, such as intra-company transferees.</p>

<sup>208</sup> Government of Canada Website, Immigration and Citizenship; <http://www.cic.gc.ca/english/hire/fstp.asp>

<sup>209</sup> Government of Canada Website, Immigration and Citizenship; <http://www.cic.gc.ca/english/immigrate/cec/apply-who.asp>

<sup>210</sup> Minimum language level of Canadian Language Benchmark (CLB) 7 for NOC 0 or A jobs OR Canadian Language Benchmark (CLB) 5 for NOC B jobs.

<sup>211</sup> Government of Canada Website, Employment and Social Development Canada; [http://www.esdc.gc.ca/eng/jobs/foreign\\_workers/reform/restrict.shtml](http://www.esdc.gc.ca/eng/jobs/foreign_workers/reform/restrict.shtml)

<sup>212</sup> Applications are not permitted in the Accommodation, Food Services and Retail Trade sectors. Furthermore, applications for positions with little or no education or training required will not be processed in economic regions that have an unemployment rate of 6% or higher.

<sup>213</sup> CIC. Phone interview, 20 November 2015.

<sup>214</sup> Government of Canada Website, Immigration and Citizenship; <http://www.cic.gc.ca/english/work/employers/apply-who.asp>



### ***'Comprehensive Ranking System' of Express Entry***

Applicants through Express Entry can gain a maximum of 1,200 points and are ranked against four main criteria:

- Core / human capital factors (maximum of 500 points, or 460 points if applying with spouse or common-law partner)
- Spouse or common-law partner factors (maximum 40 points)
- Skills transferability factors: education and/or foreign work experience (maximum 100 points)
- Additional points, for either provincial nomination or arranged offer of employment (i.e. LMIA-supported job offer) (maximum 600 points)

Those who score the most highly will receive an Invitation to Apply (ITA) for permanent residence. According to the CIC, "a goal of Express Entry is to ensure strong links between economic immigration and the Canadian labour market. For that reason, qualified candidates who also have a job offer will get enough points to ensure they are ranked high enough to get an invitation to apply... Similarly, a nomination by a province or territory, will give a candidate additional points to rank high enough to be invited to apply at the next eligible round of invitations"<sup>215</sup>. The full sub-criteria are listed below<sup>216</sup>.

<b>A. Core / human capital factors</b>		
Factors	Points per factor - With a spouse or common-law partner	Points per factor - Without a spouse or common-law partner
Age	100	110
Level of education	140	150
Official languages proficiency	150	160
Canadian work experience	70	80
<b>B. Spouse or common-law partner factors</b>		
Factors	Points per factor (Maximum 40 points)	
Level of education	10	
Official language proficiency	20	
Canadian Work Experience	10	

**A. Core/human capital + B. Spouse or common-law partner factors = Maximum 500 points (with OR without a spouse or common-law partner)**

<b>C. Skill Transferability factors (Maximum 100 points)</b>	
Education	Points per factor (Maximum

<sup>215</sup> Government of Canada Website; <http://www.cic.gc.ca/english/express-entry/criteria-crs.asp>

<sup>216</sup> Lifted directly from the CIC website; <http://www.cic.gc.ca/english/express-entry/grid-crs.asp>

	<b>50 points)</b>
<b>With good/strong official languages proficiency and a post-secondary degree</b>	50
<b>With Canadian work experience and a post-secondary degree</b>	50
Foreign work experience	<b>Points per factor (Maximum 50 points)</b>
<b>With good/strong official languages proficiency (Canadian Language Benchmark [CLB] level 7 or higher) and foreign work experience</b>	50
<b>With Canadian work experience and foreign work experience</b>	50
Certificate of qualification (for people in trade occupations)	<b>Points per factor (Maximum 50 points)</b>
<b>With good/strong official languages proficiency and a certificate of qualification</b>	50

**A. Core/human capital + B. Spouse or common-law partner + C. Transferability factors = Maximum 600 points**

<b>D. Additional points (Maximum 600 points)</b>	
<b>Factor</b>	<b>Points per factor</b>
<b>Arranged employment (positive Labour Market Impact Assessment required)</b>	600
<b>PN nomination</b>	600

**A. Core/human capital + B. Spouse or common-law partner factors + C. Transferability factors + D. Additional points = Grand total – Maximum 1,200 points**



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# National schemes for attracting highly qualified workers

Country Fiche: Australia

### Key Points to note:

- The Skilled Stream (vis-à-vis the Family and Humanitarian Stream) of migration accounts for about two-thirds of the migration visas issued (in 2014-15, 128,550 places were allocated to the permanent skilled migration stream, including all accompanying family members). It includes a variety of visas.
- Visas are both temporary and permanent. The main temporary visa is ‘the temporary skilled visa’ (457), which is temporary and sponsor-based. Permanent visas are either sponsor-based, whereby the sponsor can be an employer (employer nomination scheme - 186), or can be the regional Australia (regional sponsor scheme – 187), or sponsor-free. This is the case of the Skilled-Independent Visa (189), which requires an expression of interest system and a points-based assessment.
- The most comparable visa with the EU Blue Card is the Skilled Temporary Visa (457): it is valid up to 4 years, but migrants have the possibility to move after two years on a permanent visa.
- Australia makes an extensive use of Skilled Occupation List to select skilled both temporary and permanent migrants and employs bridging visas from one category to another.
- Traditionally, migration visas have been permanent. Since the mid-90s, however, a considerable number of temporary skilled visas started to be issued.
- Permanent migration is usually capped by the government and a processing priority is indicated.
- Permanent migrants are more commonly selected onshore and the importance of sponsor-free immigration has decreased over time. In fact, the majority of skilled category applicants now enter Australia as temporary long-stay workers (457) - 130,000 primary applicants in 2014-15.
- Labour migration policy in Australia is under constant monitoring and informed by well-developed skilled migration research.

## 1. Overview of the scheme

The Australian **permanent immigration program**<sup>218</sup> is divided into two distinct streams: the “Migration Programme for Skilled and Family Migrants” and the “Humanitarian Programme for Refugees”. Within the Migration Programme for Skilled and Family Migrants, the skill stream is linked to the needs of the national labour market, while the family stream facilitates the entry of family members wishing to join their relatives in Australia. Combined, both programmes also address the national goal of sustained population growth, in a context where by 2011 26% of Australia’s population were first generation immigrants, substantially exceeding national rates for the other major immigrant-receiving countries.

<sup>217</sup> This country fiche has been co-written by Prof. Leslyanne Hawthorne, on 12 December 2015.

<sup>218</sup> For more information, see Parliament of Australia 2012, Background Note, “Skilled migration: temporary and permanent flows to Australia”, [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2012-2013/SkilledMigration](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/SkilledMigration)

Australia's labour migration policy consists of a plurality of schemes, responding to specific needs and contemporary labour market demands. All schemes, however, albeit to a different degree, feature a detailed labour market analysis, selection of specific skills, and informed by geographical considerations (through the state/territory regional sub-category which has grown rapidly in recent years). It is important to note, that not only highly qualified migrants are covered, but also medium and low skilled workers deemed to be necessary for the Australian labour market. However, around two-thirds of primary applicants selected are professionals and managers.

The Minister for Immigration and Border Protection has the power to cap the number of permanent visas which can be granted each year in a particular visa subclass. When a cap is reached, no further visas will be granted in that visa class in the programme year. Although a visa can no longer be granted until the start of the new programme year, processing of applications may continue and applicants who meet the requirements can wait in a queue for the following year (cap and queue). The option 'cap and cease' is also available in exceptional circumstances, and means that when a cap has been reached for a particular visa class, work on all applications which have not been processed to decision stops, the files are closed and application fees are refunded. These applications are treated as if they have not been submitted.

The Minister can also give written directions on the order of priority for processing visa requests. For skilled migration, the highest priority is afforded to those seeking migration to a regional area, followed by applicants who are sponsored by an employer. The next priority is afforded to people who have been nominated by a state or territory government agency. Lower priority is afforded to applications from people who have not been sponsored by an employer or nominated by a state or territory government. By 2011 the government had introduced a more demand-driven approach, favouring the admission of skilled migrants whose employment had been arranged prior to their arrival. The empirical basis for this decision was compelling as 92% of employer-sponsored applicants were employed full-time within 6 months of arrival from 2009-11, compared to 76% of points-tested 'Independent' migrants selected offshore.

Beyond the permanent skilled migration programme, however, it is essential to recognise that the majority of skilled category applicants now enter Australia as **temporary long-stay workers** – a category with no annual quota, and one which wholly reflects the priorities of sponsoring employers. with minimal requirement for labour market testing<sup>219</sup>. The temporary skilled visa (457, see below for description) 'visa is of interest to Australian employers in multiple fields – allowing them direct choice over migrants' selection, personal attributes, speed of entry, and access to work in under-supplied sectors and sites for up to 4 years (with scope for extension). From the migrant's perspective, the 457 visa has similar benefits – facilitating priority processing, immediate access to work, opportunity to change employers, and scope to 'category-switch' in Australia by applying for permanent

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<sup>219</sup> Khoo, S-E, McDonald, P & Hugo, G (2005), Temporary Skilled Migrants in Australia: Employment Circumstances and Migration Outcomes, Department of Immigration Multicultural and Indigenous Affairs, Canberra.

skilled migration. The 457 visa plays a vital role in assuring workforce supply in select fields, including medicine and nursing.

## 1.1 Design of the Scheme

The **Skills Stream Migration Programme** is divided into several categories. Some categories require a points-based assessment (2), whereas other categories do not (1)<sup>220</sup>. The work visas can be permanent or temporary, and sponsored-based or not sponsored-based.

- The categories that do not require a points-based assessment are the following:
  - The **Temporary Skilled Visa** (subclass 457) The requirement is that the migrants will work in one of the occupations included on the regularly updated Skilled Occupations List, have a sponsored employer, show evidence of recent relevant skills and experience, and have a level of English proficiency matched to their occupational requirements (for example to secure vocational registration)<sup>221</sup>. A high proportion of applicants category-switching to stay are former international students qualified in Australia, who first secure employment through the 457 visa<sup>222</sup>.
  - The **Employer Nomination Scheme** (subclass 186) is a *permanent* scheme for applicants sponsored by an employer. It requires a skill assessment carried out by the relevant authority and three years of working experience, unless exempt. The profession should be listed in the Consolidated Sponsored Occupations List and the worker should be paid at least the same as an Australian in the same occupation in the same location (market salary rate defined as the salary of an Australian in the same occupation in the same location also considering competitor companies in the same sector). Applicants must be younger than 50, unless exempt. The scheme consists of two steps: a nomination by an approved Australian employer and an application under the scheme. There are three streams: the transition scheme from the temporary skilled visa (457), a direct stream for people outside Australia or in Australia on a permit different from 457, and an agreement stream, for people sponsored by an employer through a labour migration agreement.
  - The **Regional Sponsored Migration Scheme** (subclass 187) is a *permanent* scheme that requires the applicant to be sponsored by a regional employer. 'Regional Australia' for the purpose of this category is defined as the non-metropolitan areas of the nation that lie beyond most of the major capital cities and their immediate surrounding suburbs. However selected capital cities, which seek a higher proportion of skilled migrants than they attract,

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<sup>220</sup> For more information, see the website of the Australian Government, Department of Immigration and Border Protection, viewed on 14<sup>th</sup> October 2015, <http://www.border.gov.au/Trav/Work/Empl/Visa-options-comparison-charts>

<sup>221</sup> Most Australian professional and trade regulatory bodies have mandated specific English language levels as a condition of securing registration to practice, most ranging from International English Language Testing System Band 6 to Band 8 (for example IELTS Band 6 for professional engineers, Band 7 for all medical and allied health practitioners, and higher levels for lawyers)

<sup>222</sup> Hawthorne, L & To, A (2014), 'Employer Response to the Study-Migration Pathway: The Australian Evidence 2007-2011', Highly Skilled Migration: Policies, Processes and Politics, Special Issue, *International Migration* (Geneva), 52(3): 99-115, August

have secured permission to be categorised as ‘regions’ under the scheme<sup>223</sup>. The applicant should hold a qualification at the 1, 2 or 3 level of the ANZCO classification. The ANZCO includes 5 occupational levels, and 1 and 2 are considered skilled, while level 3, 4 and 5 are considered semi, low or unskilled respectively<sup>224</sup>. The salary is required to be equivalent to the salary of an Australian in the same occupation and location. Moreover, the applicants should be younger than 50 years and be competent in English.

- **The categories that do require a points-based assessment are the following:**
  - The **Skilled-Independent Visa** (subclass 189) is a *permanent* permit that requires the applicant to express her interest, before applying through SkillSelect. A sponsor is not necessary; however the applicant must nominate an occupation in the relevant Skilled Occupations List<sup>225</sup> and her skills are assessed by a relevant authority. Moreover, the applicants must be under 50 and be competent in English. Those who cannot demonstrate the specified English standard for their field, and/ or those whose qualifications are unlikely to be recognised are excluded from eligibility to proceed. Points are granted for the number years worked in skilled employment, level of qualifications, qualifications obtained in Australia, working experience in Australia and partner’s skills.
  - The **Skilled-Nominated Visa** (subclass 190) is a *permanent* permit that requires the applicant to express her interest, before applying. A sponsor is necessary and the applicant must be nominated by a state/territory government. The applicant must nominate an occupation in the relevant Consolidated Sponsored Occupations List<sup>226</sup> and her skills are assessed by a relevant authority. Moreover, the applicant must be under 50 and be competent in English (as above). Points are granted for years worked in skilled employment, qualifications, qualifications obtained in Australia, working experience in Australia and partner’s skills.

The **Skilled-Regional (Provisional) Visa** (subclass 489) is a *temporary* entry channel that grants residence for up to 4 years and for which the applicant must express interest before being invited to apply. The applicant can be sponsored by either an eligible relative or by a state/territory government and the occupation must be respectively either in the Skilled Occupations List or in the Consolidated Sponsored Occupation List. Moreover, the applicants must be under 50 and competent in English.

It is important to note that the Skilled Occupations List includes a variety of professions, both highly qualified, like nuclear engineers and surgeons, and medium-skilled, like plumbers and

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<sup>223</sup> The state capital cities of Adelaide (South Australia) and Hobart (Tasmania) have sought ‘regional’ categorization in the past decade, to boost their scope to recruit skilled migrants.

<sup>224</sup> <http://www.immigration.govt.nz/migrant/general/generalinformation/anzsco>, viewed on 10<sup>th</sup> December 2015.

<sup>225</sup> The Skilled Occupation List can be consulted on the website of the Australian Government, Department of Immigration and Border Protection, viewed on the 15<sup>th</sup> October 2015 <http://www.border.gov.au/Trav/Work/Work/Skills-assessment-and-assessing-authorities/skilled-occupations-lists/SOL>

<sup>226</sup> The Consolidated Skilled Occupation List can be consulted on the website of the Australian Government, Department of Immigration and Border Protection, viewed on the 15<sup>th</sup> October 2015 <http://www.border.gov.au/Trav/Work/Work/Skills-assessment-and-assessing-authorities/skilled-occupations-lists/CSOL>

joiners. Likewise, the Consolidated Occupations List includes both highly qualified professions and medium/low-skilled professions, like flower growers and pig farmers.

## **1.2 Application procedure**

The dividing line between ‘permanent’ and ‘temporary’ migrants has become increasingly unclear over time, with temporary migration dominating. In a typical year up to 130,000 ‘457’ visa primary applicants become residents – far exceeding the number of primary applicants in the 128,550 permanent skilled migration quota (where stated numbers include all accompanying family members). Reflecting this trend, in July 2012 a new model to select skilled migrants – the Skilled Migrant Selection Model (SkillSelect) – was introduced in Australia, following an internal review of the points-based system<sup>227</sup>. The model is an electronic system whereby prospective applicants must first submit an expression of interest (EoI) for an initial review of their skills from the Department of Immigration and citizenship before being invited to make a visa application<sup>228</sup>. Four key points should be noted in relation to this:

- This application process can be used for both temporary and permanent primary applicants.
- Lodged applications can be screened online, by both prospective employer and state/ territory government sponsors.
- Applicants may be immediately offered a permanent skilled migration place, or (alternatively) a temporary sponsored position in the first instance, with sponsored applicants then fast-tracked.
- Applications remain in the ‘pool’ for a defined period of time. If not selected within that period, migrants must lodge a new application to ensure all information is current, and to prevent the development of processing backlogs.

## **1.3 Rights granted under the scheme**

The Temporary Skilled Visa (subclass 457) allows skilled people to work for their approved sponsor for up to four years. After a period of employment of two years in the same position, an employer may be able to sponsor a subclass 457 visa holder through the Temporary Residence Transition stream, allowing ‘category-switching’ to permanent resident status. Since 2012 degree-qualified international students have been guaranteed the right to stay and seek employment in Australia for 2-4 years on course completion (with 4 years allocated to those qualified by doctoral qualifications). This is uniquely generous in global terms, in a context where very substantial numbers of international students elect to study in Australia (for example 78% of recent medical graduates).

- The Employer Nomination Scheme (subclass 186) is a permanent scheme for applicants sponsored by an employer.

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<sup>227</sup> Department of Immigration and Citizenship, 2010 “Introduction of a New Points Test”, DIAC,, <http://www.immi.gov.au/skilled/general-skilled-migration/pdf/points-fact.pdf>, accessed 27 December 2010.

<sup>228</sup> Expression of interest, otherwise called express entry or SkillSelect is a stage which precedes the application itself, and serves the purpose of pre-filtering migrants. It is an efficiency-oriented instrument that is particularly relevant when the number of applicants exceed the capped number. For more information on cap, <https://www.border.gov.au/about/corporate/information/fact-sheets/21managing> viewed on 10<sup>th</sup> December 2015. It further provides scope for employers and states/ territories to assess pre-screened applicants for sponsorship purposes.

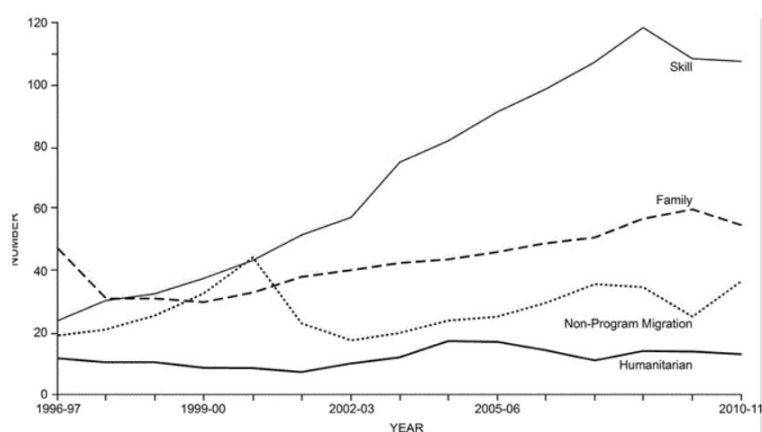


- The Regional Sponsored Migration Scheme (subclass 187) is a permanent scheme that requires the applicant to be sponsored by a regional employer. The salary is required to be equivalent to the salary of an Australian in the same occupation and location.
- The Skilled-Independent Visa (subclass 189) is a permanent permit.
- The Skilled-Nominated Visa (subclass 190) is a permanent permit.
- The Skilled-Regional (Provisional) Visa (subclass 489) is a temporary entry channel that grants residence for up to 4 years.

#### 1.4 Statistical overview

In 1997, people migrating under the Skilled Stream overtook the arrivals under the family stream (see Figure 1). In 1996-97, skilled migration represented 47% of the Migration Programme, but by 2011-2012, this share had risen to 68%.

*Table 1: Permanent migrants by eligibility category in Australia 1996-97 to 2010-11*<sup>229</sup>



The recent statistics show that temporary migration, for work or study purposes, is increasingly becoming the first step towards permanent settlement in Australia. In 2011-2012, around 40% of applicants for permanent visas were already residing in Australia, and half of these had a temporary skilled permit<sup>230</sup>. By 2015 this had risen to around 50%. Immigration policy in Australia distinguishes among on- and off-shore applications, and provides bridging visas between the two. The number of permanent / provisional visas in 2012-13 to 30 June 2013 where the previous visa was held by a migrant on a temporary skilled visa was 38,470<sup>231</sup>. For the past decade former international students have been the dominant group participating in what is termed ‘two-step migration’, far exceeding the number of ‘457’ temporary workers category-switching to stay.

<sup>229</sup> G Hugo, Australia’s changing population and the future, presentation to the Migration Institute of Australia Migration 2010 conference, Sydney, 8 October 2010. Data sources: ABS 2007, Australian Social Trends; DIAC 2009 and 2011.

<sup>230</sup> Parliamentary Library, Temporary skilled migration, 2014, viewed on 14<sup>th</sup> October 2015, [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook44p/TempSkilledMigration](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/TempSkilledMigration)

<sup>231</sup> Australian Government, Department of immigration and Borders Protection, Subclass 457 State/Territory summary report, 2013. Viewed on 14<sup>th</sup> October 2015, <http://www.border.gov.au/ReportsandPublications/Documents/statistics/457-stats-state-territory-june13.pdf>



As demonstrated by Table 2, by June 2014, the number of temporary ‘457’ visa professionals far exceeded the scale of points-tested permanent skilled migrant arrivals in key fields such as IT, engineering and medicine. Around 50% of permanent skilled migrants by this time were also selected onshore – the majority as former international students who had qualified in Australia (for example in accounting and nursing), but also as former temporary foreign workers<sup>232</sup>.

**Table 2: Australian Employer Demand for Skilled Migrants, Temporary Compared to Permanent Points-Tested Categories, by Major Field and Selection Location (30 June 2008 to 30 June 2014)**<sup>233</sup>

Skilled Migration Category	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	% Selected Onshore 2013-14
<b>Temporary Stock Resident (457 Visa)</b>							<b>% New 2013-14 Approvals Only</b>
Computing/ IT	7,150	7,360	9,010	10,490	11,050	10,880	22.2%
Engineering	6,670	5,620	6,210	8,280	8,070	6,160	39.8%
Accounting	2,580	2,470	2,710	3,330	3,840	4,010	48.9%
Nursing	4,560	3,850	3,300	4,070	4,770	3,810	61.6%
Medicine	5,060	4,600	4,990	5,030	4,590	4,160	34.7%
Education	1,220	1,130	1,420	2,190	2,830	2,910	50.8%
Total (all fields)	77,300	68,400	72,030	91,050	107,970	108,870	50.9%
<b>Permanent Arrivals (GSM Visa)</b>							<b>% + No. Total 2008-14 Approvals</b>
Computing/ IT	4,774	5,205	4,468	8,538	8,389	7,975	37.2 (39,349)
Engineering	4,319	5,907	4,112	4,891	3,898	4,160	35.2 (27,287)
Accounting	6,642	6,783	14,949	7,303	6,022	6,880	70.1 (48,579)
Nursing	1,357	1,700	1,374	1,174	1,404	2,761	57.5 (9,770)
Medicine	446	1,070	508	1,037	1,289	1,134	28.8% (5,484)
Education	883	754	467	730	912	961	37.5 (4,707)
Total (all fields)	33,604	28,042	34,913	36,893	39,147	38,130	50.0 (210,729)

Source: Hawthorne, L (2015), ‘The Impact of Skilled Migration on Foreign Qualification Recognition Reform in Australia’, *Canadian Public Policy Journal*, August, <http://www.utpjournals.press/toc/cpp/41/Supplement+1>, based on analysis of unpublished Department of Immigration and Border Control immigration arrivals data for permanent compared to temporary skilled migration categories, provided August 2014.

In 2012, 48,995 new migrants arrived under the temporary work skilled programme, whereas 40,607 were the new arrivals under the skill scheme who were granted permanent residency. That year the main source countries for permanent migration to Australia as Subclass ‘457’ were the India, China and the UK; whereas the top origin countries for temporary migration were the India, United Kingdom, Ireland, Philippines, US, China and South Africa.

In the year to June 2014, 38,130 primary applicants were selected in Australia’s permanent skilled migration programme (at a time when the quota including family members was 128,550). Of these 77% were professionals, 20% technicians or trade workers, and 2% managers. The great majority of primary applicants at this time were selected onshore (for example 24,709 professionals compared to 14,139 selected outside Australia). The primary professional fields at this time were computing (21%), accounting (18%), health (12%) and

<sup>233</sup> Although official immigration statistics include also the family members, the figures provided in this table and the tables below on primary applicants for the 457 visa compared to the points-tested permanent primary applicants refer to primary applicants and are based on unpublished data provided to Leslyanne Hawthorne directly by DIBP.

engineering (11%). It is important to note that source countries also varied markedly by field. For professional engineers, for instance, India (21%), China (12%), Iran (10%), Malaysia (9%) and the UK (5%) were the top 5 source countries, while in medicine the main source countries were the UK (19%), Malaysia (17%), India (16%), Canada (4%) and Sri Lanka.<sup>234</sup>

By June 2014 108,870 primary applicant ‘stock’ were resident, derived from multiple occupations. 49% percent of arrivals that year were professionals, 25% technicians/ trade workers, and 20% managers. Half were selected onshore (many as former international students), with the main professions that year computing (16%), health (5%), engineering (4%) and accounting (4%). In relation to policy and employment outcomes, it is important to note the impact of employer choice on skilled migrants’ selection. Within the professions, Australian employers demonstrate a marked preference to select migrants with advanced English language ability, training in OECD countries, and/or local qualifications. As demonstrated by Table 2, showing the top ten source countries for employer-sponsored temporary applicants compared to permanent skilled migrants in the year to 30 June 2014, 54% of the 457 visa engineers had qualified in OECD countries, and 50% were native English speakers from the UK, Ireland, the USA and Canada. The comparable figure for permanent points-tested migrants (selected by government) was 7%.

**Table 3: Top 10 Source Countries for Skilled Category Temporary Compared to Permanent Migrant Engineer Primary Applicants (30 June 2009-2014)**

Temporary ‘457’ Visa Stock Resident Year to 30 June 2014 (All Sources = 6,160)	Permanent Skilled Category Total Selected Year to 30 June 2014 (All Sources = 4,160)
UK (24%)	India (18%)
Ireland (13%)	China (15%)
USA (9%)	Iran (9%)
India (6%)	Pakistan (7%)
Philippines (5%)	Malaysia (6%)
Canada (4%)	UK (5%)
China (4%)	Sri Lanka (3%)
France (4%)	Philippines (3%)
Malaysia (2%)	South Africa (2%)
South Africa (2%)	Bangladesh (3%)

L (2015), ‘The Impact of Skilled Migration on Foreign Qualification Recognition Reform in Australia’, *Canadian Public Policy Journal*, August, <http://www.utpjournals.press/toc/cpp/41/Supplement+1>

As shown by multiple Australian studies in recent decades, English ability is the key determinant of registration for migrants in regulated fields, and of migrants’ early employment outcomes (including their likelihood of utilising qualifications in work). Those with low English language ability face years of occupational displacement.

### 1.5 Comparative overview between the national scheme and EU Blue Card

In global terms, Australia achieves excellent outcomes from its permanent skilled migration programme, with employer sponsored and offshore independent applicants securing the

<sup>234</sup> Hawthorne, L (2015), ‘The Impact of Skilled Migration on Foreign Qualification Recognition Reform in Australia’, *Canadian Public Policy Journal*, August, <http://www.utpjournals.press/toc/cpp/41/Supplement+1>

highest full-time employment rates (92% and 76% employed at 6 months respectively, with employer-sponsored migrants most likely to use their qualifications in work (see Table 1).

The Australian system for HQW is complex and layered, but when comparing the Blue Card, the visa 457 Temporary Skilled Visa is the best comparative candidate because it is a temporary and sponsor-based scheme. Quarterly statistics on visa 457 are available online<sup>235</sup>. It has to be noted that, in general, the statistics on the number of permits issued include family members.

In the 2014-15 programme year, in the three months (quarterly publication) up to 31<sup>st</sup> December 2014, 27,660 subclass 457 primary visa applications were lodged. The acceptance rate was very high - 92% - and 25,530 visas were granted, seemingly pointing out that the system is efficient. In 2014-15, there were 130,000 primary applicants.

In the EU, the number of Blue Cards issued in 2014 were 13,724, although 88% (12,108) were issued in Germany. If family members are included in the figures (6,380), the total number in 2014 reached 20,104. Data on the number of the applications for the Blue Card are not available at the EU level, so no acceptance rate can be calculated.

By comparing the number of the Blue Cards and the 457 visas, it emerges that Australia grants in three months almost twice as much as the EU grants in one year. And geographically, the vast majority of Blue Cards have been issued in Germany so far. Australia suffers from an uneven geographical distribution of migrants, whereby migrants tend to gather around the top four metropolitan cities. For tackling this uneven distribution, Australia has devised specific permits for regional Australia.

On 30<sup>th</sup> September 2015, 103,860 subclass 457 primary visa holders resided in Australia. As for the origin of the applications, approximately half of the applications were launched onshore and half offshore. In 2012-13, 40,450 457 visa holders were granted permanent residence.

The first element of success of the Australian system is that it is diversified and offers several pathways to migrate to Australia for work purposes. It is also designed to facilitate 'two-step migration', allowing temporary foreign workers and international students to transition to permanent resident status. The system is tailored to the needs of the labour market, and offers a variety of options to migrants at different skill levels.

Moreover, the percentage of migrants who obtain immediate permanent entry is very high compared to the EU, despite the growing dominance of temporary migration. Temporary skilled migrants can also apply for a permanent permit after 2 years, if they are sponsored by their employer through a bridging visa.

In general, Australian schemes foresee less strict requirements than the Blue Card: there is no salary requirement, except the market conformity, and a formal qualification is required only if the job itself requires a qualification. Employers play an increasingly important role and, while sponsoring the migrant undertake to ascertain on behalf of the government that the migrant is qualified for the job.

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<sup>235</sup> Australian Government, Department of immigration and Borders Protection (2014), Subclass 457 quarterly report; <http://www.border.gov.au/ReportsandPublications/Documents/statistics/457-quarterly-report-2014-12-31.pdf>

Further, Australia does not implement a selection for highly qualified migrants according to an *ex ante* definition; rather it tailors its definition of (highly) skilled migrants to the labour market needs, through occupational lists and through the flexibility the points-based assessment grants. There is no defined quota for medium and low skilled workers, if they are needed by the Australian labour market. To this end, the labour market assessment the government carries out along with social partners is essential.

Family members apply with the main applicant, and when a points-based assessment is carried out, their skills can be taken into account to score more points.

Compared to the Blue Card, the Australian schemes emphasise the importance of age (often people over 50 cannot not apply), of language competence (independent English language assessment is always required, matched to the vocational requirements of specific occupational fields) and to address worker maldistribution, select schemes require migrants to work for a defined period in regional Australia. Moreover, employers play a more important role in sponsoring migrants than they do in Europe, not only when migrants are on their first permit, but also when they change permit, and transfer to a permanent one<sup>236</sup>.

Finally, to inform effective policy development, the Australian government has made a sustained commitment to skilled migration research, including longitudinal and continuous surveys of different temporary and permanent sub-categories.

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# National schemes for attracting highly qualified workers

Country Fiche: China

## Key Points to note: China

- China introduced a new visa category – the R Visa, or ‘talented person visa’ - in 2012, under the Exit and Entry Administration Law. This new visa category created a specific entry route for individuals who are classified as ‘high-level personnel’ or ‘much-needed talent’.
- The R visa has been adopted recently, and take-up has been relatively low so far (in comparison to similar schemes in other countries);
- There are also generous financial incentives on offer – the scheme offers a resettlement subsidy of 500,000 Yuan (70,000EUR), which is often complemented by additional subsidies and research grants from local governments that in some cases have been worth an additional 1-3 million Yuan;
- However, the application process is unclear and likely acts as a disincentive to third-country nationals (TCNs);
- The associated schemes for attracting highly skilled workers (HSWs) have brought in the number of HSWs that they intend to, but as yet it is not clear whether this will have the desired impact upon national technological output.

## 1 Overview of the scheme

China introduced a new visa category – the R Visa, or ‘talented person visa’ - in 2012, under the Exit and Entry Administration Law<sup>237</sup>. This new visa category created a specific entry route for individuals who are classified as ‘high-level personnel’ or ‘much-needed talent’, with recognition as meeting the requirements for one of these two categories dependent on being given a statement of eligibility from the government departments responsible for applying the scheme (usually the Ministry of Human Resources and Social Security or the State Administration of Foreign Experts). Eligibility is ultimately at the discretion of these government bodies, as neither a list of the fields and sectors in which applicants should be experienced nor the criteria they will be assessed against are publicly available.

This new visa category is complemented by a national scheme called the Thousand Talents Plan (TTP), an incentive scheme launched in 2008 with the aim of attracting 2,000 highly-talented individuals to China within its first 5-10 years. Participants move to China as either a ‘researcher’ or an ‘entrepreneur’ and are awarded generous financial incentives – the scheme offers a resettlement subsidy of 500,000 Yuan (70,000EUR), which is often complemented by additional subsidies and research grants from local governments that in some cases have been worth an additional 1-3 million Yuan. Like the R Visa there are no published guidelines spelling out which specific fields or roles applicants are sought in, but applicants are supposed to work in the fields of innovation, science and research. As well as the national TTP there are also various regional-level schemes of a similar nature. Award recipients are given an R visa to China<sup>238</sup>.

### 1.1 Design of the scheme

Qualification for an R visa – as opposed to a regular working Z visa – is dependent on receiving recognition from a relevant government department as being eligible. However, no government departments publish information on how they assess applicants and no specifications are written down in the law. Using TTP requirements as a proxy for the R visa, applicants are generally expected to possess a doctorate and be professors in renowned research institutes/universities (if they are researchers) or possess an undergraduate degree and have spent at least 3 years as a middle or senior manager at a major company. As with the legislation, there are no specific definitions of what constitutes ‘renowned’ or ‘major’. Other than this, requirements for the R visa are the same as requirements for the regular working visa. A binding job offer is required, usually with no salary threshold<sup>239</sup>, and there are no requirements for a labour market test to be carried out. Applicants for TTP have to be under 55 years of age, 5 years lower than the usual limit of 60 years for a regular working visa<sup>240</sup>.

### 1.2 Application Procedure

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<sup>237</sup> English version at: <http://cs.mfa.gov.cn/wgrlh/lhqz/lhqzjjs/t1120988.shtml>.

<sup>238</sup> SCMP, 2014. “*qianren jihua*”, *na lingren chuixiande yaoyue beihou (the Thousand Talents Program, behind the coveted invitation)*, <http://www.nanza.com/sc/national/14c3169f9022412/qian-ren-ji-hua-na-ling-ren-chui-xian-di-yao-yue-bei-hou>

<sup>239</sup> Local jurisdictions can apply their own restrictions on top of the national requirements. Nowhere appears to set a salary threshold for R visas at present.

<sup>240</sup> All eligibility requirements in English on the TTP website: <http://www.1000plan.org/en/>



The application process is the same as for other visas. Documentation proving eligibility for an R visa must be submitted to a visa centre outside of China, with successful applicants receiving a visa within 4 days. For long-term arrivals in China (those coming for more than 180 days), the visa holder has 30 days after arrival in China to apply to have the visa converted into a residence permit, this residence permit then covering the duration of their time in China<sup>241</sup>. Conversion to a residence permit officially takes 15 working days, although in practice the process can take up to 20-25 days<sup>242</sup>.

R visa holders can apply for a residence permit of up to 5 years' validity, which differs from the one-year residence permits available to people who hold regular working visas. Other than this, the residence permit is the same as the residence permit available to other foreigners working in China: it gives the holder access to healthcare, state pensions, education (for children) and other social security, as well as the right to buy one residential property. Recipients can also bring their spouse, parents, spouse's parents and any children under the age of 18 with them on the same visa.

One difference to note is that if a Chinese national returns to China under the TTP scheme, they are exempted from the usual household registration restrictions and can access state-subsidized social security in whichever city they choose to live in<sup>243</sup>.

R visa holders appear to follow the same employment law as regular working visa holders. They may change employers so long as their old employer gives them a letter of release and they have a formal job offer from their new organisation. If they do not receive a letter of termination then they have to leave the country within 30 days and get a new visa if they wish to return to China, as do those whose employment is terminated without them finding new employment.

The law does not appear to place restrictions on the kind of work that a HSW can switch to, although if they cease to work in an area deemed to be in need of high-skilled talent then they would almost certainly only be able to apply for a one-year residence permit when the time came for their permit to be renewed, as they would no longer be eligible for the R visa.

### 1.3 Statistical overview

It is difficult to build a comprehensive picture of the TCN highly-skilled workforce in China. The R visa is still new and detailed statistics on government operations are not routinely published. However, using data relating to participation in the TTP (which appears to be the primary way in which R visa applicants arrive in China) and for all TCNs residing in China on regular working visas it is still possible to arrive at an approximation of the volume and demographics of R visa recipients.

**Table 1: TCN demographics<sup>244</sup> (2010)**

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<sup>241</sup> Chinese Visa Application Service Center, <https://www.visaforchina.org/>.

<sup>242</sup> Travel China Guide. *Chinese Temporary Residence Permit*. <http://www.travelchinaguide.com/embassy/visa/information.htm>.

<sup>243</sup> The Chinese household registration system (*hukou*) requires all citizens to be registered to a particular prefecture, and they then only have full rights to state welfare such as healthcare and education in that prefecture. If they move elsewhere, then can only get state-funded welfare in their new location if they meet the eligibility requirements set for non-locals by the local government, or if they are able to transfer their registration to their new location.

	All TCN residing in China
<b>Total TCNs resident in China</b>	593,832
<b>Gender</b>	Male: 57% Female: 43%
<b>Nationality (top 5)</b>	South Korea: 20% USA: 12% Japan: 11% Myanmar: 7% Vietnam: 6%
<b>Young working age (20-34 years old)</b>	47%

*Census data 2010 (National Bureau of Statistics)*

At the time of the 2010 census there were 598,832 TCNs residing in China, 134,889 of whom were on a working visa. The working population of China as a whole was 802 million at this point.

Publicly available data does not give any information on uptake of the R visa or any detailed information on exactly who has received R visas so far. However, given the unclear procedures and requirements involved in being declared eligible for the R visa, it is likely that a significant proportion of recipients are people brought to China via the TTP scheme (which brings participants to China on an R visa). We can therefore use the number of TTP participants as a proxy for R visa recipients in order to get a rough idea of how many TCN HSWs are moving to China under the R visa.

**Table 2: The workforce in China**<sup>245</sup>

Total workforce	Total number/share
Highly skilled workforce	31.2 million
Unemployment rate highly-educated persons	16%
<b>TCN HSW in the workforce</b>	
HSW admitted, total <sup>246</sup> (2008-2014)	4,180
HSW admitted, annual (average)	597
TTP participants / regular working visa holders	0.5% <sup>247</sup>
TTP participants/ domestic highly-skilled workforce	<1%
TTP participants / high-skilled labour shortages	<1%

*Source: China Daily, 2012 (domestic HSW); McKinsey, 2013 (unemployment and labour shortages); Chinese census data, 2010 (working visas); TTP website (HSW admitted figures).*

China's high-skilled workforce contained 31.2 million people in 2011<sup>248</sup> and growing demand for high-skilled workers means the country is likely to face a shortage of 8 million graduates by 2020<sup>249</sup>. Relative to the size of China's native workforce, the number of TNCs working in China (on either R or regular working visas) is very low, making up less than 1% of the

<sup>244</sup> Residing in China on any visa (a demographic breakdown of each visa category is not available).

<sup>245</sup> All figures excluding Hong Kong, Macau and Taiwan.

<sup>246</sup> Number of total TTP participants, 2008-2014

<sup>247</sup> 0.5% is the 597 annual TTP figure as a percentage of total working foreigners in China.

<sup>248</sup> China Daily, 2012. *China's workforce goes more skilful.*

<sup>249</sup> McKinsey, 2013. *The \$250 billion question: Can China close the skills gap?*

labour supply. This is particularly evident for HSW - even using generous estimates, foreign HSW only make up 0.01% of the country's high-skilled workforce.

**Table 3: TCNs relocating to China**

Acquisition	Per year (average)
Citizenship	248
Permanent residence	556

*Source: Chinese Census statistics 2010 (citizenship); China Daily, 2015 (permanent residence).*

The number of foreign nationals becomes permanent residents or citizens of China is low, amounting to less than 1% of TCNs of China in total. Official statistics do not identify the routes via which TCNs have acquired citizenship or permanent residence, so an examination of exactly how many TCNs in China on working visas become permanent residents or citizens is not possible. Figures on TCNs changing jobs, moving between visa categories and/or leaving the country are also not publicly available.

## 2 Success of the scheme

As no data on participation in the R visa scheme is currently available, other information needs to be used to assess the take up and success of the scheme. The best way to do this is by using data on participation in TTP. TCNs recruited by the TTP program are awarded R visas for China, and given the difficulty of applying for an R visa directly it is likely that TTP participants make up the majority of TCNs awarded R visas into China.

Using TTP data as a measure, the effects of the R visa and its associated schemes have been limited in comparison to the EU Blue Card. Overall numbers of TCN HSW moving to and settling in China as a result of the introduction of the scheme are significantly lower than the number of TCN HSW taking up work in the EU as a result of the EU Blue Card scheme, both in absolute terms and as a proportion of the HSW workforce. Up until now the schemes have not operated on such a scale as to have a significant impact upon labour shortages in the country.

Looking at TTP specifically, the scheme has exceeded its target for take up, bringing 4,180 HSW to China in its first 6 years against an initial target of 2,000 over its first 5-10 years. Figures show that 1,306 of TTP participants became permanent residents of China during the first five years of the program, roughly one third of the 4,130 participants. Using the average figure for successful permanent residence applications over this same period, 47% of all TCNs who became permanent residents between 2008-2013 did so after moving to China as part of the TTP.

The generous packages offered by the program appear to have been initially successful at persuading TCNs to move to China on a long-term basis, but whether or not this has contributed to technological breakthroughs or the enhancement of China's high-tech and emerging disciplines (the stated purpose of the TTP) is yet to be ascertained, as the impact of the program has not been assessed.

### 2.1 Advantages and disadvantages of the R visa

Some of the requirements for an R visa are less strict than those for an EU Blue Card:

- The R Visa has no minimum salary threshold, and there is no apparent labour market test carried out before a TCN may be offered a visa.
- The application process for both the visa and residence permit are also faster than for the EU Blue Card as outlined in the EU Blue Card Directive.
- The maximum length of the residence permit available to R visa holders is one year longer than the EU Blue Card's maximum of four years.

There is, however, a crucial disadvantage to the R visa, which is the lack of clear guidelines available about how to successfully apply for one. How to apply to the 'relevant government departments', what criteria the applicant will be assessed against, or even exactly which departments to apply to are not spelled out anywhere in official government documentation. This means that there is a large degree of uncertainty surrounding eligibility, and this coupled with the necessity to either be able to speak Chinese or to get help from a Chinese contact during the process of establishing eligibility is likely to act as a significant deterrent to many who would otherwise be interested.

The residence permit offered by the R visa also offers a little less residence security than the EU Blue Card. If a TCN becomes unemployed and has no new job offer, the law states that their residence permit is to be terminated with immediate effect (in contrast to the three months permitted by the EU Blue Card). While in practice employment terminations are often not reported properly and TCNs will be able to remain in China even though unemployed, this is illegal and prevents the TCN from being able to find new legal employment without first leaving mainland China and then re-entering with a new visa upon securing a new formal job offer. Changing employers can be done if a release letter is received from the TCN's previous employer, but this can be hard to obtain if the TCN's employment ends on bad terms. This means that HSW's flexibility in terms of changing employers is significantly lower than HSWs with an EU Blue Card.

The TTP (not the R visa) has also been relatively costly to run, with the standard package of incentives offered to HSWs exceeding 150,000EUR and complementary schemes offering even more. For a scheme designed to attract larger numbers of HSW, this would most likely be far too costly to be sustainable.

## ANNEX 9

### INTRA-EU MOBILITY OF THIRD COUNTRY NATIONALS

#### 1. INTRODUCTION

National policies aimed at attracting highly-qualified workers do not grant third-country nationals the right to reside and work in other Member States. EU-wide mobility rights are one of the main benefits which EU legislation can provide, and which national legislation cannot. Employers may have a legitimate interest in being able to move their staff around the single market without undue constraints. For migrant workers, the prospect of being able to build a career anywhere in the EU, for example by changing employer or branch within the same employer including in a different Member State, is one of the most attractive features of EU level legislation on migration. Consequently, the more the intra-EU mobility possibilities of a particular category of third-country nationals are facilitated and made easy, the higher the attractiveness of the scheme.

When asked to identify the main advantages of a unified EU-wide scheme for admitting highly-qualified workers, more than half of the respondents chose easier mobility between Member States.<sup>250</sup> This call for enhanced intra-EU mobility rights has been echoed by various stakeholders, including business representatives and trade unions.<sup>251</sup> The European Trade Union Confederation's Action Plan on Migration specifically calls for EU legislation to "*remove obstacles to the intra-EU mobility of third country nationals regularly residing in a Member State, but without a long-term resident status*".<sup>252</sup> BusinessEurope has consistently argued the benefits of intra-EU mobility of specific categories of third-country national workers.<sup>253</sup>

The Europe 2020 Strategy for growth recognised the role of intra-EU mobility of workers — including EU nationals moving to other Member States — within the EU single market in improving the matching of labour supply and demand.<sup>254</sup> The European Commission Communication 'An open and secure Europe: making it happen' within the 'Strategic Guidelines for the area of Freedom, Security and Justice (2014–2019)' aims to facilitate intra-EU mobility of third country nationals, including through mutual recognition of national permits.<sup>255</sup> The European Agenda on Migration specifically proposed to look at how to improve possibilities for intra-EU mobility for EU Blue Card holders.<sup>256</sup>

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<sup>250</sup> Public consultation on the EU Blue Card and the EU's labour migration policies, European Commission DG Home Affairs and Migration

<sup>251</sup> European Trade Union Confederation, "A new Narrative for the Migration Phenomenon in Europe". [https://www.etuc.org/documents/etuc-position-new-european-commissions-five-year-programme-migration-ec-communication-%E2%80%9C#\\_VnPP8v7lv2x](https://www.etuc.org/documents/etuc-position-new-european-commissions-five-year-programme-migration-ec-communication-%E2%80%9C#_VnPP8v7lv2x)

<sup>252</sup> European Trade Union Confederation, *Action plan on migration*, 5-6 March 2013. <https://www.etuc.org/documents/action-plan-migration>

<sup>253</sup> BusinessEurope note on *Labour Market Mobility*, 28 June 2013. <https://www.buinessurope.eu/sites/buseur/files/media/imported/2015-00109-E.pdf>

<sup>254</sup> European Commission's Communication COM(2010) 2020 final, *Europe 2020: A strategy for smart, sustainable and inclusive growth*, 3 March 2010. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>

<sup>255</sup> European Commission's Communication COM(2014) 154 final, *An open and secure Europe: making it happen*, 11 March 2014. [http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/an\\_open\\_and\\_secure\\_europe\\_-\\_making\\_it\\_happen\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/an_open_and_secure_europe_-_making_it_happen_en.pdf)

<sup>256</sup> European Commission's Communication COM(2015) 240 final, *A European Agenda on Migration*, 13 May 2015. [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)

## 2. INTRA-EU MOBILITY IN THE BLUE CARD DIRECTIVE

Based on the Schengen acquis, Blue Card holders and other highly-qualified labour migrants can travel up to 90 days in any 180 period within the Schengen area if their Blue Card or national residence permit is issued by a Schengen state. This is not specific to these categories but applies to all TCNs with a residence title issued by a Schengen State (i.e. a country fully implementing the Schengen acquis). As a general rule, they are not, however, allowed to work or reside in another Member State, with some exceptions (e.g. short business meetings are usually allowed, subject to national rules, and third-country nationals can be posted under Directive 96/71/EC<sup>257</sup> – see below).

Blue Card holders who have been admitted as highly-qualified workers in one Member State and have been legally residing and working there for 18 months are allowed to move to a second Member State and apply for a new EU Blue Card. All regular admission conditions applicable in the second Member State have to be met (Art 18.2), which makes the advantages over a regular new application very limited. Both a labour market test (Art 18.4 referring back to Art 8.2) and numerical limits (Art 18.7) can be applied. The advantages lie in the fact that some Member States allow the Blue Card holder to work pending the decision (Art 18.2), that the period of residence in the first Member State will count towards the 5-year requirement for obtaining a long-term residence permit under Directive 2003/109/EC<sup>258</sup>, and that family members may join immediately when the family was already constituted in the first Member State (Art. 19.1).

The EU Blue Card Directive contains some safeguards for the benefit of the second Member State in case the mobile EU Blue Card holder is not granted an EU Blue Card in the second Member State and is no longer allowed to stay on its territory. In such cases, the first Member State shall readmit without formalities the EU Blue Card holder with possible family members, even if the permit has already expired. Furthermore, the costs for doing so may be recovered from the applicant or the employer.

The EU Blue Card Directive has facilitated access to **EU long-term resident status** for (former) Blue Card holders. It has also increased the rights associated with permanent residency and created the special category of "EU long-term resident – former EU Blue Card holder". In particular, stays as an EU Blue Card holder in different EU Member States can be aggregated to count towards the 5-year required for obtaining long-term resident status.

Research by the OECD shows that there is a positive causal effect of long-term residence on the mobility of third-country nationals in the EU. However, it also showed that the mobility of third-country nationals is still hampered by legal and practical constraints.<sup>259</sup>

At least one Member State, Germany, provides fast access to the national permanent residence status — 33 months for EU Blue Card holders, reduced to 21 months if basic German language skills are demonstrated (level B1). The EU long-term residents Directive, which imposes a mandatory five-year residency, did not allow Germany to

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<sup>257</sup> Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 018 , 21/01/1997 P. 0001 - 0006

<sup>258</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53

<sup>259</sup> DELSA/ELSA/MI(2015)5, Mobility of Third-Country Nationals in the EU: the Role of Long-Term Residence and Naturalisation. Jonathan Chaloff and Friedrich Poeschel.

provide similar speedy access to EU long-term resident status. At the end of October 2015, 1 935 EU Blue Card holders had obtained a national permanent residence title after 33 months of residence, 4 601 after 21 months and 883 without time specification<sup>260</sup>. Former EU Blue Card holders who change status to a national permanent residence lose their rights under the EU Blue Card, including the mobility provisions, and the facilitated access to EU long-term residence.

The conditions for intra-EU mobility in the current EU Blue Card Directive are in general considered not substantial and not attractive for potential migrants. This emerged from the impact assessment study<sup>261</sup> as well as the public consultation on the EU Blue Card and the EU's labour migration policies.

### 3. INTRA-EU MOBILITY IN OTHER LEGAL MIGRATION DIRECTIVES

Article 79(2)(b) TFEU specifically endows the EU to adopt measures covering the right to mobility and of residence of third-country nationals in other Member States. Several existing Directives include provisions on intra-EU mobility for permit holders.

Third-country nationals holding **long-term residency status** according to Directive 2003/109/EC in one Member State – acquired after five years of legal residence in a Member State – have the right to reside for more than three months in a second Member State to exercise an economic activity, to pursue studies or for any other purpose, subject to certain conditions. Stable resources and proof of accommodation as well as sickness insurance may be required. An employment-based permit in the second Member State requires a work contract there, and can be subject to a labour market test. A visa may also be required. The procedure to apply for a permit in the second Member State takes up to 4 months, during which the third-country national may not be allowed to work.

The **Directive on Intra-Corporate Transferees**<sup>262</sup> introduces schemes for short term mobility (up to 90 days in any second Member State, so multiple periods of mobility in different Member States are possible) and long term mobility (more than 90 days in any second Member State) for third-country nationals employed by a group of undertakings based in a third country and posted to a host entity/subsidiary based in an EU Member State. The mobility provisions regulate subsequent stays in Member States other than the one where they are posted first. No visa can be required or labour market test applied. The short-term rules are flexible and based on a notification. The long-term rules allow Member States to issue permits for that purpose, in which case the procedure resembles an initial admission, with more limited conditions being checked. However, the transferee is allowed to stay and work in the second Member State pending a decision.

The recast **Directive on Students, Researchers and other categories** (to be formally adopted early 2016) facilitates movement between Member States for up to six months to carry out research or for study purposes. It shares several elements with the mobility rules applicable to Intra-Corporate Transferees. Applying for a new permit in such cases is not required. For students the situation is more complex than for researchers as they benefit from real intra EU-mobility rights only if covered by programmes (EU, multilateral or agreements between higher education institutions). For "individual"

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<sup>260</sup> Data directly obtained from the BAMF.

<sup>261</sup> Reference to ICF study, A3.4.1.

<sup>262</sup> Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p. 1–22.

students, being mobile in the EU implies to submit to the second MS an application equal to the one which is necessary for first entry in the EU.

Third-country nationals can also be **posted under Directive 96/71/EC** by undertakings based in an EU Member State active in the transnational provision of services. Whilst no specific provisions for posted third-country nationals are included in the Directive, relevant case-law makes clear that the host Member State may not impose administrative formalities or additional conditions on posted workers who are third-country nationals when they are lawfully employed by a service provider established in another Member State (e.g. *judgments of 9.8.1994, Vander Elst, case C-43/93, of 21.10.2004, Commission v Luxembourg, case C-445/03, and of 19.1.2006, Commission v Germany, case C-224/04. Idem judgment of 21.9.2006, Commission v Austria, case C-168/04*).<sup>263</sup> However, the Posted Workers Directive does not regulate the admission conditions – including whether a visa is required or not – of third-country nationals in EU Member States, but it focuses on rights of workers during the posting and practical cooperation between Member States.

There are three specific groups of situations envisaged in Directive 96/71/EC: (a) provision of services under a contract concluded between the employer organisation and another party in another Member State, (b) transfer of an employee to an undertaking or establishment owned by the employer group in another Member State and (c) hiring out of employees from a temporary employment agency to a client company in another Member State. Therefore, EU Blue Card holders can in some cases fall under the scope of application of Directive 96/71/EC; especially the intra-corporate transfer within the EU can be a relevant option for both highly qualified workers and their employers. However, some situations of professional mobility are clearly excluded, such as e.g. purely sales-oriented participation in events, or fact-finding missions to explore business opportunities in a new Member State.

In Article 3(2)(j) of the current Blue Card Directive there is an exclusion stating that persons who are covered by Directive 96/71/EC do not fall within the scope of the Blue Card Directive as long as they are posted on the territory of the Member State concerned. This means that a posted worker cannot apply for an EU Blue Card and become a beneficiary of that scheme during the posting. Contrarily, there is nothing to suggest that EU Blue Card holders could not be posted under Directive 96/71/EC, on which occasion their rights in the Member State of posting would also be determined by this instrument. The position of an EU Blue Card holder would naturally persist in the initial Member State having granted the permit for as long as it remains valid.

Moreover, it should be noted that family members of EU mobile workers, regardless of their nationality, i.e. including family members third country nationals, or whether they are dependent on the EU citizen, have the right to work in the host Member State.<sup>264</sup> Mobile workers' children, whatever their nationality, have the right to education in the host Member State on the same terms as its nationals,<sup>265</sup> as well as access to social advantages on an equal basis as family members of nationals.

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<sup>263</sup> *Intra-EU Mobility of third-country nationals*, European Migration Network Study, 2013.

<sup>264</sup> Article 23 of Directive 2004/38/EC.

<sup>265</sup> Article 10 of the Regulation 492/2011.



#### 4. THE ROLE OF INTRA-EU MOBILITY FOR EU BLUE CARD HOLDERS

Employers may have a legitimate interest in being able to move their staff around the single market without undue constraints, particularly highly skilled workers and professionals. Workers will be attracted to the scheme if it gives the prospect of being able to build a career anywhere in the EU, for example by being able to change employer easily. Improved intra-EU mobility for third-country nationals could enable the creation of an EU-wide labour market that could effectively and promptly respond to existing and arising demands for highly qualified labour, and to offset skill shortages, by enhancing the inflows and circulation of third-country highly skilled workers between jobs and Member States and promoting their efficient allocation and re-allocation on the EU labour market.

The importance of intra-EU mobility to the attractiveness of the Blue Card is confirmed by the results of the public consultation, where it was found that more than half of all respondents indicated that mobility would be a major added value of a unified EU-wide scheme. A survey among EU Blue Card holders by the German BAMF showed that 87.4 % of respondents consider visa-free travel and the possibility of moving to another MS important. 66.6 % would consider an extension of the possibility for easy "short-term" mobility to 12 months useful, another 27 % simply do not know if this could prove useful, but very few oppose this.<sup>266</sup>

#### 5. DATA ON INTRA-EU MOBILITY

Data on intra-EU mobility of third-country nationals is scarce, as in most Member States it is not collected systematically. It is therefore not possible to provide overall figures. A 2013 study by the European Migration Network<sup>267</sup> revealed that between 1.2 % and 3.7 % of all mobile persons are third-country nationals, i.e. considerably less than the share of third-country nationals in the entire population (4 %). The study highlighted several barriers to intra-EU mobility which could explain the relatively low mobility rates witnessed among third-country nationals, but also stated that the overall mobility of third-country nationals appears to be growing.

Calculations by the OECD using EU Labour Force Survey data (Eurostat) put the number of TCN who are mobile within the EU at only tens of thousands, but rising faster than the total third-country national population.<sup>268</sup>

According to the EMN study, third-country nationals mainly move to neighbouring Member States. This pattern would be consistent with intra-EU movements of EU citizens, such as service providers. Where statistics are available, it appears a large share of mobile TCN is highly-qualified (France: 30 %) and/or moves for the purposes of highly-qualified work (The Netherlands: 44 %). Calculations by the OECD using EU Labour Force Survey data (Eurostat) confirm that intra-EU mobility of tertiary-educated

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<sup>266</sup> Hanganu, E. and Heß, B., 'Die Blaue Karte EU in Deutschland: Kontext und Ergebnisse der BAMF-Befragung', *Forschungsbericht 27*, Bundesamt für Migration und Flüchtlinge, Nürnberg, 2016, *forthcoming*.

<sup>267</sup> *Intra-EU Mobility of third-country nationals*, European Migration Network Study, 2013.

<sup>268</sup> DELSA/ELSA/MI(2015)5, *Mobility of Third-Country Nationals in the EU: the Role of Long-Term Residence and Naturalisation*. Jonathan Chaloff and Friedrich Poeschel.

third-country nationals is significantly higher (2.5 to 4 times over the period 2008-2012) than mobility of third-country nationals as a whole.<sup>269</sup>

## 6. DATA ON THE NEED OF INTRA-EU MOBILITY FOR BUSINESS

### A. Large-scale international survey on intra-EU mobility

A 2015 survey on Intra-European Mobility of 85 multinational employers<sup>270</sup> by Worldwide ERC<sup>271</sup> sought answers from them on their drivers, needs, challenges, strategies, volumes, and costs. While their responses do not exclusively cover TCN, the needs and challenges for TCN can be considered to be similar, if not greater, than for EU citizens when it comes to intra-EU mobility. The findings of the survey can therefore be informative. The respondents to the survey report a wide range of mobility volumes – ranging from one to 2 500 employees per year over different types for mobility.

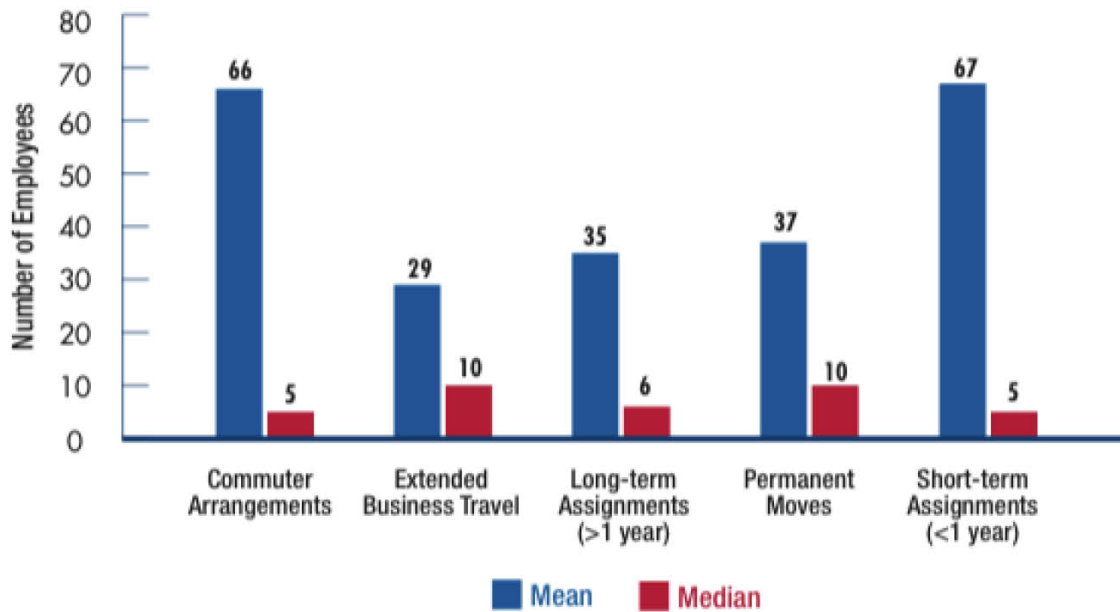
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<sup>269</sup> DELSA/ELSA/MI(2015)5, *Mobility of Third-Country Nationals in the EU: the Role of Long-Term Residence and Naturalisation*. Figure 1 — Mobility rates of third-country nationals and EU citizens, 2008-2012. Jonathan Chaloff and Friedrich Poeschel.

<sup>270</sup> Abbott Laboratories, Accenture, Albemarle Corporation, Allegion, Allnex, Avery Dennison Corporation, Avon Products, Inc., Bank of America, Bechtel Corporation, Biogen Idec, BorgWarner, Inc., Brambles, Bravura Solutions, Broadcom Corporation, CABI, Careerbuilder, Cargotec Holding, Inc., Cegelec, Cerberus European Capital Advisors, LLP, Cerner Corporation, CEVA Group PLC, CH2M HILL, Inc., Chatham Financial, Cimpres N.V., Covance, Inc., Cytec, Dana Holding Corporation, Deere & Company, Dell, Inc., Delphi, DHL Express A/S, Eli Lilly and Company, Enterprise Holdings, Inc., Flextronics International USA, Inc., Foot Locker, Inc., FrieslandCampina Nederland BV, Frontica Business Solutions, Granite Services International, Inc., Grant Thornton UK LLP, Herbalife, IHS, Inc., ING Group, Ingersoll-Rand Company, Intercontinental Hotels Group, Inteva Products, Kinross Gold Corporation, Lenovo, Lumos, LyondellBasell, Mayer Brown International LLP, McCain Foods Limited, MeadWestvaco Corporation, MediaCom, MFS Investment Management, Micron Technology, Inc., Natura, Naturedao Information Science & Technology Ltd., Nissan, Nomura, Novelis Incorporated, Omnicell, Owens-Illinois, Inc., Parker Hannifin Corporation, Pearson Education, PwC Poland, Rockwell Automation, Samsung, SanDisk Corporation, SAP, Shell Oil Company, SKF SA, SPX, The Body Shop International, The Manitowoc Company, The Walt Disney Company, TIBCO Software Inc., TNT Express France SNC, Tom West Company, Inc., TRUMPF, Inc., Tupperware Brands Corporation, Videology, Inc., W. W. Grainger, Inc., Warner Brothers, Wells Fargo & Company, Western Union Holdings, Inc.

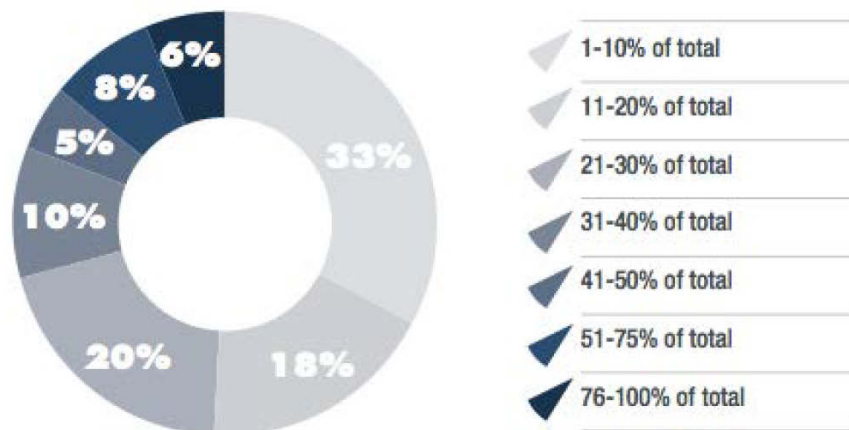
<sup>271</sup> A workforce mobility association for professionals who oversee, manage, or support U.S. domestic and international employee transfer. <http://www.worldwideerc.org/Pages/index.aspx>

**Graph 1 – 2014 Intra-European Mobility**



For 49% of the surveyed companies at least 20% of their cross-border activity takes place in the EU, for 19% even more than 50% takes place in the EU.

**Graph 2 – Intra-European Mobility as a percentage of total cross-border mobility (percentage of organisations)**

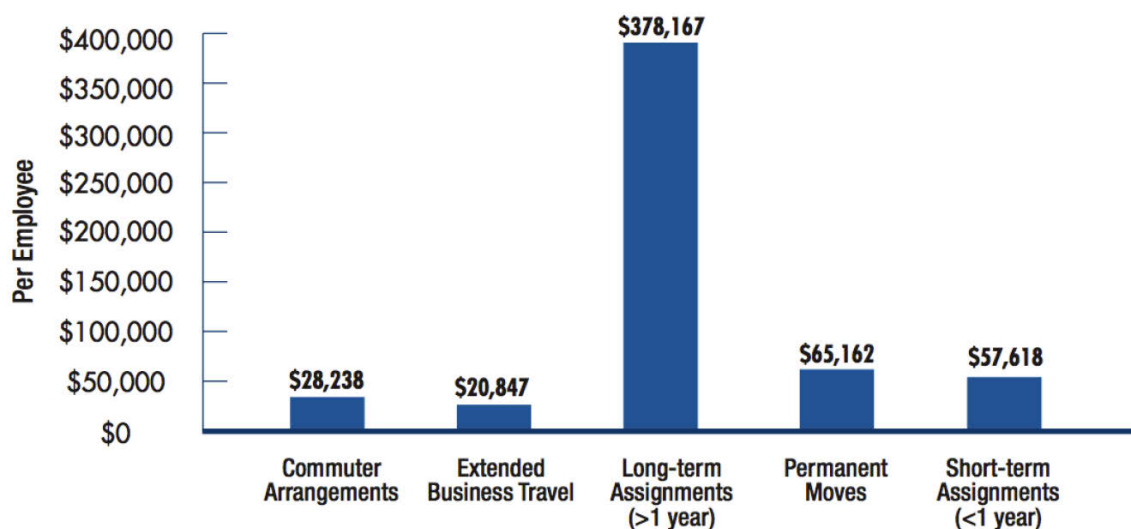


The survey asked the participating companies to estimate the average cost per mobile employee of five different types of cross-border mobility within Europe<sup>272</sup>. By far, the most expensive assignment type is a traditional long-term assignment of more than one year, which represents an average cost per assignee of \$378,167. Intra-European permanent moves and short-term assignments cost less, with averages of \$65,162 and

<sup>272</sup> These costs represent the averages experienced by the pool of respondents to this survey. Programs can vary in many ways causing higher or lower costs. The reported figures represent only general trends.

\$57,618, respectively. Commuter arrangements and extended business travel are the least costly, with an average cost of \$28,238 for commuter arrangements and \$20,847 for extended business travellers.

**Graph 3 – Average Cost of Intra-European Mobility**



The respondents were also asked to identify the primary drivers for each of the various types of mobility.

**Graph 4 – Primary Drivers of Intra-European Mobility (percentage of organisation)**<sup>273</sup>

	Long-term Assignments	Short-term Assignments	Permanent Moves	Commuter Arrangements	Extended Business Travel
<b>To fill a skills gap</b>	59%	68%	76%	59%	39%
<b>Knowledge transfer</b>	56%	61%	27%	35%	50%
<b>Employee development</b>	66%	66%	33%	21%	22%
<b>To communicate corporate culture</b>	31%	30%	13%	29%	25%
<b>Project/task completion</b>	44%	82%	21%	56%	61%
<b>Business need</b>	75%	59%	71%	65%	72%
<b>Succession plan</b>	53%	21%	43%	6%	--

The survey also asked about the challenges of intra-EU mobility. For short-term and long-term assignments, top challenges tend to be related to housing and living costs and compliance issues. For the more transient mobility of short-term assignments, commuter arrangements and extended business travel, immigration compliance is identified as a top challenge along with employee tracking. For permanent moves, the most pressing challenges are less compliance-related, though still relatively high, and more tied to compensation, high housing costs and pensions. Recruiting and retaining skilled talent ranks as a high challenge for long-term assignments, and slightly lower for short-term assignments and permanent moves.

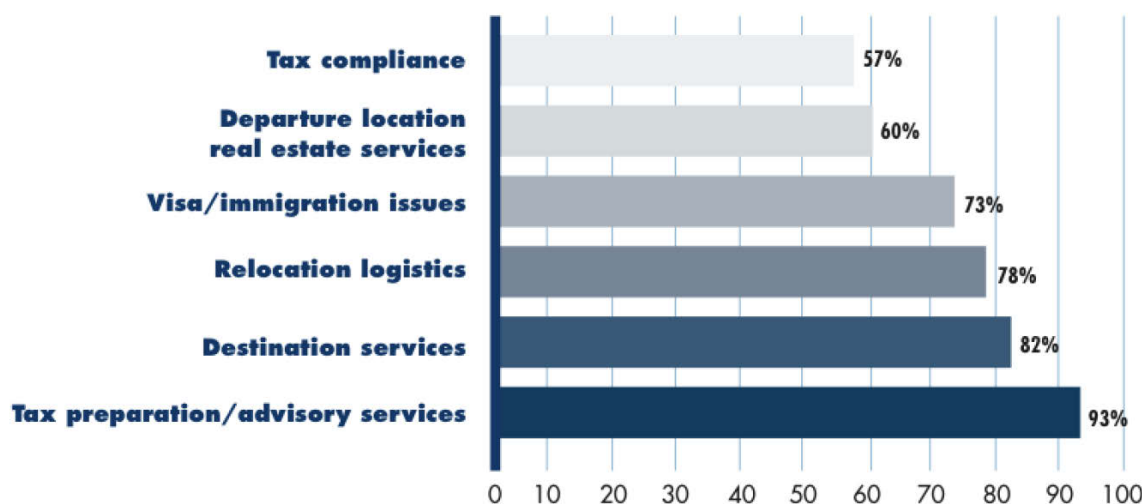
<sup>273</sup> Percentages do not total 100% due to multiple responses.

**Graph 5 – Challenges of Intra-European Mobility (Rankings ranged from 1 = least challenging to 5 = most challenging)**

	<b>Long-term Assignments</b>	<b>Short-term Assignments</b>	<b>Permanent Moves</b>	<b>Commuter Arrangements</b>	<b>Extended Business Travel</b>
<b>Career development of assignee</b>	2.31	2.33	2.05	2.41	2.56
<b>Compensation issues</b>	2.84	2.36	3.50	2.38	2.24
<b>Cost tracking</b>	2.83	2.36	2.43	3.29	3.17
<b>Cost-of-living allowance/differential</b>	3.12	2.56	2.67	1.68	1.89
<b>Culture of corruption</b>	2.03	1.82	1.81	1.81	1.77
<b>Education infrastructure in host location</b>	2.85	1.92	2.72	1.64	1.58
<b>Emergency preparation</b>	2.06	1.97	1.97	1.83	1.86
<b>Environmental issues in host location</b>	1.89	1.88	1.84	1.54	1.65
<b>High housing costs</b>	3.64	3.05	3.41	2.23	2.54
<b>Immigration compliance</b>	2.80	3.00	2.43	3.35	3.32
<b>Inadequate housing facilities in host location</b>	2.47	2.27	2.44	1.59	1.84
<b>Healthcare coverage</b>	1.97	1.89	1.94	1.53	1.70
<b>Pension/retirement coverage</b>	2.72	1.94	3.03	1.55	1.65
<b>Recruiting and retaining skilled talent</b>	3.08	2.69	2.75	2.14	2.27
<b>Security in host location</b>	2.00	2.00	1.77	1.68	1.84
<b>Taxation compliance</b>	3.17	2.88	2.24	3.54	3.53
<b>Tracking assignees</b>	2.03	2.12	1.81	3.73	3.47

The survey also showed that just shy of three-quarters of companies fully outsource their visa and immigration issues.

Graph 6 – Fully Outsourcing Mobility Services<sup>274</sup>



The survey concludes:

*With the increase in the number of employees living and working in European countries other than their own, companies will need to remain robust in the management of their mobile talent. The close proximity of European countries lends itself to more short-term assignments, commuter arrangements and business travel. These various forms of mobility have their own challenges and drivers that must be considered. Likewise, countries within Europe have their own government regulations, which if not followed, present many complications and associated costs. Clear and open communication, education about the issues for both the businesses and employees, effective partnering with service providers, and more precise tracking of assignees are all vital to achieving success in the complex arena of mobility within Europe.*

## B. Testimonials from business

The Commission also received a number of testimonials from companies on their specific needs for intra-EU mobility and its cost (some have been anonymised where requested).

### *Testimonial 1 - Oracle*

Oracle has 555 third country nationals locally employed across the EU. Of these circa 100 would travel to other EU countries for various business reasons.

### *Testimonial 2 - Heitkamp & Thumann Group*

The Heitkamp & Thumann Group is a family-owned group of 21 small and medium-sized enterprises located in 9 different countries and employing 2.045 people. 909 employees are located at our European locations (UK, ES, DE, CZ). At their European locations they only have about 15 third-country nationals that are locally hired (mostly at

<sup>274</sup> Percentages do not total 100% due to multiple responses.

our UK subsidiaries) and that frequently travel to other EU Member States for business. These third-country nationals are high-qualified employees, many of them from India, working as R&D engineers or in IT.

### ***Testimonial 3 - Large global company***

In a large global company that has third-country nationals employed in the UK, Belgium and Switzerland, approximately 500 third-country nationals travel on an annual basis<sup>275</sup>. This is the number of people, not trips, which means that if on average a person takes 5 business trips a year, this would equal 2500 trips just out of those countries.

### ***Testimonial 4 – Large multinational media and information services firm***

(1) Evidence and examples of the administrative cost and burden of immigration procedures and rules to companies (with an EU focus)

#### **A. Data or testimonials on average processing times**

*“Varies by location but typically several months end to end. We usually factor in approx 3-4 months as a starting point.”*

#### **B. Common issues with immigration procedures**

*“Inconsistencies with documentation, especially at consulates abroad.  
Challenges with address requirements, as it's difficult to obtain for new employees or those living abroad.  
Slow processing times.  
Dependents timing out.”*

#### **C. Financial and HR cost for employers on immigration processes / d. average number of employer hours for immigration processes**

*“The aggregate number of business hours needed to maintain immigration support and compliance is quite high.  
HR time - For EU matters, I typically budget 4-8 hours per foreign national but can be as high as 40 or more for complex cases and additional dispersed time is not included for ongoing program management  
Employee time - We don't collect this information specifically, but anecdotally, I would guess that most employees spend a minimum of 1-2 full weeks when securing a visa for EU.  
Manager time - We attempt to minimize this time as much as possible, but probably at minimum 4 hours of time on average*

#### **D. How often legal support services are used (and their cost)**

*“We always rely on immigration support for sponsored employees to provide guidance on legal matters, to provide practical assistance and guidance to our employees, to mitigate risk, and to provide key insights to the shifting immigration landscape  
Cost varies by location and service.”*

(2) Data and evidence on the need for mobility for highly skilled workers from and

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<sup>275</sup> Hired locally in the EU and travelling to other EU Member States

employers perspective, specifically intra-EU mobility of TCNs residing in a Member State to other Member States

**A. Average number of business trips/foreign assignments per highly skilled employee**

*"For Sales/News&Media/Product employees specifically - they have short term travel for several days every week*

*For All other areas - travel tends to be far less frequent, typically short term and no more than monthly*

*We only rarely have employees assigned for longer periods, but may do this in specific instances i.e. Job swaps and maternity cover"*

**B. Number of employees with regional responsibilities requiring regular travel to other offices.**

*"Depends on business area, but we have hundreds if not thousands when you factor in key business areas with frequent travel requirements...a streamlined business traveler method would be welcome, particularly with security crack downs."*

***Testimonial 5 - Large multinational IT service firm***

(1) Evidence and examples of the administrative cost and burden of immigration procedures and rules to companies (with an EU focus)

*"In general our biggest challenge is the limitation that the different European national legalisation impose to the need of global companies to mobilize talented and high skilled individuals between company facilities within Europe. This mobility need is mostly driven by the customers' demands (bearing in mind that most of the customers are also cross-country established and therefore they expect that a project that has been performed in country X could be also delivered in country Y with the same resources."*

**A. Data or testimonials on average processing times**

*The average processing timelines per country differs depending of the level of bureaucracy that national legislation imposes. In average one can say that the end to end process takes approximately 8-10 weeks. However there are extreme differences between member states: Some countries like the Netherlands have a fast track system for recognized companies bringing high skilled migrants. In this case the process takes only 3 weeks. Whereas in Slovakia the process takes 8-9 months and 5-6 months for Czech Republic.*

*Specifically refereeing to the blue card, our experience with processing times is little as we have only been starting to file Blue Cards recently in Germany. In Germany, it is expected to take approx. 10 business days upon visa submission with the German embassy / consulate abroad. In other European countries we have no experience on Blue Card filing, but according to a research we had been doing last year, it seems that the processing times are between 2 – 4 months.*



## **B. Common issues with immigration procedures**

*"The lack of harmonized processes and set of docs recognized all over the EU MS, as well as the lack of mutual recognition of documentation, increases the administrative burden for companies. Real problems are:*

*1.) recognition of university degree: the process to have university degrees been recognized strong differ from country and country and can be very time consuming. In Germany, there is a data base available (anabin) to assess if a degree is recognized.*

*2.) legalization of degree certificate: not mandatory in all countries, but can be a very lengthy process (2 – 3 months) .*

*3) Disconnect between the local labour authorities and their diplomatic representatives overseas. In some instances the local consulate or embassy does not communicate with the labour office which result in delays.*

*4) Aside of the above, some countries apply specific processes for high skilled employees which facilitate the process and even fast tracked the applications. Whereas other countries do not make a difference between economic migrant with specific skills and any other type of migrant."*

## **C. Financial and HR cost for employers on immigration processes**

*"It is very difficult to generalise varies per country. Aside of immigration other mobility matters have to be considered: some countries demand extra allowance support for accommodation or living expenses and travel. This increases the cost up to 30% in some locations. The cost of HR, Finance and Tax to ensure that the resource and the company fulfill the obligations from these aspects need to be included as well in the total expenditure per resource."*

## **D. Average number of employer hours for immigration processes**

*"Expenditure of time for employer 20 – 25 hour per application; for employee: 8 – 10 hours"*

## **E. How often legal support services are used (and their cost)**

*"In average the cost of the full immigration process (visa, work permit, residence permit, registration formalities) per associate could vary from 2000 – 5500 EUR per country depending of the law firm used. In our experience, Luxembourg, Belgium and the Nordics are the most expensive. In some instances where online filling is possible and French, English or German are accepted as official languages the process could be in housed and no legal support is required."*

(2) Data and evidence on the need for mobility for highly skilled workers from and employers perspective, specifically intra-EU mobility of TCNs residing in a Member State to other Member States

*"In the IT sector – due to the nature of the services (consulting, programming etc.) the activities should be performed mainly at the client location and on project basis. This means that the length of stay of a resource would be directly attached to that specific project. After implementation, some maintenance activities might be required and therefore – there will be a need for the resources to travel for short term to the client site to fulfil these activities."*

**A. Average number of business trips/foreign assignments per highly skilled employee.**

*"One have to take into account that IT companies deal with customers established cross-country. Therefore the customer drives the requirement of having a resource for either one specific country or multiple countries at the same time using the same resources.*

*This creates an extra burden since the same resource would require a work permit for each country where he needs to deliver his services, even though the role, project and activities would be identical in the multiple countries. It is difficult to calculate but an average of 25-30% of the population might require to travel for short term BV.*

*In very general lines in the IT sector 70% of the resources are working on project basis and 30 % would be allocated to other corporate roles. Hence the need of mechanisms enabling the mobility intra EU is very high."*

**B. Number of employees with regional responsibilities requiring regular travel to other offices.**

*"Very difficult to define. However the burden for this specific group is extreme. The mobility within EU is inherent to their function however they require a work permit for each country where they need to operate. We have several cases in which the same person at leadership level required 6 work permit at the same time to be able to exercise his function in Europe."*

## ANNEX 10

### THIRD-COUNTRY NATIONAL ENTREPRENEURS

#### 1. INTRODUCTION

The attraction of third country nationals (TCN) or migrant entrepreneurs<sup>276</sup>, particularly innovative ones, has been high on the political agenda of national governments of both sides of the Atlantic for the past years. This is explained by the expectancy that this category of migrants will bring significant rewards for host countries, both thanks to migrants' propensity to start new businesses, thus creating jobs, and their more recently recognized capacity to expand beyond the ethnic markets into more innovative and high-value sectors. At the same time, migrant entrepreneurship is also seen as a potential way to counteract both demographic and economic decline and to contribute to social inclusion as an alternative way to access the labour market, also increasing the attractiveness of the areas and countries where it is fostered, and to capitalize on the expansion of innovative trends of the economy<sup>277</sup>. This has led governments to recently adopt policies targeting migrant entrepreneurs, both those already residing in the country (through mainstream or targeted business support programs), and those willing to immigrate (through specific admission policy that regulate the entry and stay in the country). These very recent developments led to reflections at EU level and political announcements to maintain the EU "as an attractive destination for migrants"<sup>278</sup>.

#### 2. THE NEED FOR TCN INNOVATIVE ENTREPRENEURS

##### *A higher entrepreneurial spirit*

Literature repeatedly reports that migrants may have a somewhat higher entrepreneurial spirit than natives do. The reasons usually put forward to account for such a propensity are first the selective dimension of migration processes and the immigrants' tendency to take greater risks. Business creation among migrants is also sometimes depicted as a means to support labour market integration and employment. Focusing on this trend, the OECD concluded for the period 2007-2008 that 12.6 % of migrants of working age were involved in non-agricultural entrepreneurship activities, compared with 12.0 % among native.<sup>279</sup> The share of entrepreneurs in total employment can be 1.5 to 2.9 percentage points higher for migrants compared to natives (United Kingdom, France, Sweden, Norway).

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<sup>276</sup> For the current exercise, the definition of entrepreneurs is that adopted by the OECD and covering "those foreign-born business owners who seek to generate value through the creation or expansion of economic activity, by identifying new products, processes and markets" (OECD, 2008a).

<sup>277</sup> In particular, the digital economy, the green economy and the social economy.

<sup>278</sup> A European Agenda on Migration, COM(2015) 240 final, 13 May 2015, p. 14.

<sup>279</sup> Migrant entrepreneurship in OECD countries, International Migration Outlook (IMO), OECD 2011, p.142.

### ***The contribution of migrant entrepreneurs to employment, innovation and economic growth***

Against this background, various economic sources have analysed the contribution of migrant entrepreneurship to employment, innovation and economic growth.

In terms of total employment, the OECD concluded for instance that this contribution was on average 2.4 % of the total employment during the period 1998-2008<sup>280</sup> and has steadily increased over this period. In 2011, in relative terms, this contribution to employment was equivalent to between 1.5-3 % of the total employed labour force in most OECD countries. Between 25 % to 50 % of migrant entrepreneurs employ other individuals in addition to themselves<sup>281</sup>. The number of individuals employed by migrant entrepreneurs represented in both 2007 and 2008 more than 750 000 individuals in Germany, around half a million in the UK and Spain, almost 400 000 in France and around 300 000 in Italy<sup>282</sup>. Furthermore, the average number of additional jobs that each single migrant entrepreneur creates is set on average between 1.4 and 2.1<sup>283</sup>. A more particular focus on the United States has shown for instance that between 2006 and 2012, the 458 immigrant-founded companies sampled collectively created a total of 9 682 jobs. They employed an average of 21.37 workers.<sup>284</sup> Overall, the proportion of migrant entrepreneurs in the active population is much higher than for natives. In particular, in Belgium and in Spain, in 2007-2008, the proportion of migrants that became self-employed was almost the double the proportion of natives in most OECD countries.

### ***The added-value of innovative entrepreneurship***

Migrant entrepreneurs' contribution to their host country is not limited to job creation. Their potential on innovation<sup>285</sup> has also been analysed by economic literature both regarding certain sectors of economy and regarding the overall capacity of a given country to innovate. Economic literature has found that immigrant entrepreneurship had a significant impact on innovative sectors. For instance, 25 % of all engineering and technological companies founded in the US in the last ten years were founded by migrants<sup>286</sup>. Similarly, the link between skilled migration and innovation and entrepreneurship was analysed from a European perspective. Through two indicators of innovation (patenting and published articles), it has been shown that immigrants outperformed skilled natives on all these measures and that efforts aiming at attracting skilled migrants to Europe and employing them in skilled professions such as those put forward in the 2020 Strategy, will indeed foster EU competitiveness in innovation<sup>287</sup>. This link was also

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<sup>280</sup> Open for Business, Migrant Entrepreneurship in OECD Countries, p.15, OECD, 2010

<sup>281</sup> IMO, 2011, p.156.

<sup>282</sup> IMO, 2011, p.157.

<sup>283</sup> IMO, 2011, p.158

<sup>284</sup> "Then and Now: America's new immigrant entrepreneurs", Part VII, V. Wadhwa, A. Saxenian, F. D. Siciliano, October 2012

<sup>285</sup> Innovation is defined in the Innovation Union as "Change that speeds up and improves the way we conceive, develop, produce and access new products, industrial processes and services. Changes that create more jobs, improve people's lives and build greener and better societies." ([http://europa.eu/rapid/press-release\\_MEMO-10-473\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-10-473_en.htm?locale=en))

<sup>286</sup> "Then and Now: America's new immigrant entrepreneurs", Part VII, V. Wadhwa, A. Saxenian, F. D. Siciliano, October 2012

<sup>287</sup> More precisely, empirical findings show that a larger pool of migrants in the skilled professions is associated with higher levels of knowledge creation. Skilled migrants contribute both to the creation of "private" knowledge measures by the number of patent applications, and to more "public" basic research,

analysed for the United States where evidence shows that skilled migration to the United States is likely to have raised total factor productivity considerably<sup>288</sup>.

This potential on innovation and job creation boosts productivity growth and finally economic growth, which can be measured both in quantitative and qualitative terms. They contribute to the economic and social regeneration of disadvantaged rural and urban areas and contribute to the revival of crafts, trades and business activities. Through their connections with their home country, they also help expand countries' foreign trade<sup>289</sup>.

### 3. THE PARTICULARITIES OF TCN ENTREPRENEURS

#### *Vulnerability of migrant enterprises*

While the specific ability of migrants for business creation has been steadily recognized, it is worth mentioning that the success rate of this entrepreneurship is in general lower than that of native-born. In 2011, the OECD has concluded that the year-to-year self-employment persistence rate over the period 1998-2008 was 94.3 % for native-born and 91.3 for foreign-born<sup>290</sup>. Data has shown for instance in 2010 in France that while the five-year survival rate for firms stand at 54 %, it falls to around 49 % when the entrepreneur is from an EU-15-member state and to only 40.5 % for non-EU nationals; this led to conclude that “[r]egardless of the entrepreneurial environment, whether or not the project was set up with financial resources, alone or with a third party, whether or not it received financial support, the firms set up by third country nationals have a markedly lower chance of surviving the first five years than those set up by French or EU entrepreneurs”,<sup>291</sup>. Importantly, even if businesses fail, there is however still direct economic benefit to the country as “for as long as a company is active, it may create employment, bring tax benefits to the State and enable the sharing of knowledge”<sup>292</sup>. In addition, the employability of the former entrepreneur has been enhanced by the entrepreneurial experience.

#### *Mainstream and specific obstacles faced by migrant entrepreneurs*

This vulnerability is accounted for by several factors that hamper the capacity of immigrant entrepreneurship to unleash its full potential in contributing to the socioeconomic welfare and competitiveness of host countries. While migrant entrepreneurs are faced with the same obstacles

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measured by the number of citations to published articles. Foreign skilled labour exerts a positive effect on the innovative capacity of the recipient countries both for industrially applicable innovations and for more general abstract knowledge. Source: “Migration of skilled workers and innovation: A European perspective”, V; Bosetti, C. Cattaneo, E. Verdolini, *Journal of International Economics* 96 (2015) 311-322.

<sup>288</sup> The important boost in innovation provided by skilled immigration in the USA in 1940-2000 period was analyzed in “*How much does immigration boost innovation*”, J. Hunt and M. Gauhtier-Loiselle, *American Economic Journal: Macroeconomics* 2 (April 2010), 31-56.

<sup>289</sup> See in this sense « The contribution of migrants in enhancing foreign trade » A. Hatzigeorgiou, Ministry for Foreign Affairs, Sweden, in *Migrant Entrepreneurship in OECD countries*.

<sup>290</sup> IMO, 2011, p. 146.

<sup>291</sup> IMO, 2010, p.283, “*Entreprises created in 2002 by non-EU nationals in France: finding it harder to survive*” Y. Breem.

<sup>292</sup> “*The Start-up visa : key to job growth and economic prosperity in America*”, T. Watson, L. Turnbull, V. Wadhwa, 2015.

that natives are when deciding to set up a business — albeit more severely — they are also faced with specific hurdles due to their migrant background<sup>293</sup>.

The access to funding is repeatedly reported as a major obstacle<sup>294</sup>, because of the mainstream credit institutions' lack of familiarity with immigrant entrepreneurs and sometimes because of the characteristics of their enterprises. All this expose the credit institutions to a higher default risks hence explaining their reluctance and the possible concentration of immigrant enterprises in limited value-added activities, which do not require an important initial financial support. The lack of familiarity with the host country language, the country-specific human capital and networks, administrative, business and legal environments are also reported as major hurdles<sup>295</sup>.

### ***Response by governments: mainstream business support programs and targeted support programs***

Against this background, governments have developed both mainstream and targeted business programs aiming at facilitating and supporting the sustainability of these businesses.

Mainstream business support services include for instance entrepreneurship training, help with fulfilment of administrative procedures, counselling, legal advice, mentoring and access to relevant networks, help in raising start-up or expansion capital. They are addressed to all entrepreneurs-to-be of a country including migrants. In addition to these, countries have also sometimes developed targeted business support programs for immigrant entrepreneurs, which help them to overcome the specific challenges that they may face as entrepreneurs. When in place, they are part of comprehensive integration plans. They can stem from public initiative or private actors (civil society associations, private foundations, banks and big companies). They include measures such as “knowledge-based” services to help develop country-specific human capital and business skills, mentoring and networking to foster the acquisition of country-specific business skills, tailored counselling and assistance in obtaining professional permits or registering businesses, measures to facilitate access to finance.

While these two sets of programs are to be seen as complementary, it should also be stressed that the decision to immigrate in a certain country to open up a business is reportedly linked with the pro-business environment of this country. This relates to the structural economic policies that governments put in place and which can consist in simplifying and accelerating administrative procedures required to set up businesses, registration, creating favourable tax regimes for businesses and investment, creating flexibility in the labour market to facilitate recruitment etc. As a consequence, these programs, as any other kind of action aiming at attracting migrant entrepreneurs, including specific admission policies, should be embedded in a broader policy strategy to create an entrepreneurship-friendly environment. Structural policy interventions in the areas of business law, general administration, taxation, labour market and regulation are key to such a strategy. Consequently, any action taken at EU level to foster the attraction of skilled or

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<sup>293</sup> This might explain that almost two thirds of migrant entrepreneurs of OECD countries have been in the host country more than ten years compared with just above 50% for migrant wage earners, IMO 2011, p.147.

<sup>294</sup> See in this sense IMO, 2011, p.162-164.

<sup>295</sup> For a more comprehensive description of obstacles faced by migrant entrepreneurs, see for instance "The Missing Entrepreneurs 2014", Policies for inclusive entrepreneurship in Europe, OECD/EC, 2014.

innovative entrepreneurs should be tightly linked with broader policy measures aiming at ensuring the fairest conditions for them.

Recently, some countries have put in place migration policy measures dedicated to attract migrants willing to create or operate their own business. These policies aim to select and sometimes support immigrant entrepreneurs showing potential to contribute actively to the domestic economic growth. The emergence of these policies is only recent<sup>296</sup> – and to date, 7 Member States are concerned and 6 countries outside the EU<sup>297</sup>. The attraction of this category of migrants is ensured through several measures which do not always imply the creation of a specific category of visa for entrepreneurs, accounting for the diversity of possibilities as described in the section below.

#### **4. OVERVIEW OF EXISTING POLICIES AIMING AT ATTRACTING INNOVATIVE ENTREPRENEURS**

##### **4.1. Denmark - "Start-Up Denmark"**

In February 2015, Denmark introduced the "Start-up Denmark"<sup>298</sup> initiative to help talented entrepreneurs relocate and grow high-impact start-ups in Denmark. Led by the Danish Ministry of Business and Growth and the Ministry of Employment, the program is meant as a gateway for talented foreign entrepreneurs to Denmark's vast start-up opportunities, such as accelerators, co-working spaces, investment funds, research centres, as well as grassroots initiatives.

##### ***Conditions:***

The targeted businesses are those that are “scalable and, ideally tech-driven start-ups”,<sup>299</sup> mainly in the fields of life science, ICT, design and clean-tech & sustainable energy. Businesses such as restaurants, retail shops, consultancy firms, import or export enterprises or similar are not eligible for the permit. Applicants must be approved by a panel of experts. The program is for early-stage businesses and can accept up to two founders. No prior investment is required to qualify to the program but proof of subsistence is required.

Participants must participate actively in the day-to-day operation of the company, and presence and involvement must be vital to the establishment of the business<sup>300</sup>.

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<sup>296</sup> This is explained by the fact that, while in the 1960's western economies did not have a selective immigration system as they needed workers to fill positions, this radically changed after the oil crisis of the 1970's and the subsequent slow-down of national economies. "Immigration systems started then to become more restrictive and governments increased the scrutiny of migrants. Countries have recognized the issue of their overly selective general work visa systems, hence the current trend of policies dedicated to entrepreneurs", "Worldwide Start-Up Visa Policies Compared", J. Goube, Migreat, Open to entrepreneurs: Startup Visas Policies Report - May 2015.

<sup>297</sup> Countries where entrepreneurial culture is traditionally widespread have been the first to put in place policies to attract migrant entrepreneurs (Canada, Australia, the United States and New Zealand). This is also strongly linked to the fact that these countries are also traditionally receiving countries.

<sup>298</sup> See <http://www.startupdenmark.info/> and [https://www.nyidanmark.dk/en-us/coming\\_to\\_dk/work/Start-up-denmark/](https://www.nyidanmark.dk/en-us/coming_to_dk/work/Start-up-denmark/)

<sup>299</sup> <http://www.startupdenmark.info/faq/>

<sup>300</sup> Shareholders are excluded.

### ***Procedure***

Entry is reviewed within 6 weeks by a panel of experts appointed by the Danish Business Authority. There must be particular Danish professional or labour market interests in the establishment of the company in Denmark<sup>301</sup>. Once the evaluation is positive, application for the entrepreneur residence permit under the Start-up Denmark scheme is allowed<sup>302</sup>. The procedure length as a whole is 10 weeks. A maximum of 50 residence and work permits are granted under the Start-up Denmark scheme per year, that is, from 1 January to 31 December.

### ***Duration***

Residence and work permanent for up to 2 years, with the possibility of extending for an additional 3 years.

### ***Rights***

Some members of the family can also come to the country.

The success of the scheme is yet to be evaluated.

## **4.2. France - "French tech Ticket"**

The French Tech Ticket is a program designed for non-French entrepreneurs from all over the world who want to create their start-up in Paris. It is targeted at innovative and scalable start-ups to contribute to a fast development of innovation and start-up ecosystems in the country. This 6-month program, started in January 2016, offers end-to-end support on the journey from early stage start-up to successful business – from financial support and training to first customer acquisition. Selected entrepreneurs work closely with one of nine leading French Incubators providing among others mentoring, fundraising strategy, expert advice and pitch practice. At the end of the six months, entrepreneurs have the option to renew this ticket for another six months to further fast track their growth.

### ***Conditions:***

In order to be eligible for the Paris French Tech Ticket, applicants must be an early stage start-up or have a project of start-up and plan to develop their business in France. Teams can be formed of 3 persons maximum (with maximum one French citizen in the team). The programme has a quota of 50 entrepreneurs for six months up to one year.

Applicants must be based in Paris during at least 6-month starting January 2016, have a valid visa to enter France, be fully dedicated to their project, which means commit to the program on a full time basis (no other side professional activity). They must open a bank account in France.

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<sup>301</sup> Consequently, residence and work permit in order to establish a restaurant, retail shop, small business, import or export enterprise or similar are excluded.

<sup>302</sup> A positive evaluation from our panel of experts does not guarantee the approval for the entrepreneur residence permit itself.



Review of applications is made by an independent panel which assesses the following: team members and entrepreneurial skills, feasibility of the product, market potential, marketing strategy, impact of the business being in Paris and financial growth. The duration of the review process is 4 months.

Entrepreneurs who are selected to the Paris French Tech Ticket and who require a Visa must apply for and be granted a VLS-TS Visa<sup>303</sup>. Teams who are not granted a Visa cannot take part in the program until all the visa paperwork has been submitted and approved.

### ***Benefits:***

The main benefit of being selected to the program is an award of €12,500. It will be possible to get a second prize of 12 500€ at the end of the 6 months (for a total of 25 000€ for 12 months). While the visa is not a specific visa but a "long stay" visa (duration of one year), it is obtained through a fast-track procedure.

Free space in a partner incubator and dedicated workspace is made available. The program also includes access to events and training sessions provided by the incubator network., access to a senior mentor to support the start-up's growth, tailored programme of events, a Help Desk to provide assistance with red tape, a Paris Landing Pack to help foreign entrepreneurs relocating to Paris, lower prices on Air France flights, a Gold loyalty card and advertising for the start-up via Air France.

In the period of June – September 2015, 722 start-up projects were submitted, for a total of 1,372 applicants and 5,677 expressions of interest from over 100 countries<sup>304</sup>.

### **4.3. Ireland - "STEP" Program**

A Start-up entrepreneur Program called STEP was introduced in April 2012 to stimulate productive investment in Ireland and to attract high potential start-ups in the field of information and communication technology (ICT). The program was reviewed in March 2014 to refine its target applicants and in May 2015. This resulted in the introduction of a pre-track of STEP which is a 12-month visa for start-ups that attend incubators or innovation boot camps in order to prepare a STEP application. The STEP facilitates residence in Ireland for foreign national entrepreneurs who have a viable proposal for a High Potential Start-up (HPSU) Company.

### ***Conditions:***

STEP applies the definition of a HPSU as used by Enterprise Ireland, which classifies a HPSU as a start-up venture that is:

- Introducing a new or innovative product or service to international markets
- Involved in manufacturing or internationally traded services.

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<sup>303</sup> "Visa de long séjour valant titre de séjour", Art. L-211-2 and L-211-2-1 Code de l'entrée et du séjour des étrangers.

<sup>304</sup> Study for an impact assessment on a proposal for a revision of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card Directive").

- Capable of creating 10 jobs in Ireland and realising €1 million in sales within three to four years of starting up.
- Led by an experienced management team
- Headquartered and controlled in Ireland.
- Less than six years old.

The required minimum investment is €50,000. Where more than one principal is involved in establishing the business the minimum investment for second and subsequent entrepreneur will be €30,000 per principal.

The applications are evaluated by an application committee chaired by the Department of Justice and Equality in Ireland. Documents required by the application committee include the most recent audited accounts (if the business is relocating to Ireland), a comprehensive business plan for the innovation start-up proposal (a template is provided), and evidence of funding through either own resources, business loan, Business Angel/Venture Capital funding or a grant from an Irish State Agency.

***Duration:***

The visa grants residency for two years and renewable for three more years.

In addition, a 12-month immigration permission has been made available for entrepreneurs attending incubators or innovation boot camps in Ireland and non-EEA students who graduate with advanced STEM (Science, Technology, Engineering, and Mathematics) degrees. It allows entrepreneurs to prepare an application to the Start-up Entrepreneur programme.

Since its introduction April 2012 and until 1 January 2015, 52 applications for STEP have been introduced and 30 were approved<sup>305</sup>.

**4.4. UK - Graduate and Entrepreneur Visas**

UK Entrepreneur visas were introduced in 2008 replacing the tier 1 general category for highly skilled migrants and the highly skilled program that allowed highly skilled migrant to come to the UK for two years without the need for a job offer.

The two main schemes are: Tier 1 Entrepreneur and Tier 1 Graduate Entrepreneur. Migrants under the Tier 1 Entrepreneur route are defined as applicants wanting to invest in the UK by setting up or taking over, and being actively involved in the running of, one or more businesses in the UK. Migrants under the Tier 1 Graduate Entrepreneur route are defined as having strong business skills and/or ideas, and are endorsed by a UK Higher Education Institution (HEI) or UK Trade and Investment (UKTI).

Eligibility criteria for Tier 1 Entrepreneur visas includes a minimum investment of £200,000, or, £50,000 if applicants have access to funds in a registered venture capital firm, a UK government

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<sup>305</sup> Study for an impact assessment on a proposal for a revision of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card Directive").

body, or, from approved seed funding under UKTI competitions. Applicants are subject to a genuine entrepreneur test, consisting of a written application with evidence of funds and a business plan, and an interview if required. With regard to Tier 1 Graduate Entrepreneurs, there are no investment requirements, and applicants have to meet the eligibility criteria set out by the endorsing organisation.

The Entrepreneur visa maximum duration is 3 years and 4 months and can be extended for 2 years if the applicant is already in this category and 3 years the person is switching to it from another category. The duration of the Graduate Entrepreneur Visa is one year.

Family members ('dependants') can also enter and reside in the country under both permits.

In 2014, there were 5,488 Tier 1 Entrepreneur visas granted, with the majority being in-country visas. The number of Tier 1 Graduate Entrepreneur visas was 564, with the majority being in-country visa switches from the Tier 4 General Student Visa<sup>306</sup>.

#### **4.5. Italy - "Start-up Visa Italia"**

The "Start-up Visa Italia" was launched in June 2014 and it aims at attracting innovative entrepreneurs to Italy's regional start-up hubs. The Start-up policy is designed to promote technological development, employment, and entrepreneurial culture in Italy by granting residency permits to non-EU talents determined to establish innovative start-ups in Italy. It enables innovative entrepreneurs to apply for a residence permit from outside Italy. Applications from within the country are also possible under "Start-up Hub". The scheme is one element of a wider policy package aimed at boosting the Italian economy.

##### ***Conditions and procedure:***

The target companies are start-ups with an innovative element, defined either by the spending on research and development, or by the qualifications of the personnel, or by the patents. In terms of eligibility, the minimum capital has been set to €50,000 and the applicant must introduce an innovative business idea, which is evaluated by a specific Committee.

In terms of procedure, there are two routes to apply for the Italian visa:

1. Direct start-up visa application; the applicant submits a request to the above mentioned Committee which evaluates the innovative business plan and verify other requirements. After this procedure the Committee may or may not issue a Certificate of No Impediment
2. Application through a licensed business incubator: if a certified incubator is willing to host the non-EU national on its premises to establish an innovative start-up, and has signed an invitation letter, it is sufficient for the Committee to issue its Certificate of No Impediment without further evaluation.

When the Committee has issued the Certificate of No Impediment, it informs the local police headquarter (*questura*). When the police has accepted the visa request, the Committee notifies the

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<sup>306</sup> Ibid.

applicant and informs the consulate or embassy in the country of origin, along with the Italia Start-up Visa contact points within the Ministry of Foreign Affairs, the Ministry of Interior and the Ministry of Labour. Once received the No Impediment Certificate, the applicant can apply for a Start-up Visa to the consulate, which will then inform the Committee once the visa has been issued.

As for any foreign worker, the start-up entrepreneur has to apply for a residence permit within 8 days after his/her arrival to Italy. The applicant has to show up at the local post office to present the application along with the fees. The entrepreneur may then apply for a work permit.

The decision process takes 30 days maximum. The maximum duration of the residence permit is two years.

The Start-up residence permit is valid for 1 year, and can be renewed under the condition that the third-country national has successfully set up an innovative start-up. The success of the start-up is proven by the company's registration in the innovative start-up register to the local police headquarter, and the registration certification, along with the self-assessment tax return, have to be presented for renewal.

The attractive feature of the Start-up visa programme for third-country nationals, as well as Italian start-up entrepreneurs, consists in a range of financial and work-related incentives. These include, inter alia, exemption from registration fees due to the Chamber of Commerce and stamp duties; flexible corporate governance, especially for Ltd (in Italian, Srl), for which the creation of categories of shares with specific rights, the possibility of carrying out operations on one's shares, the possibility of issuing participative financial instruments, offer to the public of capital shares become possible; exemption from the regulations on companies reporting systematic losses; exemption from the duty to affix the compliance visa for compensation of VAT credit; tax credit for the employment of highly qualified staff; tax incentives for corporate and private investments in start-ups; fast-track, simplified and free-of-charge access for innovative start-ups and certified incubators to the *Fondo Centrale di Garanzia*, a Government Fund that supports access to credit through guarantees on bank loans;

In the period 24th June 2014 - 31st December 2015 (18 months), the total number of applications received for the Start-up Visa was 61. From these, 40 received a positive response and the success rate was 66%. Five applications were received and approved for conversion into Start-up Visa, and the success rate was 100%<sup>307</sup>.

#### **4.6. The Netherlands - "Start-up Visa"**

There are two admission schemes for entrepreneurs in the Netherlands: a general self-employment scheme (points-based system) which entered into force in 2008 and a special scheme for start-up entrepreneurs which entered into force on 1 January 2015. The two schemes are closely interlinked since after one year on the residence permit for start-up entrepreneurs, the entrepreneur may have the duration of their residence permit extended on the basis of the self-employment scheme.

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<sup>307</sup> Ibid.

### ***Visa and requirements:***

The Dutch policy makes it possible for ambitious entrepreneurs to apply for a temporary residence permit in the Netherlands.

No financial requirement exists, except the proof to have sufficient financial resources for living and housing expenses. Other conditions include: working together with a reliable expert facilitator; an innovative product or service; both start-up entrepreneurs and the facilitator are registered in the Commercial Register of the Chamber of Commerce.

When the visa application is approved, the applicant is referred to Start-up Delta, a collaboration organisation between government, accelerators, investment groups and start-ups, to provide them with guidance on starting a business in the Netherlands.

Start-up visa applicants are exempt from the entry clearance visa requirement. This means that they can apply and await the decision on their application in the Netherlands without having to travel back to their country of origin. Family members can also reside in the Netherlands and are given the same employment status.

About 30 residence permits for self-employment are issued on average every year, which represents about 15% of the total applications. With regard to the residence permit for start-up entrepreneurs, in total 95 applications were submitted in 2015 from which 21 residence permits were granted, 26 are in progress, 28 were denied and 20 were retracted<sup>308</sup>.

### **4.7. Spain - Ley de Emprendedores**

Launched in September 2013, the *Ley de Emprendedores* was created to attract foreign investment and entrepreneurs in order to improve the competitiveness and innovation in Spain.

### ***Visa and requirements:***

The start-up policy offers five visa categories from investors to entrepreneurs and highly skilled workers. The policy is designed to eliminate the obstacles for foreign entrepreneurship and to establish a regulatory framework that is conducive to this entrepreneurial activity. It introduces a flexible and fast application procedure with a single authority by Large Business and Strategic Groups Unit (UGE).

The visa criteria for entrepreneurs require them mainly to have a government-vetted business plan in Spanish that demonstrates the economic benefits for Spain and applicants are to be able to sustain themselves only. No minimum financial requirement is therefore required.

The procedure is streamlined and made faster as the process and decision are made within 10 working days and the residence permit provided within 20 working days. The permit duration is 1 year.

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<sup>308</sup> Ibid.

The visa comes with access to a government unsecured lending program, which has about €100 million, or \$125 million, to lend to innovative small and midsize companies each year. The loans, from €25,000 to €1.5 million, are available to all entrepreneurs, regardless of nationality, who have a business based in Spain (except for those running real estate or financial ventures). The scheme allows the simultaneous application for a permit (for residence and work) by family members.

More than a year since the entry into force of the national scheme, the total number of visas and permits issued for entrepreneurs amounts to 82. The estimated value of entrepreneurial activities until the end of 2014, was considered to be approximately €234 million<sup>309</sup>. It is also estimated that a total of 2,624 jobs<sup>310</sup> will be created in the forthcoming years thanks to these entrepreneurial activities of special economic interest for Spain.

## **5. OVERVIEW OF EXISTING POLICIES AIMING AT ATTRACTING INNOVATIVE ENTREPRENEURS OUTSIDE THE EU**

### **5.1. Australia - "Business Innovation and Investment Programme"**

The Australian "*Business Innovation and Investment Programme*" was introduced in July 2012 to supersede the Business Skills Programme set up in 1992. The programme is designed to attract high quality investors and entrepreneurs to Australia. It grants a residence permit up to 4 years to migrants who expressed an interest, passed a points-based assessment and were subsequently nominated by the state or territory

#### ***Visas and requirements:***

The programme offers three visas subclasses (two providing permanent visas and one temporary visas) and substreams within it with different requirements for each - bringing the number of "visa" options to a total of ten. The selection criteria are both general human capital criteria (age, education, languages, and experience) and business-related (turnover, assets and business shares). More precisely, the applicant and her/his family members (even if they are not migrating) must meet some health and character requirements, which consist in health examinations, health insurance and the police clearance certificate. Moreover, the foreigner must sign the Australian Values Statement and must have no debts towards the Australian government. With regard to the business-related requirements, the applicant must, for two out of four previous fiscal years before the application, show to have had an ownership interest in an established business(es) that had at least AUD 500,000 turnover per year. The applicant must also have a certain percentage of the nominated business, which equals to 51% if the business has a turnover of less than AUD 400,000 per year, to 30% if more than AUD 400,000 and 10% if the business is a publicly listed company. In general, the business career of the applicant must prove successful and his/her desire to continue running the business in Australia needs to be genuine

The Business Innovation visa is a temporary visa which has a validity of 4 years and 3 months and can be converted after a certain period of successful business in a permanent visa.

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<sup>309</sup> Discussion paper for the experts meeting on A possible scheme at European Level to attract, retain and support the non-EU Highly Skilled entrepreneurial innovators 20 May 2015.

<sup>310</sup> Ibid.

Family members apply for the same visas held by the main applicant, therefore having the same rights, also with regard to access to permanent visas.

In the period 2012-13, 429 applications were lodged and 46 were granted, whereas in the period 2013-14 (up to March 2014), 739 applications were lodged and 342 granted<sup>311</sup>.

## **5.2. Canada - "Start-up Visa Program"**

In April 2013, the "Start-up Visa Program" replaced the old Entrepreneur visa that only required the foreigner to recruit one Canadian for one year. It is a pilot programme for five years granting permanent residence to immigrant entrepreneurs. It targets immigrant entrepreneurs with the necessary skills to build innovative businesses in Canada that can create new jobs and compete on a global level.

### ***Visa and requirements:***

Under this Programme, applicants must be admitted into a business incubator, secure at least CA\$75,000 in investments from an angel investor group, or secure at least CA\$200,000 in investments from a venture capital fund. The system therefore heavily relies on the support of one of several designated Canadian organizations (angel investor group, venture capital fund or business incubator). The investor organization has to provide a Commitment Certificate directly to Citizenship and Immigration Canada, summarizing the details of the commitment made with the applicant. A peer Review Process has been introduced so as to make sure that the deals made between the investment organizations and immigrant entrepreneurs are legitimate.

The program has set a quota of 2,750 visas per year.

Since the launch of the program, 16 applicants have been approved for permanent residency, helping launch eight companies<sup>312</sup>. In 2015, nearly 60 applications were at various stages of the process. These entrepreneurs are behind 34 business projects. An additional 25 projects have secured financial support from dedicated investment groups under the program.

## **5.3. Chile - "Start-up Chile"**

The Chilean government launched a pilot program in 2010. The aim of Start-Up Chile is to attract early-stage, high-potential entrepreneurs worldwide. The ultimate objective of this scheme is to position Chile as the innovation and entrepreneurship hub of Latin America.

The program runs like a competition for funding, with three competitions each year. Each competition results in the selection of 100 start-ups with on average two founders per start-up. The scheme selects promising young firms and gives their founders capital, space networking mentoring, and a year's visa to come and work on their ideas in Chile. Chile also has one of the fastest incorporation rates in the world, allowing a new start-up to incorporate almost in one day.

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<sup>311</sup> Study for an impact assessment on a proposal for a revision of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card Directive").

<sup>312</sup> <http://news.gc.ca/web/article-en.do?nid=981649>

The scheme is divided in three programs based on the stage of the start-up.

- S Factory: Pre-acceleration program for start-ups in early stage focusing in female founders. Selected companies benefit a financial support of \$10 million CLP (€3.000) and three months acceleration.
- Seed: Acceleration program for start-ups with an efficient product. Selected companies receive 20 million CLP (around €26.000) equity free and six months acceleration.
- Scale: Subsequent fund for start-ups that are already incorporated in Chile and proved to be performant. Selected companies receive \$60 million CLP (around €78.000) equity free under the condition that they incorporate and operate in Chile.

Since its introduction, around 500 companies and almost 900 entrepreneurs from a total of 37 countries have benefited from it<sup>313</sup>. Start-Up Chile has attracted a lot of global high-tech companies. In addition, the influx of start-ups is boosting local interest in entrepreneurship. The introduction of the Start-Up Chile has also change Chileans' attitudes and provided them with a global network of business contacts.

#### **5.4. New Zealand - Entrepreneur Work Visa**

A new "Entrepreneur Work visa" was introduced in March 2014 and replaced the old Entrepreneur visa routes called Long Term Business. The aim of the Entrepreneur Visa review was to better target businesses with high export and growth potential.

##### ***Visas and requirements:***

Three visas for entrepreneurs exist, one temporary (Entrepreneur Work Visa) and two permanent (Entrepreneur Residence Category) providing residency in six or two years depending on how well the business has performed under the previous temporary visa.

The requirements for the Entrepreneur Work Visa include having a business plan, scoring 120 points on the entrepreneurs' points scale, showing an intermediate level of English, and acceptable health conditions and good character. The applicants are required to do a minimum investment of NZ\$ 100,000 (approx. €60,000); however, for innovative start-ups, this requirement can be waived.

The visa is valid for 3 years, but only if the entrepreneur shows that s/he has made steps to establish the business, the visa validity is confirmed after 12 months.

The introduction of the new visa marked a drop in the number of applications received and positive decisions made: from 1,057 applications (first-stage) and 562 positive decisions in 2013/14, to 491 applications and 171 positive decisions in 2014/15<sup>314</sup>.

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<sup>313</sup> Study for an impact assessment on a proposal for a revision of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card Directive").

<sup>314</sup> Ibid.



## **5.5. Singapore - Entrepass**

Singapore Entrepass was created in 2004. It went through several updates in order to better target innovative entrepreneurs. The scheme is part of Singapore's general plan to become a regional business hub and attract the best entrepreneurial minds to the country. The scheme was lastly revised in 2013.

### ***Visa and requirements:***

The company must be less than 6 months old, own at least 50,000 in paid-up capital and the applicant must hold at least 30% of the shares in the company.

EntrePass' admission conditions were restricted in 2013. From 1 September 2013 only businesses with funding from a recognised venture capitalist firm or angel, businesses holding registered intellectual property or businesses supported by a Government agency, are eligible for an EntrePass. The business must satisfy the 'innovativeness' requirement which was introduced in September 2013. In selected cases for particularly promising businesses, the government will match investment from the private sector

The visa is granted for a year and renewal criteria are based on progressive targets for local job creation, revenues and spending

The EntrePass allows the applicant to bring family members (spouse and unmarried children under 21) to Singapore by applying for their Dependants' Passes. EntrePass holders are also eligible to apply for Singapore permanent residence.

There is no official quota of the number of EntrePass to be granted. In 2012, there were 1,300 EntrePass visa applications and 1,000 applications in 2013, 50% of which were accepted<sup>315</sup>.

## **5.6. Taiwan - Entrepreneur Visa Promotion Plan**

In July 2015, Taiwan has introduced an Entrepreneur Visa Promotion Plan to attract foreign entrepreneurs. The plan offers an initial visa for 1 year which can be renewed up to two years if evidence shows that the visa holder runs a bona fide business. Permanent residence can be granted after 5 consecutive years.

The focus is set on innovative businesses that have been created for less than 5 years, through the identification of 5 principles: funds received registration in an incubator, patent or intellectual property rights hold, participation in a government-accredited incubator, won major competitions.

## **5.7. USA - Start-up Visa**

The US Start-up Visa is a proposed amendment to the U.S. immigration law to create a visa category for foreign entrepreneurs who have raised capital from qualified American investors. It aims at addressing the absence of a visa category for entrepreneurs raising outside funding<sup>316</sup>.

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<sup>315</sup> Ibid.

<sup>316</sup> Note that currently, in the United States there is no stand-alone, dedicated visa for innovative start-ups. However, there are a number of other types of visas that can be used for such purposes.

The Start-up Visa Act of 2013 has been introduced in the Senate on January 30, 2013 (and follows two previous versions) and is currently awaiting Committee review.

It was found that Temporary visas, including H-1B visas, were ill-suited for entrepreneurs and could be disallowed for use by a foreign national who controls a company. Start-ups have been shown to be responsible for much of the net increase in employment in some recent years and discussions in the U.S Congress concluded that "The Startup Act," could create 500,000 to 1.6 million jobs over the next 10 years if it becomes law<sup>317</sup>.

The Start-up Visa would be a temporary immigrant visa, or conditional permanent resident visa (conditional green card) which converts to a permanent residency (green card) after two years if certain conditions are met.

***Requirements:***

The latest proposal Start-up Act 3.0 bill introduced in the U.S. Senate entailed a fixed pool of 75,000 foreign-born individuals who already hold H-1B visas or F-1 student visas and who start companies in the US.

In the first year of business, these entrepreneurs would be required to employ at least two full-time, non-family workers and to invest or raise an investment of \$100,000 or more. By meeting the first-year requirements, recipients would be granted a three-year visa extension. If, over that three-year period, the business owner has hired, on average, one additional employee each year, they may apply for permanent status.

## **6. ATTEMPT OF CATEGORIZATION AND CONCLUSIONS**

The two previous sections show that the attraction of migrant entrepreneurs is ensured through several measures that do not necessarily imply the creation of a specific category of visa for entrepreneurs, accounting for the diversity of possibilities.

***Attempt of categorization***

The wide range of measures spans indeed from the creation of a visa specific to entrepreneurs with corresponding entry requirements and rights (which could be referred to as a real "Start-up Visa" or "Entrepreneur Visa"), to the establishment of incubating programs, where the enrolment is made usually on the basis of a regular work and residence permit, or even competitions where money can be directly granted to selected applicants. Some countries also chose an intermediary road, enabling the granting of a general work visa with some facilitation in the procedure dedicated to entrepreneurs (such as a fast track procedure).

While the overarching goal is the same, governments have therefore enacted very different policies to achieve these goals and terms such as "Entrepreneurs Visa" or "Start-up Visa" refer

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<sup>317</sup> National Foundation for American Policy, Policy Brief 2016 .

actually to a myriad of realities as all these options can be combined and are not mutually exclusive.

Three main measures emerge:

#### Specific permit regimes

The design of a permit regime dedicated to entrepreneurs is probably the most targeted measure in as much as it creates specific rules and requirements that are meant to correspond to the specificities of this category of migrants and grants them corresponding rights.

In the EU, this measure has been introduced in the UK, NL and ES. Outside the EU, it concerns Australia, Canada, New Zealand, Singapore and Taiwan.

While entry conditions and definition of success vary between countries, there are two key elements:

- Financial requirements to entry (initial investment).
- The timeframe and the number of jobs that must be created by the business or the amount of revenues that must be generated (this is the yardstick for success).

Worth noting is that criteria are often modulated as usually the system is made as flexible as possible to reflect the diversity of entrepreneurial profiles. Further analysis and data are required to have a clear overview. Regarding the renewal, it is usually based on the assessment of the success of the business, but the criteria used also differ (the number of jobs created or the amount of revenues generated) as well as the timeframe set to achieve this.

#### Facilitated procedure

Another measure adopted to attract innovative entrepreneurs consists in facilitating the acquisition of residence permits. This relates mainly to the creation of a fast-track procedure and is for instance in place in FR, ES, IT, NL.<sup>318</sup>

The entry requirements vary within this category, some countries having chosen to set minimum financial requirements, others not. The selection process is also different according to countries as it is based on a review by an expert panel (the composition of which differs according to countries) on the impact of a project in terms of dedicated investment, jobs created and economic impact. No information is available at this stage on the criteria used to assess the projects.

#### Incubation programs

This option is the most integrated one. It creates an aggressive start-up policy through selective programs that target high-profile entrepreneurs. Quotas are strict (50 for France and Denmark per year, 300 for Chile, 2,750 for Canada) and a selective process is designed. Programs are aimed specifically at engineering innovation and entrepreneurship and can include significant funding.

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<sup>318</sup> No data available for DK, UK, IE.

This model relies usually on the concept of small teams, building on the conclusion that team-based start-ups are more likely to grow than those of single entrepreneurs<sup>319</sup>.

In the EU, this is in place in FR, NL, and DK. Outside the EU, it concerns Chile and Canada.

### *EU level perspective*

The fragmentation of very recent existing policies aiming at attracting innovative entrepreneurs, the topicality of the issue, especially for what relates to innovative start-ups, and the opportunity to create a legal migration route for innovative entrepreneurs prompt reflection at EU level. This is all the more relevant as the contribution of entrepreneurship to employment, innovation and economic and inclusive growth must also be seen in the light of the EU's competitiveness as highlighted in the Entrepreneurship 2020 Action Plan<sup>320</sup>, anchored in the overarching Europe 2020 Strategy. While the potential of this specific category of persons is widely acknowledged, it is however also often decried that the EU lags behind the traditional immigration countries in terms of offering opportunities for highly-skilled migrants to start new businesses<sup>321</sup> and that this potential should be unleashed, which could contribute to boost the EU's competitiveness. While measures have been adopted recently, they exist in a very limited number of Member States, show a great deal of discrepancy and they cannot grant third-country nationals any intra-EU mobility rights. This hampers both migrants and the EU as whole to make full use of the growth potential from a 500 million inhabitant single market.

Gathering data on the efficiency of the policies in place so as to feed reflection at EU level, including on the added value of an action at EU level, is required and extending the scope of the EU Blue Card to entrepreneurs does not appear as the appropriate step at this stage. Legislative action aiming at attracting entrepreneurial innovators should answer the following issues..

Firstly, innovative entrepreneurs form a totally different category which cannot be encompassed by the conditions set up by the Directive. Extending the scope of the Blue Card Directive to entrepreneurs requires allowing self-employed activity within the Blue Card for which the existing entry conditions cannot be used as these are targeted at situations of employment. Similarly, the Blue Card targets high-skilled employment. It therefore enshrines yardsticks to measure this and relies on a university degree or a relevant professional experience. Such indicators would not be relevant for innovative entrepreneurs, and probably sometimes contradictory to the aim of fostering innovation where the focus should be set rather on the feasibility and soundness of the business plan considered as well as on its impact on economic growth and employment, thus also undermining the use of the salary threshold criteria. This is the

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<sup>319</sup> See in this sense M. Shrivastava and J. Tamvada, Entrepreneurial teams, Optimal team size and founder exits, 2011, available at [http://www.iza.org/conference\\_files/EntreRes2011/tamvada\\_j3400.pdf](http://www.iza.org/conference_files/EntreRes2011/tamvada_j3400.pdf)

<sup>320</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ENTREPRENEURSHIP 2020 ACTION PLAN Reigniting the entrepreneurial spirit in Europe COM/2012/0795 final.

<sup>321</sup> Ruby Gropas, 'Migration and Innovation: why is Europe failing to attract the best and brightest,' March 2013.

reason why when schemes already in place refer to identified skills or qualifications, the evaluation of the business plan is still a predominant criterion<sup>322</sup>.

Secondly, we have seen the particularities of migrant entrepreneurship and the importance of supporting measures aiming at facilitating the sustainability of the businesses created by migrant entrepreneurs. Setting the right framework conditions can indeed both boost the attraction of foreign innovative entrepreneurs and give them the right conditions to expand their businesses in a sustainable way. These measures are not always legislative, are addressed at EU level and cannot be addressed in the present revision exercise. Forcing the current structure of the Blue Card in order to make it fit to attract entrepreneurs at this stage would not give the right signal, neither for potential entrepreneurs willing to settle in the EU, nor to the Member States. A holistic approach is required. Against this background, any action aiming at facilitating the entry and residence of innovative migrant entrepreneurs should be coordinated with the efforts already and currently put in place in the different policy areas (migration, research and innovation, industrial and digital policies) and with the scheme to be designed in the coming months through a study commissioned by DG RTD This would enable to present a comprehensive and single "entrepreneurship/start up package" aimed at fostering migrant innovative entrepreneurship.

Thirdly, additional data is also required to be able to present a comprehensive analysis. The analysis should focus on the need of action at EU level, especially in terms of EU-wide rights to be granted, such as intra-EU mobility. This data should also include the results of the admission policies put in place, which is scarcely available at the moment, both because of the recent nature of these policies and of the lack of literature on this emerging matter. In May 2015, J. Goube wrote "At present, the effectiveness of entrepreneurial visas in attracting the best and brightest has not been proven. Start-up visa policies have not caused a surge in the number of applications and companies for most countries – so far most programs in Europe approved fewer than 100 applications a year, except for the UK (though strong anecdotal evidence seems to indicate abuse and failure of the entrepreneurs under the first iteration of the visa). Additionally, strong anecdotal evidence are suggesting that flexible visa requirements form an essential foundation that supports the growth of an innovative and international business creation hub – but alone cannot make global entrepreneurs want to move to another country to settle".<sup>323</sup> However, the schemes at Member States level are recent and 'going down their learning curve' and it might be too soon to draw any conclusions.

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<sup>322</sup> See for instance Ireland, where the project must be "led by an experienced management team" and where the review process does not focus on such an element: <http://www.inis.gov.ie/en/INIS/Guidelines%20for%20Start-up%20Entrepreneur%20Programme.pdf/Files/Guidelines%20for%20Start-up%20Entrepreneur%20Programme.pdf>

The scheme explicitly excludes retail, personal services, catering or other businesses of this nature out of its scope.

Similarly, in Spain the report on the business and entrepreneurial activity is the most important element: [http://extranjeros.empleo.gob.es/es/UnidadGrandesEmpresas/folleto/Folleto\\_ley\\_emprendedores\\_Emprendedores\\_EN.pdf](http://extranjeros.empleo.gob.es/es/UnidadGrandesEmpresas/folleto/Folleto_ley_emprendedores_Emprendedores_EN.pdf)

In the UK, even the "graduate entrepreneur visa" are a graduate who has been officially endorsed as having a genuine and credible business idea

<sup>323</sup> "Worldwide start-up visa policies compared", J. Goube, Migreat, May 2015.

In addition, before gathering the relevant data required to have a comprehensive analysis of the effectiveness of measures to attract innovative entrepreneurs, it could be useful to allow Blue Card holders to have a minor entrepreneurial activity on the side of the primary employment as Blue Card holders.

In the beginning of a new business venture, many entrepreneurs continue to work their "day job" to support their personal expenses while developing their entrepreneurial activity in their private time. Latest research<sup>324</sup> shows indeed that a significant number of start-ups commence in the informal economy primarily to test the viability of the business, often started as a hobby. And, about 22% of men and 13% traded informally when starting their business, whereby 66% of men and 53% of women assert that the main reason was to test the viability of their business<sup>325</sup>. Research also suggests that the risk and uncertainty associated with entrepreneurial activity deters entry and contributes to the high rates of new business failure<sup>326</sup>. While nationals do not have specific constraints to start this venture as long as the applicable fiscal and corporate law rules are respected, the situation of third country nationals appears very different as in most cases (i) their work permit usually only grants the possibility of economic activities as an employee, specifically excluding any self-employed activities and (ii) their work permit is explicitly linked to a specific job, even to a specific employer. Consequently, any self-employed activity besides a main job as an employee takes place, at best, in a grey zone or is not allowed. Often there is no explicit prohibition in the law, but it is a logical implication of a system based on a job or employer specific work permit for employed activities. And, when the labour access status is not respected (and the dependant residence status), neither are the fiscal, social security and corporate law rules.

Under the current Blue Card Directive, this possibility is forbidden as the third country national must be an employee according to Article 2(b). This situation could be changed by explicitly allowing a secondary professional activity as a self-employed besides the main job on which the Blue Card is dependent providing that the following conditions are met:

- The self-employed is clearly defined as secondary (supplementary) to the employed job for which the Blue Card has been granted;
- All conditions of the Blue Card remain fulfilled at all the time;
- The self-employed venture respects all fiscal and corporate rules.

Whether the employer of the Blue Card holder allows this or not could be arranged in the private employment relationship between the Blue Card holder and the employer. However, the permit should not be the (legal) obstacle that prevents entrepreneurial activity.

This would provide added flexibility to high-skilled persons and in some cases favour a gradual transfer to entrepreneurship, without distorting the current legal framework. Benefits could be seen in economic terms as research shows that "hybrid entrepreneurs who subsequently enter full-time self-employment (ie. quit their day job) have much higher rates of survival relative to

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<sup>324</sup> William C and Martinez A. 'Is the informal economy an incubator for new enterprise creation? A gender perspective', International Journal of Entrepreneurial Behaviour and Research, Vol. 20, No 1, 2014, pp.4-19

<sup>325</sup> Id.

<sup>326</sup> "Should I quit my day job?: a hybrid path to entrepreneurship" J. Raffiee and J. Feng, Academy of Management Journal, 2014, Vol. 57, No 4, 936-963.

individuals who enter full-time self-employment directly from paid employment"<sup>327</sup>, thus addressing the specificity of the vulnerability of migrants enterprises. Such a route could therefore provide the certainty and security required for high-skilled migrants who wish to start their own business, improving their sustainability, add value to the Blue Card, and be part of a more flexible approach which could foster promising innovation and businesses.

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<sup>327</sup>

Id.

# ANNEX 11

## INTERNATIONAL SERVICE PROVIDERS

### 1 CONTEXT

Services are increasingly important in the global economy and a central part of the economy of every EU country. The EU is the world's largest exporter of services with tens of millions of jobs throughout Europe in the services sector. It accounts for over 22 % of global trade in services — compared to 15 % for the US and 8 % for China — and has a positive services trade balance with the rest of the world of over 150 billion EUR per year.<sup>328</sup> Opening up foreign markets for services means more growth and jobs in the EU, while the admission of well-trained, high skilled and qualified foreign professionals who move to the EU to provide services would contribute to enhancing EU competitiveness.

To maintain or increase its global lead, the EU concludes free trade agreements with international partners. It uses trade agreements to achieve mutual economic benefits, but also to promote established international governance structures (such as the WTO) and to encourage standards and best practices in partner countries.<sup>329</sup> In doing so, it is in competition with other large trading nations, who may not share the aims or practices of the EU. It is therefore essential that the EU remains a reliable partner, and that it lives up to the commitments which it has taken in past agreements, so as to be able to continue to set the agenda worldwide.

Trade in services can take several forms and is therefore categorised, in accordance with the General Agreement on Trade in Services (GATS), in **four distinct "modes of supply"**<sup>330</sup>. "**Mode 4**" requires the presence of a natural person in the territory of the trading partner, and hence touches upon migration policy.

Within Mode 4, the EU usually negotiates a number of categories of professionals for whom temporary presence on the territory is essential and for whom adequate admission channels need to be in place: business visitors for establishment purposes (BVEPs) or business service sellers (SeSe); intra-corporate transferees (ICTs), including graduate trainees/trainee employees (GTs), contractual service suppliers (CSSs) and independent professionals (IPs). The relevant categories in the context of this Impact Assessment<sup>331</sup> are **contractual service suppliers (CSSs)** and **independent professionals (IPs)**, who - with very limited exceptions<sup>332</sup> - need to possess university-level qualifications as well as three to six years of professional experience. They are generally admitted for a cumulative period of not more than 6 months or for the duration of the contract, whichever is less.

The table below provides an overview of the different "Mode 4" categories.

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<sup>328</sup> European Commission, DG Trade, "*European Union trade in the World: Index*", published 6 November 2015. [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_122532.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122532.pdf)

<sup>329</sup> See, for example, "*Trade for all — Towards a more responsible trade and investment policy*", Communication outlining the European Commission's new trade & investment strategy. [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf)

<sup>330</sup> Cross-border supply (mode 1), Consumption abroad (mode 2), Commercial presence (mode 3) and Presence of a natural person (mode 4).

<sup>331</sup> Other categories such as business visitors or business service sellers only stay for a very limited time (up to 90 days); the status of Intra-corporate transferees (including Graduate trainees) is regulated under the Intra-Corporate Transferee Directive.

<sup>332</sup> Exceptionally, the EU granted entry and temporary stay to contractual services suppliers in fashion model services, chef de cuisine services, and entertainment services other than audio-visual services without the requirement of possessing of a university degree or a qualification demonstrating knowledge of an equivalent level under Economic Partnership Agreement (EPA) with Cariforum states.



<b>"Mode 4" categories in the context of the General Agreement on Trade in Services (GATS)</b>		
- Business visitors for establishment purposes (BVEPs)	Natural persons working in a senior position who: - are responsible for setting up an enterprise, - do not offer or provide services or engage in any other economic activity than required for establishment purposes. - do not receive remuneration from a source located within the host Party.	Up to 90 days in any twelve month period
- Intra-corporate transferees (ICTs)	Natural persons who: - have been employed by a juridical person or have been partners in it for at least one year - are temporarily transferred to an enterprise, the host entity, that may be a subsidiary, branch or head company of the juridical person in the territory of the other Party, - are either managers or specialists.	Up to 3 years
- Graduate trainees/trainee employees (GTs)	Natural persons who: - have been employed by a juridical person of one Party or its branch for at least one year, - possess a university degree - are temporarily transferred to a subsidiary, branch or representative office of the juridical person in the territory of the other Party, for career development purposes or to obtain training in business techniques or methods.	Up to 1 year
- Business sellers (BS) or Business Service Sellers (SeSe)	Natural persons who: - are representatives of a services or goods supplier of one Party, - seeking entry and temporary stay in the territory of the other Party for the purpose of negotiating the sale of services or goods, or entering into agreements to sell services or goods for that supplier - do not engage in making direct sales to the general public - do not receive remuneration from a source located within the host Party - are not they commission agents.	Up to 90 days in any twelve month period
- <b>Contractual service suppliers (CSSs)</b>	A person employed by a company based outside of the EU which has concluded a contract to supply services with a final consumer in the EU, requiring the presence on a temporary basis of its employees in the EU in order to fulfil the contract to provide services. They must have: - at least three years of relevant professional experience, - a university degree or an equivalent qualification, and, - if required for regulated professions, the professional qualifications required to exercise this activity in the Member State where the service is supplied.	Cumulative period of max. 6 months or the duration of contract, whichever is less
- <b>Independent professionals (IPs)</b>	Natural person established as self-employed outside of the EU. They must have: - at least six years of relevant professional experience, - a university degree or an equivalent qualification and, - if required for regulated professions, the professional qualifications required to exercise this activity in the Member State where the service is supplied.	Cumulative period of max. 6 months or the duration of contract, whichever is less

Due to the rising importance of services worldwide, as well as the EU's pre-eminent position and clear offensive interests in this field, all recent EU trade agreements dealing with trade in services include (or will include) provisions on Mode 4. Some past examples are the EU Free Trade Agreements (FTAs) with South Korea, Cariforum, and Canada, whilst similar provisions are likely to be included in future agreements such as with the USA, Japan, Australia, or the plurilateral Trade in Services Agreement (TiSA).

Since CSSs and IPs are rarely recognised as a distinct category in the EU Member State's migration legislation, statistics are incomplete. Some Member States can provide statistics on third-country nationals who receive posting permits. It cannot be assumed,

however, that these figures are indicative of the number of CSSs and IPs, as they can also relate to several other categories.

## 2 RELATION BETWEEN TRADE AGREEMENTS AND MIGRATION POLICIES

The GATS Annex on Movement on Natural Persons Supplying Services specifies that the agreement does not apply to measures affecting access to the employment market or to rules on citizenship, residence or employment on a permanent basis.

It is clear that trade agreements, and in particular those negotiated by the EU, aim to steer clear of migration policies, by adopting a different vocabulary (professionals vs. workers, mobility vs. migration) and by underlining the temporary nature and specific purpose of stays.

However, it is also clear that the liberalisation agreed in those trade agreements cannot have any effect as regards entry and temporary stay of natural persons for business purposes if no adequate admission policies are put in place in the host countries.

In spite of the EU's exclusive competence in the field of international trade,<sup>333</sup> the rules on admitting Mode 4 service suppliers remain fragmented and incomplete. The ICTs and GTs have been incorporated in the EU *acquis* through the adoption of a specific Directive, the Directive on Intra-Corporate Transfers,<sup>334</sup> adopted in 2014 and which is to be implemented in all 25 participating Member States by 29 November 2016. The rules on admitting CSSs and IPs remain national policy.

A 2015 study by the European Migration Network<sup>335</sup> showed the large variance in national admission policies for CSSs and IPs. This information has been recently complemented by a survey among Member States (through a questionnaire sent to the Trade Policy Committee), specifically aimed at supporting this Impact Assessment.

The **main findings of the EMN study** and of the above-mentioned **survey** are explained below.

Most Member States **do not have dedicated programmes** in place for admitting CSSs or IPs. In many cases, where the period of stay is short (90 days under Schengen rules), the relevant professionals will enter those Member States by using the procedures laid down for tourists. For longer periods of stay, the standard procedures for admitting highly-qualified migrant workers or self-employed migrants are used instead. As service providers are linked to their EU clients by a service contract, rather than an employment contract, their admission can be hindered due to a lack of dedicated provisions.

**CSSs and IPs are not defined** separately in relevant legislation in the vast majority of Member States. As a result, existing definitions in national law do not always clearly distinguish between the various types of business persons and can overlap in several cases.

The **duration of stay** on the basis of the first permit varies significantly between Member States, as shown in the table below.<sup>336</sup>

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<sup>333</sup> Common Commercial Policy, Art 207 TFEU.

<sup>334</sup> Directive 2014/66/EU of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

<sup>335</sup> EMN Study, *Admitting third-country nationals for business purposes*, European Migration Network, 2015, Synthesis Report.

<sup>336</sup> EMN Study 2015.

	IPs	CSSs
<b>Up to 3 months</b>	FI, HR, HU	FI, HR, HU
<b>3-6 months</b>	HU, LU, PT, SE, UK	BE, HU, LU, PT, UK
<b>6-12 months</b>	AT, FR, HU, LV, PL	BE, EL, HU, FR, PL
<b>1-2 years</b>	EL, ES, SK	ES, IE, SE, SK
<b>Over 2 years</b>	BE, HU	HU, LV, NL

The **length of procedures** varies significantly (between 3 days and 3 months), as does the **cost** (45-1000 EUR). Speed and cost are not correlated.

Most Member States allow the **family** of the service provider to join (PL, SI, SE, BG, DK, SK, HR, CZ, BE, ES, EE, DE) and to work (PL, SE, BG, DK, CZ, BE, ES, FR, EE, DE, and – subject to a labour market test – SI).

Service providers are excluded from the scope of the EU **Long-Term Residents'** Directive. Furthermore, periods spent as a temporary worker or service provider do not count towards the 5-year minimum stay to be eligible for EU Long-term resident status.<sup>337</sup> Nevertheless, several Member States allow service providers to build up eligibility for long-term residency under national rules (SI, SE, DK, SK for CSSs, HR, CZ, BE, ES, EE, DE).

Currently, CSSs and IPs enjoy limited **professional mobility within the EU**. Their mobility is limited to Schengen rules (90 days within any 180 days period), if their residence permit was issued by a Schengen state. Any right to work, however little, is subject to national rules in the second Member State. Some Member States have introduced pragmatic rules which allow non-EU professionals who are staying legally in another Member State to engage in limited activities, e.g. attending business meetings. According to the information provided by the Trade Policy Committee, most Member States do not see the need to provide for (professional) intra-EU mobility for CSSs or IPs.

In conclusion, the current situation, in which CSS and IPs mode 4 categories are not recognised in EU law and only partially at national level, produces several adverse situations, such as **problems with proper implementation** of the EU commitments, or the risk that **international disputes** will increase as agreements with key partner (Canada, the US, Japan, and in the future possibly Australia) enter into force. A detailed report on the implementation of the EU-Cariforum agreement contains several allegations of legitimate service providers being denied appropriate access.<sup>338</sup> The **EU's negotiating leverage** will decrease if current and future agreements cannot be implemented properly. As more commitments are taken on mode 4, fragmented and incomplete legislation will lead to high numbers of **unfounded applications** and

<sup>337</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Articles 3.2.e and 4.2.

<sup>338</sup> [http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc\\_152825.pdf](http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152825.pdf) (executive summary).

[http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc\\_152824.pdf](http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152824.pdf) (full report, see pp 40-49).

increase the risk of abuse. The **economic potential** of the trade agreements will remain unfulfilled as regards mode 4.

## Background information

### 1. Policy documents, consultations and studies

The **European Agenda for Migration** noted that the services sector is economically significant, and suggested to assess possible ways to provide legal certainty to these categories of people, also in order to strengthen the EU's position to demand reciprocities when negotiating Free Trade Agreements (FTAs).<sup>339</sup>

The **Communication on New EU Trade and Investment Strategy "Trade for All"**<sup>340</sup> emphasises the importance of mobility of professionals as a key element to conduct business internationally. Benefits envisaged in numerous service sectors covered by trade agreements would be enhanced significantly if highly qualified service providers were able to move more seamlessly to provide their services across borders. The Communication announces that the Commission will use the review of the EU Blue Card directive to assess the possibility of including conditions of entry and residence of third-country nationals providing a service on a temporary basis in line with EU commitments in trade agreements.

**DGs HOME** and **TRADE**, as well as Member States trade and home affairs experts have collaborated closely to redefine the EU's strategy on Mode 4, in view of the clear commercial interests of the EU and its Member States set out in the "Trade for all" Communication.

The **Trade Policy Committee** (Services and Investments) was consulted to gather extensive information on how the Mode 4 commitments on CSSs and IPs are implemented, with a view to conducting this Impact Assessment.

In 2015, the **European Migration Network** conducted a study on "*Admitting third-country nationals for Business Purposes*", which includes a review of the admission of other third-country nationals who travel to the EU for business reasons under the EU Free Trade Agreements. It was based on the contributions of the 24 of the network's national contact points.<sup>341</sup>

### 2. List of EU trade negotiations containing provisions on "Mode 4":

#### A. Concluded and in force

- |  |
|--|
| 1. <b>General Agreement on Trade in Services (GATS)</b> <sup>342</sup> |
| 2. <b>EU - Korea</b> <sup>343</sup>                                    |

<sup>339</sup> COM(2015) 240 final, A European Agenda On Migration. [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)

<sup>340</sup> Communication outlining the European Commission's new trade & investment strategy. [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf)

<sup>341</sup> Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom).

<sup>342</sup> [http://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm)

<sup>343</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:127:0006:1343:EN:PDF>

3. <b>EU - CARIFORUM</b> <sup>344</sup>
4. <b>EU - Central America</b> <sup>345</sup>
5. <b>EU – Colombia And Peru</b> <sup>346</sup>
6. <b>EU - Chile</b> <sup>347</sup>
7. <b>EU - Mexico</b> <sup>348</sup>

#### **B. Concluded but not in force**

8. <b>EU – Singapore</b> <sup>349</sup>
9. <b>EU – Moldova (Deep and Comprehensive Free Trade Agreement)</b>
10. <b>EU – Armenia (Deep and Comprehensive Free Trade Agreement)</b>
11. <b>EU – Georgia (Deep and Comprehensive Free Trade Agreement)</b>
12. <b>EU – Ukraine (Deep and Comprehensive Free Trade Agreement)</b>
13. <b>EU – Canada (Comprehensive Economic and Trade Agreement)</b>

#### **C. Under negotiations**

14. <b>EU – India</b>
15. <b>EU – MERCOSUR</b>
16. <b>EU – Ecuador (integration in EU-COLOMBIA AND PERU)</b>
17. <b>EU – Japan</b>
18. <b>EU – Malaysia</b>
19. <b>EU – Thailand</b>
20. <b>EU – Vietnam</b>
21. <b>EU – Morocco</b>
22. <b>EU - Tunisia</b>
23. <b>EU – China investment agreement</b>
24. <b>European Partnership Agreements (EPAs) with Central Africa, SADC, West Africa, East Africa and the Pacific regions.</b>
25. <b>EU – United States of America (Transatlantic Trade and Investment Partnership (TTIP))</b>
26. <b>Plurilateral "Trade In Services Agreement"<sup>350</sup> (TiSA)</b>

<sup>344</sup> [http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc\\_137971.pdf](http://trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137971.pdf)

<sup>345</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=689>

<sup>346</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=691>

<sup>347</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:352:0003:1439:EN:PDF>

<sup>348</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:276:0045:0061:EN:PDF>

<sup>349</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961>

<sup>350</sup> Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey, the United States.

## ANNEX 12 STATISTICS

### 1. DATA AVAILABILITY AND LIMITATIONS

The following analysis has been constrained partly by limitations in data availability and partly by significant lack of comparability in migration statistics. Despite the significant efforts made to collect sound and reliable figures to underpin all aspects discussed in this evaluation, a satisfactory quantitative analysis is still lacking for several of them. Recent studies and researches have also revealed little empirical evidence on several of the analysed issues. Therefore it has been difficult to estimate and quantify the scale of effects of certain proposals (particularly the economic and financial impacts) in a reliable manner. This is particularly relevant when it comes to statistics that could help quantifying the volume of the problems and the potential impacts of the policy options.

In general, figures on the **national schemes are not always directly comparable**. This is due, primarily, to variations in the definition of a highly skilled worker, to the particularities of the different national migration systems, some of which do not have distinct categories for highly skilled workers, and to the way in which the statistics may be collected.

One of the main issue in relation to **data availability concern the the numbers of permits** issued for highly qualified third country nationals under national schemes and the number of Blue Cards issued, which **are not readily comparable** due to several gaps or imprecisions in the data collected at national level.

Firstly, some Member States<sup>351</sup> **have national schemes which do not differentiate according to the skill level**. As a result, they do not register the skill or wage level of a permit holder. This complicates the identification of the numbers of third-country workers receiving national permits who might also be eligible for the Blue Card.

Secondly, even where data is available, further problems might arise due to differences in **the ways permits granted are recorded** in Member States and at the European level. While the numbers for one given year sometimes refer only to the numbers of first permits granted, others include status changes or renewals. This is a broader problem that concerns several type of residence permit.

Thirdly, problems arise as regards the **comparison between the yearly or monthly salary thresholds set by the Member States and 1.5 times the gross average wage as recorded by Eurostat**. As for the comparison, reference can be made to the Structure of Earnings Survey. However, not only does the most recent version of this Survey date back to 2010, but the Survey is also limited regarding the coverage of certain sectors and company sizes. Looking into alternative sources, the average gross earnings per employee can be calculated on the basis of the Eurostat National Accounts data, as it has been done, based on the total amount of wages and salaries among the main components of GDP divided by the number of employees according to the domestic concept, which captures the employment in resident production units. This, however, also includes those employed on a part-time basis and therefore does not produce an exact full time equivalent. Finally, information on the salary

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<sup>351</sup> See Annex 6.

threshold set in 2014 is missing for PT, while in EL no salary threshold was set because the country decided to issue no Blue Card pursuant to its right to control the numbers of admission, as set out in Article 6 of the Directive<sup>352</sup>. For HR no Eurostat data is available on the share of wages and salaries of total GDP<sup>353</sup>.

With regard to the issues of **costs and length of the procedure** and on the subject of **administrative burdens** for national authorities, even less reliable data is available. Applicable EU legislation does not require Member States to collect such data and many of them do not have them easily available.

Finally, a different problem concerns **comparability of data**, which often vary considerably or cannot be considered entirely representative for all Member States and all labour market sectors.

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<sup>352</sup> According to Art. 6 on volumes of admission, "This Directive shall not affect the right of a Member State to determine the volume of admission of third-country nationals entering its territory for the purposes of highly qualified employment."

<sup>353</sup> Eurostat: [nama\_10\_gdp]



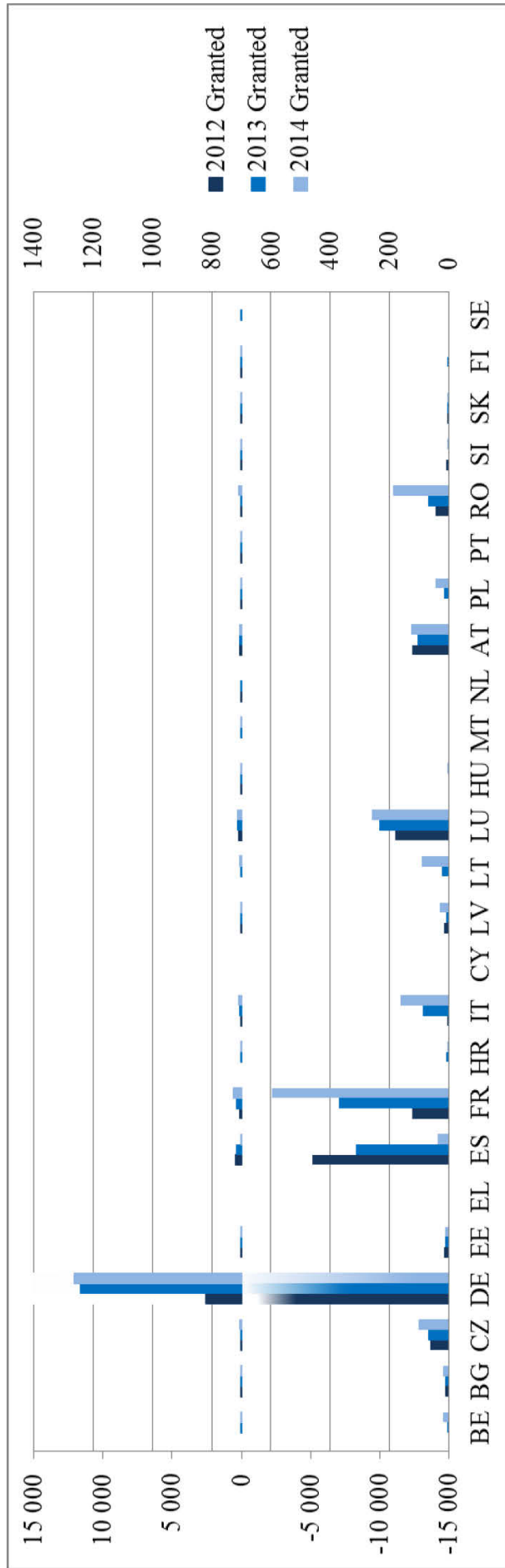
## 2. PERMITS OF BLUE CARD HOLDERS AND THEIR FAMILY MEMBERS, AND SALARY THRESHOLDS

Blue Cards granted, renewed and withdrawn by MS (EU25) – Table

	Granted						Renewed			Withdrawn		
	2012		2013		2014		2012	2013	2014	2012	2013	2014
<b>BE</b>	0	0,00%	5	0,04%	19	0,14%	n/a	0	7	n/a	0	0
<b>BG</b>	15	0,41%	14	0,11%	21	0,15%	0	12	25	n/a	n/a	0
<b>CZ</b>	62	1,69%	72	0,56%	104	0,75%	1	20	40	0	0	2
<b>DE</b>	2 584	70,52%	11 580	89,32%	12 108	87,41%	0	1	0	n/a	n/a	0
<b>EE</b>	16	0,44%	12	0,09%	15	0,11%	0	0	11	0	0	0
<b>EL</b>	0	0,00%	n/a	0,00%	n/a		0	n/a	n/a	0	n/a	n/a
<b>ES</b>	461	12,58%	313	2,41%	39	0,28%	91	310	283	n/a	n/a	0
<b>FR</b>	126	3,44%	371	2,86%	597	4,31%	49	182	243	0	0	0
<b>HR</b>	n/a	0,00%	10	0,08%	7	0,05%	n/a	0	3	n/a	0	4
<b>IT</b>	6	0,16%	87	0,67%	165	1,19%	n/a	0	0	n/a	0	0
<b>CY</b>	0	0,00%	0	0,00%	0	0,00%	0	0	0	0	0	0
<b>LV</b>	17	0,46%	10	0,08%	32	0,23%	0	70	29	0	0	1
<b>LT</b>	n/a	0,00%	26	0,20%	92	0,66%	n/a	1	58	1	0	0
<b>LU</b>	183	4,99%	236	1,82%	262	1,89%	0	18	219		1	7
<b>HU</b>	1	0,03%	4	0,03%	5	0,04%	0	0	2	0	0	0
<b>MT</b>	0	0,00%	4	0,03%	2	0,01%	0	18	4	0	7	8
<b>NL</b>	1	0,03%	3	0,02%	0	0,00%	0	0	0	0	0	0
<b>AT</b>	124	3,38%	108	0,83%	128	0,92%	5	9	8	n/a	n/a	n/a
<b>PL</b>	2	0,05%	16	0,12%	46	0,33%	0	0	0	0	0	0
<b>PT</b>	2	0,05%	4	0,03%	3	0,02%	n/a	0	0	0	0	0
<b>RO</b>	46	1,26%	71	0,55%	190	1,37%	0	1	41	n/a		0
<b>SI</b>	9	0,25%	3	0,02%	8	0,06%	0	0	2	0	0	0
<b>SK</b>	7	0,19%	8	0,06%	6	0,04%	0	0	0	0	0	0
<b>FI</b>	2	0,05%	5	0,04%	3	0,02%	0	0	1	0	0	0
<b>SE</b>	0	0,00%	2	0,02%	0	0,00%	0	0	0	0	6	9
<b>EU25</b>	<b>3 664</b>		<b>12 964</b>		<b>13 852</b>		<b>146</b>	<b>642</b>	<b>968</b>	<b>1</b>	<b>14</b>	<b>31</b>

Source: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr\_resbc1]; Last updated on 12/02/2016 and extracted on 18/02/2016

Blue Cards granted, renewed and withdrawn by MS (EU25) – Graph



Source: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr\_resbc1]; Last updated on 12/02/2016 and extracted on 18/02/2016

**Blue Cards granted in DE in 2014 and the first half of 2015 by time of arrival and salary threshold applied**

		2014			January to September 2015						
Time of arrival		Salary threshold applied			Time of arrival			Salary threshold applied			
<b>In 2014</b>	4 673	39%	<b>1,5 (regular)</b>	5 954	45%	<b>In 2015</b>	2 372	32%	<b>1,5 (regular)</b>	3 301	45%
<b>Before 2014</b>	7 175	61%	<b>1,2 (shortage occupations)</b>	5 894	55%	<b>Before 2015</b>	4 991	68%	<b>1,2 (shortage occupations)</b>	4 062	55%
<b>Total</b>	<b>11 848</b>		<b>Total</b>	<b>11 848</b>		<b>Total</b>	<b>7 363</b>			<b>7 363</b>	
<b>Increase above the last year (2013)</b>				558	5%	<b>Increase above the same period of the last year (first half 2014)</b>				1 439	20%

Source: BAMF, "Wanderungsmonitor Erwerbsmigration nach Deutschland", Jahresbericht 2014 and 1. Halbjahr 2015(2014 and January to September 2015)

### 3. Permits for family members granted, renewed and withdrawn by MS (EU25)

	Granted						Renewed				Withdrawn				
	2012		2013		2014		2012		2013		2014		2012	2013	2014
BE	0	0,00%	4	0,10%	9	0,13%	0	0	0	9	0	0	0	0	0
BG	5	0,45%	4	0,10%	0	0,00%	0	0	4	10	n/a	n/a	n/a	0	0
CZ	35	3,16%	21	0,55%	64	0,96%	0	0	0	10	0	0	0	0	n/a
DE	270	24,39%	2 998	78,46%	5 099	76,31%	0	0	0	0	0	n/a	n/a	n/a	0
EE	18	1,63%	2	0,05%	14	0,21%	0	0	0	13	0	0	0	0	0
EL	0	0,00%	n/a		n/a		0	0	n/a	n/a	0	0	n/a	n/a	n/a
ES	385	34,78%	358	9,37%	60	0,90%	82	n/a	354	326	0	0	n/a	n/a	n/a
FR	n/a:		n/a		43	0,64%	n/a	n/a	n/a	9	n/a	n/a	n/a	n/a	0
HR	n/a		n/a		0	0,00%	n/a	n/a	n/a	2	n/a	n/a	n/a	n/a	0
IT	n/a		5	0,13%	1	0,01%	n/a	n/a	0	0	0	n/a	n/a	0	0
CY	0	0,00%	0	0,00%	0	0,00%	0	0	0	0	0	0	0	0	0
LV	8	0,72%	2	0,05%	23	0,34%	0	0	11	13	0	0	2	4	4
LT	n/a		0	0,00%	n/a		n/a	n/a	0	n/a	n/a	n/a	0	0	n/a
LU	223	20,14%	207	5,42%	245	3,67%	0	0	118	395	0	0	0	0	0
HU	0	0,00%	0	0,00%	n/a		0	0	0	n/a	0	0	0	0	n/a
MT	n/a		10	0,26%	4	0,06%	n/a	n/a	0	10	0	0	0	0	n/a
NL	0	0,00%	0	0,00%	8	0,12%	0	0	0	0	0	0	0	0	0
AT	155	14,00%	136	3,56%	174	2,60%	25	79	91	0	0	0	n/a	n/a	n/a
PL	0	0,00%	0	0,00%	778	11,64%	0	0	0	0	0	0	0	0	0
PT	0	0,00%	0	0,00%	3	0,04%	n/a	n/a	0	0	0	n/a	n/a	n/a	0
RO	0	0,00%	65	1,70%	135	2,02%	0	0	0	0	0	n/a	0	0	2
SI	3	0,27%	1	0,03%	12	0,18%	1	1	1	0	0	0	0	0	0
SK	5	0,45%	8	0,21%	10	0,15%	n/a	n/a	0	0	0	n/a	0	0	0
FI	n/a		:		n/a		0	4	:	:	0	0	n/a	n/a	n/a
SE	0	0,00%	0	0,00%	0	0,00%	n/a	n/a	0	0	0	n/a	0	0	0
<b>EU25</b>	<b>1 107</b>		<b>3 821</b>		<b>6 682</b>		<b>108</b>	<b>571</b>	<b>888</b>	<b>0</b>	<b>2</b>	<b>6</b>			

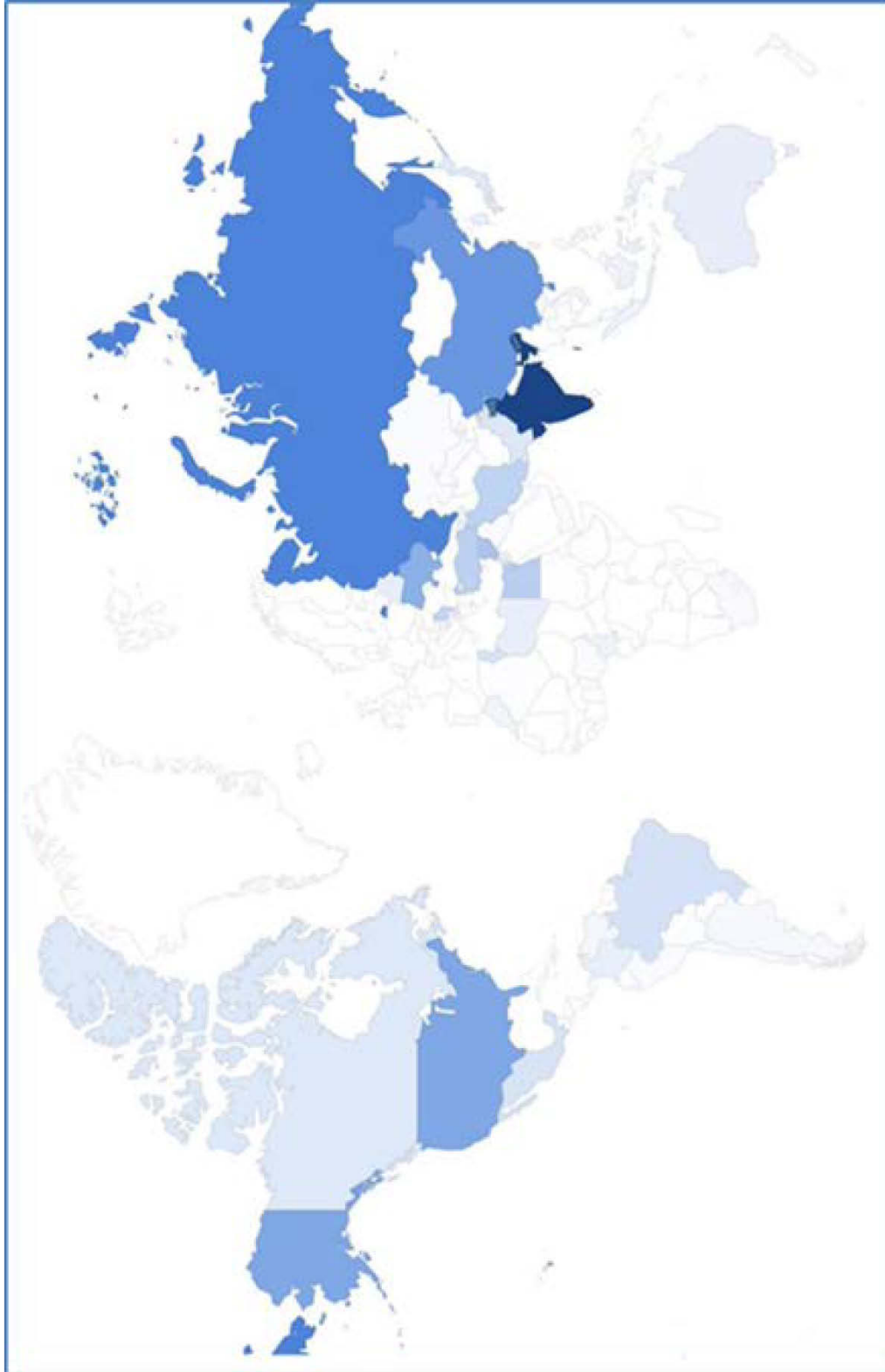
Source: Eurostat Admitted family members of EU Blue Cards holders by type of decision and citizenship [migr\_resbc2], Last updated on 18/01/2016 and extracted on 25/02/16

#### 4. Top-20 countries of origin of Blue Card holders – Table

	2012		2013		2014	
	Country	Permits	Country	Permits	Country	Permits
1	India	699	China	1 011	India	2 595
2	China	324	Russia	994	Russia	1 212
3	United States	313	United States	776	China	1 002
4	Russia	271	Syria	547	United States	845
5	Ukraine	149	Ukraine	536	Ukraine	781
6	Turkey	112	Egypt	450	Syria	554
7	Egypt	105	Serbia	412	Egypt	467
8	Mexico	105	Turkey	409	Turkey	447
9	Syria	104	Iran	394	Iran	426
10	Japan	93	Jordan	290	Serbia	410
11	Serbia	79	Brazil	265	Brazil	289
12	Brazil	78	Mexico	249	Mexico	269
13	Iran	75	Japan	246	Tunisia	260
14	Canada	67	Canada	206	Canada	225
15	Pakistan	60	Pakistan	189	Pakistan	219
16	South Korea	59	South Korea	180	Japan	204
17	Colombia	53	Libya	148	Jordan	176
18	Venezuela	50	Belarus	143	Macedonia	171
19	Jordan	47	Colombia	140	Australia	165
20	Croatia	46	Bosnia & Herz,	138	Belarus	163
<b>Top-20</b>		<b>2 889</b>		<b>7 723</b>		<b>10 882</b>
<b>Total</b>		<b>3 664</b>		<b>12 964</b>		<b>13 852</b>

Source: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr\_resbc1], Last updated on 12/02/2016 and extracted on 25/02/2016,

## 5. Countries of origin of Blue Card holders – Map



Source: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr\_resbc1]; Last updated on 08/10/2015 and extracted on 18/01/2016.

## EU Blue Cards holders and family members by MS of previous residence

Data for 2014 has not yet been published by EUROSTAT and some of the existing data is incomplete

	2012				2013			
	EU Blue Card holder		Family and relatives		EU Blue Card holder		Family and relatives	
	Depar,	Destination	Depar,	Destination	Depar,	Destination	Depar,	Destination
BE	0		0		0		0	
BG	0		0		0		:	
CZ	1	LU	0		0		0	
DE	n/a		n/a		0		n/a	
EE	0		0		0		0	
EL	0		0		:		:	
ES	n/a		n/a		n/a		n/a	
FR	n/a		n/a		n/a		n/a	
HR	n/a		n/a		n/a		n/a	
IT	0		0		0		0	
CY	0		0		0		0	
LV	n/a		n/a		4	EE(1)/ES(3)	1	ES
LT	n/a		n/a		0		0	
LU	0		0		:		:	
HU	0		0		1	NL	0	
MT	0		0		0		0	
NL	0		0		0		0	
AT	0		3	n/a	0		1	
PL	0		0		0		0	
PT	n/a		n/a		n/a		n/a	
RO	0		0		0		0	
SI	0		0		0		0	
SK	0		0		0		0	
FI	n/a		n/a		n/a		n/a	
SE	0		0		0		0	
<b>EU25</b>	<b>1</b>		<b>3</b>		<b>5</b>		<b>2</b>	

Source: Eurostat EU Blue Cards holders and family members by Member State of previous residence [migr\_resbc3], Last updated on 17/02/2016 and extracted on 25/02/16,

No data is available yet on the year 2014,

## Salary thresholds set by Member States, comparison with Eurostat data

	2014			2015
	Salary threshold set by MS (€)	1,5 * average annual salary (Eurostat data, €)	Ratio threshold / salary (Eurostat data)	Salary threshold set by MS (€)
IT	24 789	38 958	0,95	n/a
CY	23 964	31 849	1,13	n/a
LV	12 888	16 213	1,19	13 776
MT	24 054	29 548	1,22	n/a
BG	* 7 519	8 959	1,26	* 8 007
LU	69 858	83 138	1,26	71 946
SI	27 516	31 727	1,30	27 648
SK	15 102	17 358	1,31	15 102
BE	50 974	58 213	1,31	51 466
ES	33 909	37 481	1,36	33 909
EE	17 088	18 731	1,37	18 096
HU	* 12 955	13 713	1,42	* 13 419
PL	* 15 140	15 629	1,45	* 15 692
DE	47 600	47 422	1,51	48 400
CZ	* 16 604	16 338	1,52	* 16 973
LT	15 078	14 767	1,53	11 580
SE	* 58 941	57 562	1,54	n/a
FI	57 708	56 180	1,54	59 112
FR	52 750	50 182	1,58	53 331
AT	55 976	52 983	1,58	57 405
NL	61 469	52 604	1,75	63 608
RO	24 576	10 113	3,65	25 828
HR	* 18 724	n/a	n/a	* 30 675
EL	n/a	24 782	n/a	19 171
PT	n/a	23 606	n/a	n/a

Sources: Eurostat the total amount of "wages and salaries" (D11 in GDP and main components (output, expenditure and income) [nama\_10\_gdp]); Last updated on 15/01/2016, extracted on 19/01/2016, Number of employees (SAL\_NC in Population and employment [nama\_10\_pe]); Las updated on 15/01/2016, extracted on 19/01/2016, National thresholds as reported by Member States, The average annual salary used as a reference for the comparison with the salary threshold set by the Member States has been calculated as a ratio between the "Wages and salaries" and the "Number of employees", according to National accounts data, Using this data source ensures that the definitions are harmonised across EU Member States and that the data is up-to-date (2014) and covers the whole economy (compared for instance to the Structure of Earnings Survey for which the latest data still dates (as of February 2016) from 2010 and which does not cover all sectors or establishments), Nevertheless, using the National accounts implies a bias for Member States where a significant share of the employees work part-time as the ratio is calculated by dividing the number of employees in headcount and therefore is not adjusted for the volume of hours worked,

\* Currency has been converted

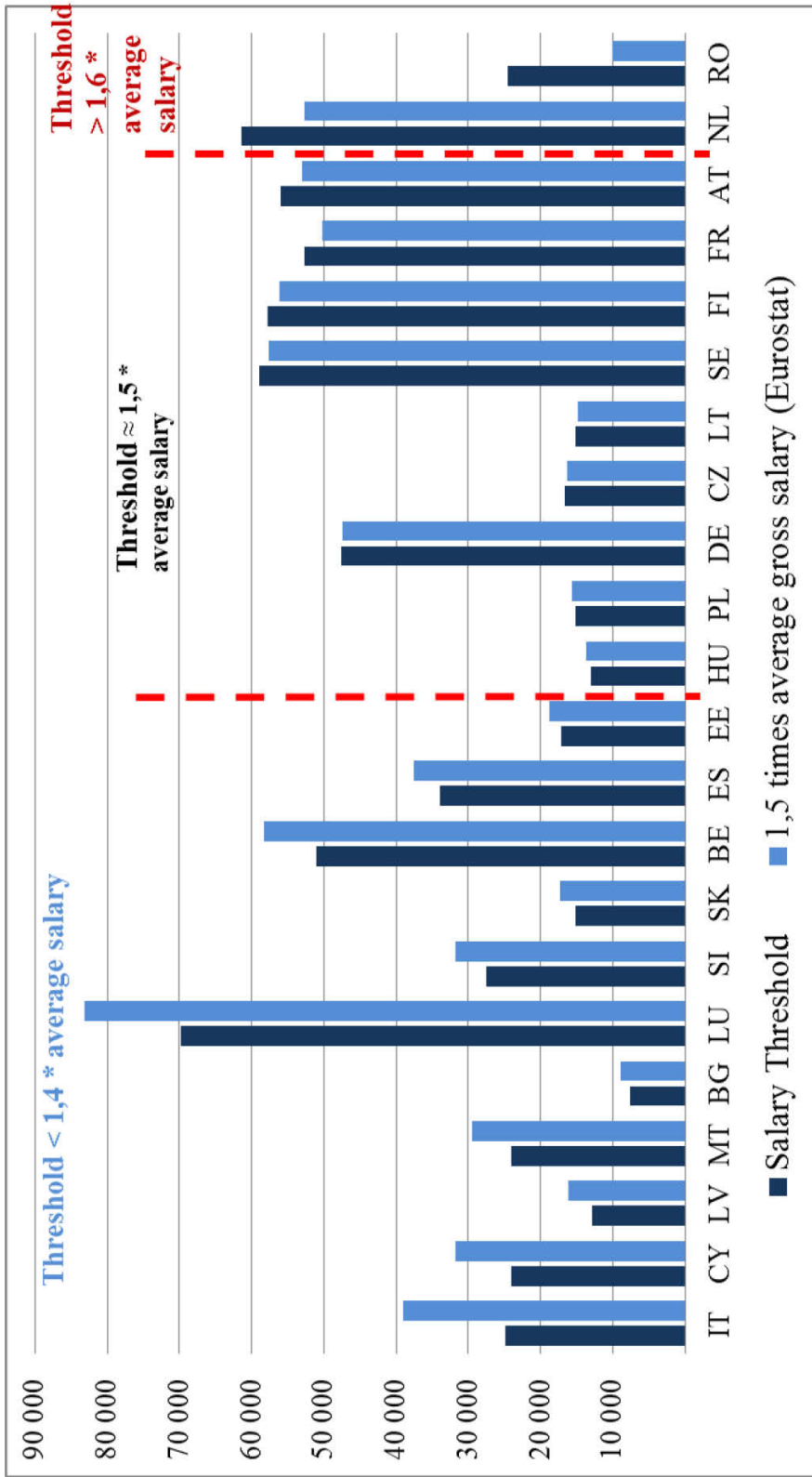
Exchange rates based on the average rate from 19 January 2015 to 20 January 2016 (EZB)



BGN 1 = EUR 0,5113; CZK 1 = EUR 0,03671; HRK 1 = EUR 0,1314; HUF 1 = EUR 0,003228; PLN 1 = EUR 0,2389; SEK 1 = EUR 0,1070

## Salary thresholds set by Member States and 1,5 times the average gross nationals salary according to Eurostat, for 2014

Note: Information is missing for HR, EL and PT



Sources: Eurostat the total amount of "wages and salaries" (D11 in GDP and main components (output, expenditure and income) [nama\_10\_gdp]), number of employees (SAL\_NC in Population and employment [nama\_10\_pe] ), Extracted on 03/12/2015  
National thresholds as reported by Member States



## Professions of Blue Card holders

*Note: information is not available for DE in EUROSTAT*

		2013		2014	
Total		12.964		13.852	
	Unknown	12.131	93,57%	12.437	89,78%
ISCO08	Known occupation	833	6,43%	1.415	10,22%
<b>OC1</b>	<b>Managers</b>	<b>262</b>	<b>31,45%</b>	<b>434</b>	<b>30,67%</b>
OC11	Chief executives, senior officials and legislators	22	2,64%	32	2,26%
OC12	Administrative and commercial managers	106	12,73%	163	11,52%
OC13	Production and specialised services managers	130	15,61%	232	16,40%
OC14	Hospitality, retail and other services managers	4	0,48%	7	0,49%
<b>OC2</b>	<b>Professionals</b>	<b>571</b>	<b>68,55%</b>	<b>981</b>	<b>69,33%</b>
OC21	Science and engineering professionals	367	44,06%	576	40,71%
OC22	Health professionals	18	2,16%	15	1,06%
OC23	Teaching professionals	4	0,48%	12	0,85%
OC24	Business and administration professionals	96	11,52%	162	11,45%
OC25	Information and communications technology professionals	66	7,92%	136	9,61%
OC26	Legal, social and cultural professionals	20	2,40%	80	5,65%

*Source: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr\_resbc1], Last updated on 12/02/2016 and extracted on 07/03/2016*

In Germany, out of the about 25 800 TCN Blue Card holders living in Germany on 31 October 2015, nearly 13 100 applied for a Blue Card with the general salary threshold, while 12.700 applied with the lower threshold for shortage occupations. This seems to suggest that 51% of Blue Card holders works in a general occupation and 49% in a shortage occupation.

However, in Germany, when registering an application in the Central Register of Foreigners (AZR), the salary threshold (not the profession) is the detection criterion. Blue Card holders who earn at least the general salary threshold are accordingly registered under the general professions, regardless of their actual profession. Those Blue Card holders who have a contract meeting the lower salary threshold for shortage occupations, are registered as EU Blue Card holders under the shortage professions. This suggests that there might be a statistical bias.

A representative survey of Blue Card holders in Germany shows that in **fact many more Blue Card holders are employed in shortage occupations (88 %)** than those registered in the Central Register of Foreigners suggested because many of them have a salary that meets the general salary threshold. For this survey about 18 000 Blue Card holders were contacted and a total of 4 340 (approximately 27 %) responded. The majority of the respondents had an EU Blue Card, while about 15 % were former Blue Card holders who had already received a permanent residence card.

### Professional groups of respondents in German survey of Blue Card holders

		Shortage occupations in Germany			
		Medical professions	MINT	Total	Other
		19,60%	68,50%	88,10%	9,40%
<b>ISCO Major Group 1</b>	<b>6,70%</b>				
ISCO 1: Chief executives, senior officials, other managers	3,70%				3,70%
ISCO 1-MINT: Chief executives, senior officials, other managers	3,00%		3,00%		
<b>ISCO Major Group 2</b>	<b>90,50%</b>				
ISCO2-MINT: Engineers	31,40%		31,40%		
ISCO2-Health professionals	19,60%	19,60%			
ISCO2-MINT: Computing professionals	18,90%		18,90%		
ISCO2-MINT: Engineering science professionals	6,70%		6,70%		
ISCO2: Business professionals	3,60%				3,60%
ISCO2-MINT: Life science professionals	2,50%		2,50%		
ISCO2-MINT: Other (mathematicians, architects, teachers, management consultants)	2,50%		2,50%		
ISCO2: Other (teachers, artists, lawyers, Humanities, Social Sciences, Other medical doctors)	2,40%				
ISCO2-MINT: physicist	1,80%		1,80%		
ISCO2-MINT: Chemist	1,10%		1,10%		
<b>ISCO Major Group 3/4</b>	<b>2,70%</b>				
ISCO3 / 4 Other	2,10%				2,10%
ISCO3 / 4-MINT	0,60%		0,60%		

*MINT (mathematics, information sciences, natural sciences, and technology) is a term used more often in Germany, yet with a similar meaning than MINT (mathematics, information sciences, natural sciences, and technology) which is more used in English-speaking countries. Percentages may not add up to 100% due to statistical rounding.*

Source: Hanganu, E. and Heß, B., 'Die Blaue Karte EU in Deutschland: Kontext und Ergebnisse der BAMF-Befragung', *Forschungsbericht 27*, Bundesamt für Migration und Flüchtlinge, Nürnberg, 2016, *forthcoming*.

### 3. NATIONAL SCHEMES FOR HIGHLY SKILLED EMPLOYMENT

#### EU Blue Cards and national schemes for highly qualified employment - Table

**Disclaimer:** When reading this table please bear in mind that the figures of the national schemes are not always directly comparable, This is due, primarily, to variations in the definition of a highly skilled workers, to the particularities of the different national migration systems, some of which do not have distinct categories for highly skilled workers, and established methods to collect statistics to this end,

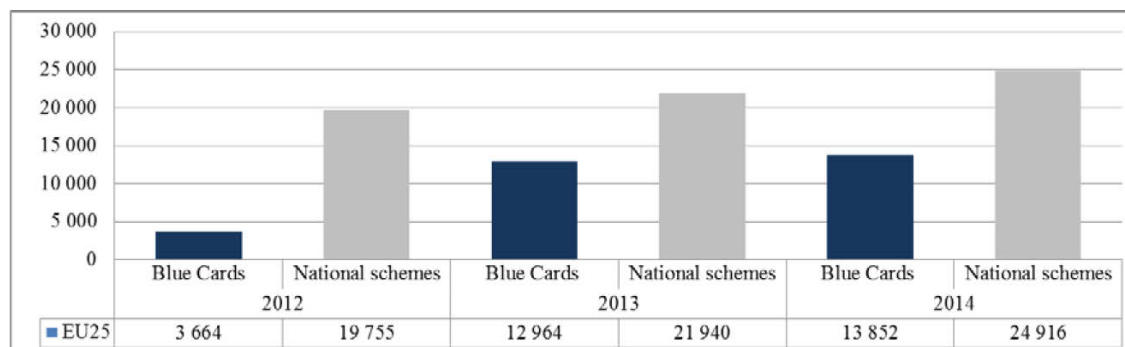
	2012		2013		2014	
	Blue Cards	National schemes	Blue Cards	National schemes	Blue Cards	National schemes
<b>BE</b>	0	95	5	73	19	2 484
<b>BG</b>	15	0	14	0	21	0
<b>CZ</b>	62	69	72	69	104	46
<b>DE</b>	2 584	210	11 580	11	12 108	13
<b>EE</b>	16	0	12	0	15	0
<b>EL</b>	0	0	n/a	0	n/a	0
<b>ES</b>	461	1 231	313	1 480	39	2 137
<b>FR</b>	126	3 037	371	2 667	597	2 567
<b>HR</b>	in force: 2013	n/a	10	565	7	0
<b>IT</b>	6	1 695	87	1 543	165	1 066
<b>CY</b>	0	600	0	385	0	469
<b>LV</b>	17	106	10	82	32	122
<b>LT</b>	in force: 2013	0	26	0	92	0
<b>LU</b>	183	21	236	0	262	0
<b>HU</b>	1	0	4	0	5	0
<b>MT</b>	0	0	4	0	2	0
<b>NL</b>	1	5 514	3	7 046	0	7 123
<b>AT</b>	124	1 158	108	1 228	128	1 083
<b>PL</b>	2	206	16	387	46	691
<b>PT</b>	2	313	4	767	3	989
<b>RO</b>	46	0	71	0	190	0
<b>SI</b>	9	0	3	0	8	0
<b>SK</b>	7	0	8	0	6	0
<b>FI</b>	2	749	5	971	3	1 120
<b>SE</b>	in force: 2013	4 751	2	4 666	0	5 012
<b>EU25</b>	<b>3 664</b>	<b>19 755</b>	<b>12 964</b>	<b>21 940</b>	<b>13 852</b>	<b>24 922</b>
<b>DK</b>	not applicable	4 088	not applicable	5 730	not applicable	5 698
<b>IE</b>	not applicable	1 408	not applicable	1 707	not applicable	2 438
<b>UK</b>	not applicable	8 070	not applicable	3 081	not applicable	2 478

<b>EU28</b>		<b>33 321</b>		<b>32 458</b>		<b>35 527</b>
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Sources: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr\_resbc1]; Last updated on 12/02/2016 and extracted on 28/04/2016

Data national schemes: Eurostat, Remunerated activities reasons: Highly skilled workers, First permits issued for remunerated activities by reason, length of validity and citizenship [migr\_resocc], Last update on 27/04/2016, extracted on 28/04/2016,

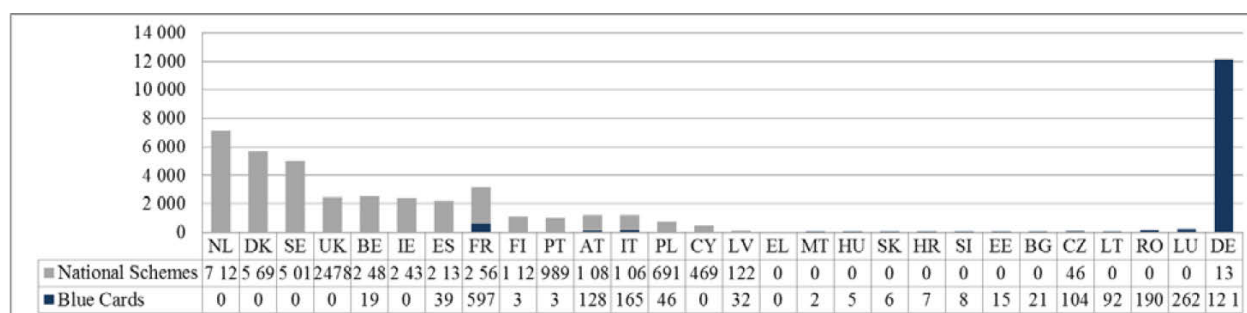
### EU25 Blue Card and National Schemes for highly qualified employment – Graph



Sources: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr\_resbc1]; Last updated on 12/02/2016 and extracted on 15/02/2016

Data national schemes: Eurostat, Remunerated activities reasons: Highly skilled workers, First permits issued for remunerated activities by reason, length of validity and citizenship [migr\_resocc], Last update on 30/11/15, extracted on 25/02/2016

### EU Blue Cards and national schemes by Member State in 2015 – Graph



Sources: Eurostat EU Blue Cards by type of decision, occupation and citizenship [migr\_resbc1]; Last updated on 12/02/2016 and extracted on 15/02/2016

Data national schemes: Eurostat, Remunerated activities reasons: Highly skilled workers, First permits issued for remunerated activities by reason, length of validity and citizenship [migr\_resocc], Last update on 30/11/15, extracted on 25/02/2016

### First permits issued under national schemes by period of validity in 2014 – Table

	Period of Validity						
	Total	3-5months		6-11months		12 months or over	
<b>BE</b>	<b>2 484</b>	160	6.44%	288	11.59%	2 036	81.96%
<b>BG</b>	<b>0</b>	0		0		0	
<b>CZ</b>	<b>46</b>	4	8.70%	3	6.52%	39	84.78%

DE	13	0	0.00%	0	0.00%	13	100.00%
EE	0	0		0		0	
EL	0	0		0		0	
ES	2 137	201	9.41%	144	6.74%	1 792	83.86%
FR	2 567	13	0.51%	136	5.31%	2 412	94.18%
HR	0	0		0		0	
IT	1 066	17	1.59%	557	52.25%	492	46.15%
CY	469	9	1.92%	130	27.72%	330	70.36%
LV	122	0	0.00%	121	99.18%	1	0.82%
LT	0	0		0		0	
LU	0	0		0		0	
HU	0	0		0		0	
MT	0	0		0		0	
NL	7 123	5 48	7.69%	1 254	17.60%	5 321	74.70%
AT	1 083	6	0.55%	1 074	99.17%	3	0.28%
PL	691	254	36.76%	308	44.57%	129	18.67%
PT	989	5	0.51%	47	4.75%	937	94.74%
RO	0	0		0		0	
SI	0	0		0		0	
SK	0	0		0		0	
FI	1 120	103	9.20%	330	29.46%	687	61.34%
SE	5 012	674	13.45%	1 320	26.34%	3 018	60.22%
<b>EU 25</b>	<b>24 922</b>	<b>1 994</b>	<b>8.00%</b>	<b>5 712</b>	<b>22.93%</b>	<b>17 210</b>	<b>69.07%</b>
<b>EU28</b>	<b>35 527</b>	<b>2 684</b>	<b>7.55%</b>	<b>7 420</b>	<b>20.89%</b>	<b>25 423</b>	<b>71.56%</b>

Sources: Eurostat, First permits issued for remunerated activities by reason, length of validity and citizenship [migr\_resocc], Last update on 30/11/15, extracted on 18/01/2016.



**Asylum Applications**  
**First time asylum applicants by Member State – Table**

	2011	2012	2013	2014	2015
<b>BE</b>	25355	18335	11965	14045	38990
<b>BG</b>	705	1230	6980	10805	20165
<b>CZ</b>	485	505	490	905	1235
<b>DK</b>	3945	6045	7170	14535	20825
<b>DE</b>	45680	64410	109375	172945	441800
<b>EE</b>	65	75	95	145	225
<b>IE</b>	1280	940	940	1440	3270
<b>EL</b>	9310	9575	7860	7585	11370
<b>ES</b>	2970	2350	4285	5460	14600
<b>FR</b>	52140	54265	60475	58845	70570
<b>HR</b>	:	:	1045	380	140
<b>IT</b>	40320	17170	25720	63655	83245
<b>CY</b>	1745	1590	1150	1480	2105
<b>LV</b>	335	190	185	365	330
<b>LT</b>	405	560	250	385	275
<b>LU</b>	1915	2000	990	1030	2360
<b>HU</b>	:	:	18565	41215	174435
<b>MT</b>	1865	2060	2205	1275	1695
<b>NL</b>	11560	9660	9815	21780	43035
<b>AT</b>	:	:	:	25675	85505
<b>PL</b>	4985	9175	13970	5610	10255
<b>PT</b>	275	290	500	440	830
<b>RO</b>	1695	2420	1405	1500	1225
<b>SI</b>	305	260	240	355	260
<b>SK</b>	320	550	290	230	270
<b>FI</b>	:	2905	2985	3490	32150
<b>SE</b>	29630	43835	54255	74980	156110
<b>UK</b>	25870	27885	29640	32120	38370
<b>EU28</b>	<b>263160</b>	<b>278280</b>	<b>372855</b>	<b>562680</b>	<b>1255640</b>

*Source: Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr\_asyappctza]; Last updated on 02/03/2016, extracted on 03/03/2016*

**First time asylum applicants by citizenship (Top 20, EU-28) – Table**

	2010	2011	2012	2013	2014	2015
<b>Syria</b>	3775	6455	20805	46450	119000	362775
<b>Afghanistan</b>	16180	22270	21080	21030	37855	178230
<b>Iraq</b>	12550	12785	11360	8775	14845	121535
<b>Kosovo (under UNSCR 1244/99)</b>	11725	7550	7165	16905	34115	66885
<b>Pakistan</b>	5800	14805	17100	19125	20550	46400
<b>Russia</b>	12725	12650	17445	35120	14030	18385
<b>Albania</b>	1075	2860	6875	10555	16145	65935
<b>Eritrea</b>	4325	5575	6235	14235	36250	33095
<b>Serbia</b>	14615	10650	13635	15060	20095	19090
<b>Somalia</b>	12920	10600	12850	15525	14805	19575
<b>Nigeria</b>	5435	12225	6725	10220	18895	29915
<b>Iran</b>	8500	10285	11740	10885	9700	25360
<b>Bangladesh</b>	4495	7725	5035	7275	10005	17695
<b>Stateless</b>	1805	2135	3190	9275	15170	18940
<b>Georgia</b>	4370	6045	9785	7995	7445	6560
<b>Former Yugoslav Republic of Macedonia, the</b>	6120	4535	6705	7380	6730	10545
<b>Unknown</b>	2595	2480	2400	3560	8605	21345
<b>Democratic Republic of the Congo</b>	5000	5795	7475	7515	6790	5720
<b>Ukraine</b>	540	725	865	835	13550	20830
<b>Mali</b>	885	3980	2325	6435	12790	8315

Source: Eurostat, *Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr\_asyappctza]*; Last updated on 02/03/2016, extracted on 03/03/2016. The countries of citizenship are sorted according to the average number of asylum seekers over 2010-2015.

## ANNEX 13

### ANALYTICAL DESCRIPTION OF POLICY OPTIONS

#### 1. POLICY OPTION PACKAGES

##### 1.1. Policy Option Package 1 (POP1)

<b>POP1: EU legislative action to extend the scope of the EU Blue Card by making it accessible to a significantly wider group of workers, including (some) medium-skilled</b>
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This option would make the EU Blue Card available also to some medium-skilled workers, as salary and qualifications would be set as alternative instead of cumulative conditions. The level of rights would not be significantly enhanced from the current level. The package would entail the following elements:
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- |  |
|--|
| <ul style="list-style-type: none"><li>a) For unregulated professions, the salary threshold and higher professional qualifications are no longer cumulative but instead alternative conditions, and the applicant has to fulfil one or the other according to their choice.<ul style="list-style-type: none"><li>i. On the one hand, this opens the EU Blue Card scheme to all workers whose salary is high enough, regardless of the level of education or professional expertise.</li><li>ii. On the other hand, if the required higher professional qualifications are met, there is no salary threshold to fulfil but the allowed occupations would be limited to ISCO major groups 1-2. The higher professional qualifications would be either higher education qualifications (at ISCED2011 level 6 and above) or work experience of at least five years at a level comparable to higher education qualifications and which is relevant in the profession or sector specified in the work contract or binding job offer;</li></ul></li><li>b) The general salary threshold is made more adaptable by providing Member States with the possibility to set a national threshold within a fork of possible thresholds between 1.4 and 1.7 times the average gross annual salary in the Member State concerned.</li><li>c) The lower salary threshold for workers in certain shortage occupations (limited to ISCO major groups 1-3, i.e. managers, professionals, and technicians and associate professionals) is revised to be a mandatory provision at factor 0.8 of the general salary threshold chosen by the Member State in question.</li><li>d) For regulated professions, the mandatory requirements to be fulfilled for the exercise of the regulated profession in the Member State in question remain in place, but the salary threshold is not applied if the occupation in question falls under ISCO major groups 1-2.</li><li>e) Mandatory safeguard mechanisms (to be determined at national level) are introduced to prevent social dumping and abuse. These can include collective agreements, prevailing wage databases and consultations with social partners. In addition, labour market tests continue to be generally allowed.</li><li>f) Required length of work contract is shortened from 12 to 6 months, thus including also</li></ul> |
|--|

shorter working relationships within the scheme.

- g) Member States facilitate the transition from highly skilled employment to entrepreneurship by allowing highly skilled workers some secondary self-employed activity on the side of employment as an EU Blue Card holder.
- h) Any parallel national schemes are abolished and merged into the EU Blue Card: all applicants who qualify will be granted an EU Blue Card, while there can be national schemes for other categories of workers not falling under the scope of the Blue Card.

*a) Introducing the salary threshold and formal qualifications as alternative conditions*

According to the Blue Card Directive the applicant for an EU Blue Card has to present the necessary qualifications for the profession specified in the work contract or job offer. If the profession in question is *regulated* in the Member State, the applicant has to present the documents showing that he or she fulfils the conditions for exercising that profession in the Member State. If the profession is *unregulated* (meaning that there are no specific criteria for the qualifications needed to exercise it), the applicant has to present higher professional qualifications, which means either a higher education diploma or corresponding professional experience of at least five years, if the Member State in question has transposed this option. In contrast to regulated professions, the purpose is not to assess the competence for the position in question, but to verify that the person is highly skilled in terms of the Directive.

In the current Blue Card Directive, applicants need to meet a salary threshold of at least 1.5 times (factor) the average gross annual salary (reference figure) in the Member State concerned. The salary threshold has two main functions: it protects TCN workers against wage dumping and distinguishes - to some extent - the highly skilled from other categories of workers. Some Member States apply a flexible interpretation of the salary threshold and set it lower than what is foreseen in the Directive, while others set it higher than the minimum, possibly to favour the national system. There are major differences in the distribution of wages across Member States, which complicates the harmonising effect of the salary threshold (see Charts 4 and 5 in Annex 7).

Under POP1, the two currently cumulative conditions of presenting the qualifications and meeting a salary threshold would be made alternative. In such case, the applicant could be admitted when fulfilling one or the other criterion according to his/her choice. This option would open up the EU Blue Card scheme to a wider audience and give up the idea that both qualifications and salary are required simultaneously as proxies for skills. Some of the issues related to the current scheme would be duly addressed: Applicants meeting the salary threshold would not need to go through the burdensome procedure of recognition of qualifications. Recent graduates could be admitted without attaining the salary of a more experienced expert, which would solve many problems currently faced by young professionals. There are examples in the national schemes of both options being used without the other one, although not as alternatives (see Annex 6).

Many national schemes for the highly skilled seem to operate without a salary threshold and instead, rely on minimum wages, collective agreements and the possible checking of market conformity of the salary<sup>354</sup>. On the other hand, salary threshold is a clear-cut condition for migrants to understand and authorities to apply, and it prevents certain types of abuse. If

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<sup>354</sup> See Annex 6.

salary threshold was to be abandoned even partially, it would be necessary to require that the salary is checked for market conformity as an additional safeguard to prevent abuse and lower the risk of social dumping. This would imply controlling that the salary promised for the job corresponds to what is regularly paid to persons in similar positions.

Giving up the salary threshold and qualifications as cumulative conditions would open up the scheme to different skills levels. If the applicant fulfils the salary threshold (either the general one or the lower one for shortage occupations) there would be no requirement to have attained any specific level of education or professional expertise. However, in order to avoid opening up the scheme too radically, the salary threshold would be relatively high, the fork of possible factors ranging from 1.4 to 1.7. This approach relies on the idea that a high enough salary indicates that the worker has skills valued by the employer. There would be a lower threshold in place for shortage occupations that would be 80 % of the regular threshold. However, as access would otherwise be too liberalised, possible occupations would be limited to ISCO major groups 1 to 3 (managers, professionals, technicians and associate professionals). Group 3 would be included to reach also more medium skilled workers necessary for filling shortages.

Correspondingly, if the applicant has the required qualifications (the level would be the same as in the current Directive) and intends to work in an ISCO 1-2 occupation (managers and professionals), there would be no salary threshold applicable. The salary would only have to meet the minimum requirements such as minimum salary or wage determined in collective agreements in each Member State and be conform to regular salaries in the market for that position. This option could be particularly attractive for highly skilled workers in lower-paying sectors.

*b) Introducing an adaptable general salary threshold*

As explained in point a), under POP1 Member States would be provided with a fork of possible salary thresholds, instead of only a minimum level as in the current Directive. A higher level of harmonisation would be attained without depriving Member States of the possibility to adapt the threshold to their national labour market circumstances and needs. Member States could set their threshold **between 1.4 and 1.7 times the national average salary**. A relatively high threshold would be necessary to limit the group of persons who could be admitted without presenting the qualifications. The aim would be to target mainly highly skilled persons and some of the medium skilled. For added transparency, Member States would be obliged to use EUROSTAT data (national accounts) as the reference figure. In practice, Member States could choose a lower threshold than what is allowed by the current Directive (which sets only a minimum factor of 1.5.), but they could also go higher than most Member States currently do, as most have set the threshold at the minimum level allowed, as indicated in Annex 5.

*c) Introducing a lower salary threshold for workers in certain shortage occupations as a mandatory provision*

According to the current Directive, Member States may choose to apply a lower threshold of 1.2 times the average gross annual salary in the Member State concerned for certain shortage occupations belonging to ISCO major groups 1 and 2.<sup>355</sup> This option has been transposed by 9

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<sup>355</sup> ISCO (International Standard Classification of Occupations) major groups 1 and 2 include managers and professionals respectively. <http://www.ilo.org/public/english/bureau/stat/isco/intro.htm>

Member States but not all of them effectively apply it. Germany, however, which issues almost 90% of all Blue Cards, applies the lower threshold extensively<sup>356</sup>.

Under POP1, the lower threshold would continue to apply to workers in occupations on shortage occupation lists, which are normally set by Member States on a yearly basis. Occupations would have to belong to ISCO major groups 1, 2 or 3. The provision would be mandatory which means that if Member States have shortage lists in place, they would be obliged to apply the lower threshold on occupations on the list. The lower threshold would be 0.8 times the general threshold applicable in the concerned Member State. This corresponds to the current Directive where the lower minimum threshold amounts to 80 % of the general minimum threshold.

*d) Admission of applicants in regulated professions*

The model of alternative admission conditions would not be applicable to workers in regulated professions. If these persons were admitted on grounds of fulfilling the salary threshold alone, there would be no guarantees that they have the necessary qualifications to exercise the profession in the Member State concerned. This would go against the purpose of admitting these workers in the first place. Instead, under this option they could obtain an EU Blue Card without fulfilling the salary threshold if they have the necessary documents proving they are qualified to exercise the regulated profession in the Member State of destination. In addition, the occupation should fall under ISCO major groups 1 and 2. In a way, they would profit partially from the alternative admission conditions as they could be admitted without the salary threshold applying, but not without presenting the necessary qualifications attached to the regulated profession in the concerned Member State.

*e) Introducing mandatory safeguard mechanisms against social dumping*

As the admission conditions would be a lot more flexible than in the current EU Blue Card, there would be an emphasized need to guarantee that the potentially added supply of TCNs would not lead to the weakening of working conditions, especially salaries, in the Member States. The simplest way would be to require that prior to issuing an EU Blue Card, Member States would make sure that the salary as determined in the work contract or binding job offer meets relevant minimum requirements. The minimum wage applied in the Member State should naturally be complied with, but also requirements included in collective agreements and comparable instruments. Prevailing wages per region, sector or occupation could be applied, if available, and consultations with social partners could be envisaged.

The current possibility to carry out labour market tests before issuing an EU Blue Card would be maintained in the Directive. This means that Member States would retain the possibility to only admit highly skilled TCNs in case there is no locally available workforce to fill the vacancy in question.

*f) Shortening the required length of work contract from 12 to 6 months*

In a demand-driven system the condition of presenting a work contract or job offer is intended to guarantee a certain level of continuity of residence and employment. Currently, in order to be able to apply for an EU Blue Card, the highly skilled worker has to have a work contract or a binding job offer for at least one year. This provision categorically excludes persons wishing to carry out work for a shorter duration. There may be an interest for the employer to first sign

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<sup>356</sup> There were 25.104 Blue Card holders residing in Germany as of 30 September 2015 of which 12.774 (50,9 %) fulfilled the normal threshold and 12.330 (49,1 %) were given Blue Cards according to the shortage list to which a lower threshold applies.

a contract with a shorter duration to be able to ensure that the employee is suitable for the position in question. Naturally, many of the workers whose initial work contract is for duration between 6 and 12 months may end up getting an extension to their contract and residing in the EU continuously, even permanently, after a "trial period" has been successfully completed.

Under POP1 the required length of work contract would be shortened from 12 to 6 months, a change which would include a larger variety of work relationships within the scheme. As demonstrated in Chapter 2 of Annex 7, an important share of national residence permits for highly skilled workers are issued for a validity period of less than 12 months. Therefore, lowering the bar for the EU Blue Card seems to be a logical step in making the scheme more inclusive and relevant for different stakeholders. Reducing the required length to six months seems coherent taking into account the more recent Single Permit Directive<sup>357</sup>, where the applicability of procedural safeguards as well as access to certain social security rights can be limited to workers whose (intended) employment in the Member State lasts at least six months.

*g) Facilitating transition from highly skilled employment to entrepreneurship by allowing secondary self-employed activity on the side of employment as an EU Blue Card holder*

In the current Directive, the access to labour market of EU Blue Card holders is only regulated in terms of employment, and there is no mention on how to address self-employed activity. Therefore, there is no harmonised approach on the issue across Member States and it can be perceived as something of a grey area. Under POP1, EU Blue Card holders would be allowed to start a subsidiary self-employed activity in parallel with employment, without losing their rights and status as highly skilled employed workers. This would facilitate the transition into entrepreneurship for highly skilled workers already residing in the EU. For details of this option, see Chapter 6 of Annex 10.

*h) Abolishing parallel national schemes and merging them into the EU Blue Card*

Under the current Directive Member States are explicitly allowed to continue to issue residence permits other than an EU Blue Card for any purpose of employment (Article 3(4) of Directive 2009/50/EC). This possibility to grant national permits to those highly skilled workers who at the same time enter into the scope of the EU Blue Card has led to a parallelism of applicable regimes to the same category of migrants.

The continued simultaneous existence of both the EU Blue Card scheme, transposed into the national legislation of 25 Member States in diverging ways, and separate national schemes targeting highly skilled workers in those same Member States, has led to a proliferation of applicable regimes between Member States but also within the same Member State.

On the one hand, the national schemes could arguably be complementary, better adapted to the specificities of the national labour markets, and introduce an element of positive competition between Member States. Member States need tailored systems to respond to their specific labour market needs. For instance, labour shortages and needs of companies recruiting TCNs vary across and even within Member States. Therefore, any EU level instrument that would replace national schemes and take into account such variations, would need a sufficient level of inclusiveness and substantial flexibility for Member States to adapt

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<sup>357</sup> Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343, 23.12.2011, p. 1–9.

to their national situation. Currently, many Member States issue more national permits than EU Blue Cards (see Table 1 in Annex 6) while the share of Blue Cards in the overall numbers of permits for highly skilled workers has risen substantially. However, the comparison between the different schemes – and the numbers of residence permits issued under them – has to be done with some caveats in mind. An exact comparison is impossible as Member States have different definitions for highly skilled and some do not have a targeted scheme for this group at all (see Annex 6), and there are no national schemes that precisely correspond to the EU Blue Card either.

On the other hand, the competition effect also has a negative side as Member States may compete with only a national interest in mind, potentially luring highly skilled workers away from labour markets in greater need of them or where their application as an economic resource would be more efficient, thus leading to an overall loss at EU level. In addition, the many national schemes and the parallelism with the EU Blue Card has resulted in a complex and confusing<sup>358</sup> overall EU immigration system for highly skilled workers with different administrative procedures for the same category of migrants that both applicants and enterprises have to deal with. Moreover, a minimum level of harmonisation and coherence is required in order for the EU's immigration system to be promotable to potential applicants and employers, and thus provide added value compared to purely national solutions. For an EU-wide scheme to be effective there is Member State input required both for the continued development and the promotion of the scheme. If many Member States continue to invest in their national schemes instead of the EU Blue Card, the branding value of the latter remains low. In order to reach a clear, coherent EU approach on attracting the highly skilled, and following the example of the Directive on Intra-Corporate Transferees and other legal migration Directives, this option proposes merging all parallel national schemes into the EU Blue Card. This requires a high level of inclusiveness, substantial flexibility for Member States to adapt to their national situation, and a high substitution potential for parallel national schemes. The purpose is to replicate and substitute the positive aspects of the national schemes, while addressing the negative dimension of the national scheme-Blue Card relationship, and maintaining and reinforcing the positive aspects of the EU Blue Card.

This would mean that all applicants qualifying for an EU Blue Card would be issued one, and there would be no competing national schemes targeting the same category of third-country nationals as those falling under the scope of the Blue Card. This means that there would still be room for *complementary* national permit categories addressing other groups of TCNs, including some highly skilled workers who do not enter into the scope of the EU Blue Card. For instance, national residence permits available for workers with lower skill levels not covered by the Blue Card Directive would continue to be allowed, as well as for very specific highly skilled workers or for self-employed skilled professionals.

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<sup>358</sup> Potentially even conflicting, as it could be that elements of two separate schemes would be desirable at the same time, e.g. faster procedure and lower threshold of a national scheme yet intra-EU mobility of the Blue Card.



## 1.2. Policy Option Package 2 (POP2)

### **POP2: EU legislative action to modify the admission conditions and rights within the EU Blue Card without extending the scope beyond highly skilled workers**

This policy option package addresses modifications that could be envisaged within the current scope and basic framework of the Directive, but with substantial facilitation as regards conditions, procedures and rights, in order to better meet its goals. The option has been divided into **three sub-options** (a), (b) and c)) depending on the target group (e.g. wider/more selective, but still within the current 'highly skilled' workers definition) of the amended Directive.

There are some **common elements to all sub-options of POP2** (and also, to a certain extent to POP1 and POP3) to improve the attractiveness of the scheme for migrants and employers, namely:

- a) Required length of work contract is shortened from 12 to 6 months, thus including also shorter working relationships within the scheme.
- b) Member States are encouraged to be more flexible when recognising professional qualifications for unregulated professions for the purposes of the EU Blue Card.
- c) The application process is speeded up: a target time limit of 30 days is introduced and the maximum processing time is shortened from 90 to 60 days.
- d) Member States grant permits to family members of workers simultaneously with the EU Blue Card to enable family members to follow the worker to the Member State without any waiting period.
- e) EU Blue Card holders are granted quicker access to long-term resident status under Directive 2003/109/EC by shortening the required period of residence from 5 to 3 years.
- f) EU Blue Card holders are given full access to highly skilled employment in the Member State concerned. Member States apply a simple system of notification of changes to enable competent authorities to check that the EU Blue Card conditions are continuously fulfilled.
- g) Member States are allowed to introduce a system of recognised or trusted employers. These employers, in exchange for committing to a scrupulous obedience of common rules, can benefit from a faster procedure and a waiver of some conditions for their workers, such as the qualification requirement for unregulated professions.
- h) Member States facilitate the transition from highly skilled employment to entrepreneurship by allowing highly skilled workers some secondary self-employed activity on the side of employment as an EU Blue Card holder.

*a) Shortening the required length of work contract from 12 to 6 months*

This option would be the same as under POP1.

*b) Adding flexibility to recognising professional qualifications*

Fulfilling the conditions set out under national law for the exercise of regulated professions is a necessarily strict criterion in the Directive, as otherwise the admitted TCN could not exercise the profession in the Member State concerned. While the problems related to this condition cannot be addressed within the Blue Card Directive, there may be scope for non-legislative measures such as facilitation of the recognition of equivalent qualifications or conversion and up-scaling of similar qualifications (see non-legislative options).

As regards unregulated professions, the concept of 'higher education qualifications' entails any diploma, certificate or other evidence of formal qualifications issued by a competent authority attesting the successful completion of a post-secondary higher education programme with a duration of at least three years. This corresponds, by and large, with Bachelor level or equivalent and higher. It is not specified in the Directive how the qualifications are supposed to be verified or assessed for the purposes of acquiring an EU Blue Card, and there is no uniform practice in this regard across Member States.

Under this option, for unregulated professions, Member States would be encouraged not to apply the full recognition procedure for the purposes of the EU Blue Card, but to rely instead on simple translations of foreign certificates, where appropriate. It is also essential to develop the methodology of validating and recognising foreign certificates and other qualifications. Computerised systems such as the Anabin<sup>359</sup> database in Germany are a good example of ways to simplify recognition.

*c) Speeding up the process: introducing a target time limit and shortening the maximum processing time*

The current time limit for processing an EU Blue Card application is "as soon as possible and at the latest within 90 days of the application being lodged". This is an obligation directed at Member State authorities, and there shall be consequences determined in national law for not respecting this deadline. POP2 proposes providing a target processing time of 30 days and a maximum time of 60 days. This type of provision would clearly indicate what the EU legislator considers as a suitable typical processing time, while also the maximum tolerable time limit would still be determined.

*d) Granting permits to family members simultaneously with the EU Blue Card*

Under the current Blue Card Directive Member States are allowed the maximum of six months to process the applications of family members after the EU Blue Card holder has been granted the permit and the family members have lodged their subsequent applications. This may result in a significant practical waiting period for the workers' families to join them. In the Directive for intra-corporate transferees (ICT)<sup>360</sup>, the applications for both the ICT permit and the permits for family members can be lodged simultaneously, in which case also the permits are granted at the same time. Extending this facility to the EU Blue Card scheme would contribute to enhancing the attractiveness of the migration option for highly skilled workers with accompanying family. The conditions for family reunifications as such would

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<sup>359</sup> In practice, if a particular foreign diploma is already inserted in the database, it is a matter of minutes to get the results on recognition. New diplomas are continuously added as assessments are carried out. <http://anabin.kmk.org/>

<sup>360</sup> Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.5.2014, p. 1–22.

not change and Directive 2003/86/EC on the right to family reunification<sup>361</sup> would continue to apply with the derogations already foreseen in the Blue Card Directive.

*e) Providing quicker access to long-term resident status*

Under Directive 2003/109/EC on long-term residents<sup>362</sup> TCNs may apply for a long-term resident status after five years of legal and continuous residence in the Member State concerned. The long-term resident status provides for security of continuous residence in the host country and some mobility rights within the EU. In Directive 2003/109/EC, there are provisions on periods of absence allowed without affecting the count towards five years and also on absences allowed once the status has been acquired.

In the current Blue Card Directive, EU Blue Card holders are granted more favourable treatment vis-à-vis the long-term resident scheme: they are allowed longer absences from the Member State territory and they can also cumulate periods of residence gathered in different Member States according to certain rules. However, the regular five years of continuous legal residence is required also from EU Blue Card holders. If further preferential treatment was granted and the required residence period was shortened from 5 to 3 years, there would be an additional incentive for highly skilled workers to choose the EU Blue Card instead of a national permit.<sup>363</sup>

*f) Giving immediate full access to highly skilled employment in the MS concerned*

Rights enjoyed by Blue Card holders are fairly extensive, especially regarding equal treatment with Member State nationals in numerous fields. However, access to the labour market in the host country is restricted and planned changes in employment may meet administrative obstacles. According to current provisions, access remains conditional upon fulfilling the requirements for an EU Blue Card during the first two years, and even after that Member States are not obliged to grant full access. Also, the provisions related to the administrative formalities are complicated.

POP2 would simplify and modernise the provisions on access to the labour market by granting EU Blue Card holders an immediate access to all highly skilled employment. This approach may seem far-reaching, but it is conditioned by the fact that EU Blue Card holders still have to fulfil the conditions for the permit throughout their residence. The underlying idea in this approach is that workers should notify relevant changes to competent authorities so that the fulfilment of EU Blue Card conditions could be checked, but the procedure would not have a suspending effect to the right to work as long as the EU Blue Card remains valid. Consequently, there would be clear and worker-friendly provisions for the change of circumstances, but people admitted as highly skilled could still not switch to a low-qualified job without losing their status as an EU Blue Card holder.

*g) Giving Member States the possibility to introduce a system of recognised or trusted employers*

To simplify and streamline the EU Blue Card process, one option would be to increase the role of the private sector in the admission of highly skilled workers. Some national systems foresee fast-track procedures for certified or trusted employers with the aim of easing the

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<sup>361</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12–18

<sup>362</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53.

<sup>363</sup> DE gives access to national permanent residence to Blue Card holders after 33 months or even after 21 months to persons with language skills at level B1. On 31/10/2015, 25 800 Blue Card holders were living in Germany while national permanent residence titles had already been granted to 1 935 former Blue Card holders after 33 months, to 4 601 after 21 months, and 883 without time specification.

administrative burden linked to hiring TCNs (see Annex 6). This approach has already been introduced as an option in some of the more recent legal migration directives<sup>364</sup>; it is characterised by more flexible admission conditions for certified entities, combined with control mechanisms to avoid fraud and abuse. Such a system would be allowed as an optional and complementary route, whereas the regular admission scheme would remain principal. Member States having chosen to take up this option would grant to trusted employers (and TCNs recruited by them) certain facilitations: at least a fast-track application procedure and waiver of the requirement to present formal qualifications for unregulated professions. Specific safeguards would be put in place (e.g. criteria related to the transparency of the procedure and the proportionality of the costs) to ensure that also SMEs have the financial and practical means to become recognised.

- h) Facilitating transition from highly skilled employment to entrepreneurship by allowing secondary self-employed activity on the side of employment as an EU Blue Card holder*

This option would be the same as under POP1.

*1.2.1. Policy Option Package 2 - Sub-option (a)*

<b>POP2(a): Making the EU Blue Card accessible to a wider group of highly skilled workers (wider and more inclusive Blue Card scheme)</b>
This sub-option would extend the scope of highly skilled workers eligible for the EU Blue Card, facilitate admission and provide further residence and mobility rights. Member States would reserve some leeway for national adaptation of the scheme. The package would entail the following elements, in addition to the horizontal ones:
<ul style="list-style-type: none"> <li>a) The general salary threshold is lowered and made more adaptable by providing Member States with the possibility to set a national threshold within a fork of possible thresholds between 1.0 and 1.4 times the average gross annual salary in the Member State concerned.</li> <li>b) The lower salary threshold for workers in certain shortage occupations (limited to ISCO major groups 1-2, i.e. managers and professionals) is revised to be a mandatory provision at factor 0.8 of the general salary threshold chosen by the Member State in question.</li> <li>c) A lower threshold at factor 0.8 of the general salary threshold is introduced for recent graduates, enabling young professionals to be issued an EU Blue Card with a lower salary.</li> <li>d) Member States are allowed to apply a labour market test (i.e. making the issuance</li> </ul>

<sup>364</sup> Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of TCNs in the framework of an intra-corporate transfer; as well as the proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange scheme or educational project, training, voluntary service and au pairing (recast).

of an EU Blue Card conditional upon whether there is national or EU workforce available for the job) to EU Blue Card applicants only in exceptional circumstances occurring in their national labour market.

- e) The recognition of professional experience is promoted as equal alternative to an education certificate as the required qualification for unregulated professions.
- f) EU Blue Card holders get more extensive intra-EU mobility rights: the required period of residence in the first Member States is shortened from 18 to 12 months, several conditions for an EU Blue Card in the second Member State are waived (labour market test, qualifications for unregulated professions), the maximum processing time is shorter, and working in the second Member State can begin immediately after applying for an EU Blue Card in that Member State.
- g) Any parallel national schemes are abolished and merged into the EU Blue Card: all applicants who qualify will be granted an EU Blue Card, while there can be national schemes for other categories of workers not falling under the scope of the Blue Card.

The underlying idea in POP2(a) is to enhance and make the current Blue Card Directive more attractive and accessible to applicants (i.e. a wider group of workers while remaining within the category of highly skilled).

*a) Introducing a lower and more adaptable general salary threshold*

Overall, it appears that the current threshold is relatively high, and thus more restrictive, compared to the salary thresholds applied in the national schemes. It can be noted that not many national schemes have specific thresholds in place on top of safeguards related to minimum wages, prevailing wages or other criteria (see Annex 6).

A lower (minimum) salary threshold would be a relatively simple way to extend the number of potential beneficiaries of the EU Blue Card. It would be more inclusive still if it was no longer set as a minimum threshold but instead, as the only possible threshold (consisting of a factor and a reference figure) to be applied. This would limit the leeway for Member States to favour their national scheme compared to the EU Blue Card, but at the same time, no adaptation to national circumstances would be possible. Currently, only the minimum threshold is regulated, which has led a few Member States to set their threshold using a higher multiplier than 1.5. At the same time, for reasons related to wage distribution, already the minimum threshold is restrictive in some Member States (see Charts 4 and 5 in Annex 7).

Similarly as under POP1, a fork of possible thresholds would be offered to Member States. The fork would be set at a lower level compared to both POP1 and the current Directive **with a minimum factor of 1.0 and a maximum of 1.4**. The purpose would be to include more highly skilled workers within the scheme, also those with less experience and those working in lower paid sectors or occupations. The qualifications requirement would however still guarantee that the scheme is reserved for the highly skilled. As in POP1, Member States would be obliged to use Eurostat data (national accounts) as the reference figure.

*b) Introducing a lower salary threshold for workers in certain shortage occupations as a mandatory provision*

This option would be similar as under POP1 with the difference that only occupations belonging to ISCO major groups 1 and 2 (and not 3) would be included.

*c) Introducing a lower threshold for recent graduates*

There is a specific group of highly skilled migrants who could be better reached with a lower salary threshold: information on wage distribution suggests that highly skilled young professionals risk failing to fulfil the general salary threshold (see Chart 6 in Annex 7). The lower threshold could amount to 0.8 times the regular threshold, similarly as for shortage occupations. International students graduated from EU educational institutions represent a great skills potential to be retained, and they are often already well advanced in their integration to the host society. Also recent graduates from (at least highly ranking) third-country universities could provide for an interesting target group. The scope of the more favourable scheme could be linked to age of the applicant or the moment of graduation or both.<sup>365</sup>

In the public consultation, facilitating the access to the labour market of recent graduates of higher education institutions and long-term trainees who finished their traineeship received strong backing from the respondents. Of the 80 % of respondents who identified any scope for improvement within the current Blue Card scheme almost 60 % suggested facilitations for international graduates. In addition, such facilitation would be a logical connection to recent amendments to EU legislation on students<sup>366</sup>, where graduates are allowed at least nine months to look for employment in the host Member State.

*d) Allowing Member States to apply a labour market test only in exceptional circumstances*

The current Directive allows Member States to refuse an application after examining the situation in their labour market; they may apply their national procedures on requirements for filling a vacancy and ensure that it could not be filled by existing available workforce before issuing an EU Blue Card. This option has been taken up by numerous Member States, some of which are favouring their national scheme at the expense of the EU Blue Card (see Annex 6). Furthermore, the concept and practices of labour market testing seem to vary across Member States, and in many cases it is not carried out European-wide as it in principle should.

Under POP2(a) Member States would be generally precluded from applying a labour market test to EU Blue Card applicants. The only leeway would be that labour market tests could be temporarily re-introduced in exceptional circumstances occurring in the national labour market. An example of such circumstances could be an exceptionally high level of unemployment. This option would reduce Member States' possibilities to control access to their labour market, even though they would retain the possibility to determine the volumes of admission of TCNs under Article 79(5) of the Treaty on the Functioning of the EU (TFEU). The aim of lifting the labour market test would be to make the procedure quicker and the outcome more predictable for the employer and TCN worker.

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<sup>365</sup> E.g. The Dutch system foresees a lower threshold for both those under 30 and for a certain period after graduation.

<sup>366</sup> The proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange scheme or educational project, training, voluntary service and au pairing (recast).

*e) Promoting the recognition of professional experience as alternative to an education certificate*

In the current Directive, recognising at least 5 years of professional experience is a possibility given to Member States as derogation from the "main" option of requiring education certificates. Professional experience to be taken into account refers to the actual and lawful pursuit of the profession concerned. While around half of the Member States have transposed the possibility for this derogation into national law, it appears that this option has been underused to date (see Annex 5). Member States have expressed difficulties in validating experience, especially if it has been obtained in a third country. Making professional experience a mandatory, equal alternative to education certificates in this respect could make experience a more workable criterion in establishing the status of highly skilled. Shortened period of required experience could be envisaged and linked to shortage occupations, if deemed necessary. Practical challenges in recognising experience would have to be addressed also at EU level by exchanging best practices among Member State experts, and possibly by developing common guidelines.

*f) Facilitating intra-EU mobility*

The current mobility provisions in the Directive allow the EU Blue Card holder to apply for a new Blue Card in the territory of a second Member State, but without any of the conditions being waived or procedure otherwise facilitated. Also, the Directive does not affect the right of the second Member State to determine the volumes of admission of highly skilled workers. The mobility provisions in the various EU instruments have been assessed in detail in Annex 9.

This option would entail a system where the second Member State would still issue a national EU Blue Card, but with a considerably shorter and simplified procedure (taking inspiration from the provision on long term mobility included in the Intra-Corporate Transferee Directive): labour market test or pre-determined volumes of admission would not be applied, processing time would be shorter than for the initial EU Blue Card and higher professional qualifications for unregulated professions would not be re-checked. Meeting the salary threshold, however, would always be required in the second Member State. The required period of residence in the first Member State before mobility rights can be invoked would be shortened from 18 to 12 months. Work in the second Member State could begin immediately after lodging the application for an EU Blue Card in that Member State.

*g) Abolishing parallel national schemes and merging them into the EU Blue Card*

This option would be the same as under POP1.

*1.2.2. Policy Option Package 2 – Sub-option (b)*

<b>POP2(b): Making the EU Blue Card a tool to attract a selected group of the most highly skilled</b>
This sub-option would make the EU Blue Card a selective instrument for the very highly skilled. Eligible workers would benefit from fast and easy admission and from extensive rights. Details of the package would include the following, in addition to the horizontal elements:
a) The salary threshold is maintained as exclusive by providing Member States with the possibility to set a national threshold within a fork of possible thresholds between 1.5 and 1.7 times the average gross annual salary in the Member State in

question.

- b) The lower salary threshold for shortage occupations is eliminated and the general threshold is applied to all applicants.
- c) The current level of required qualifications is maintained.
- d) Member States are not allowed to apply a labour market test (i.e. making the issuance of an EU Blue Card conditional upon whether there is national or EU workforce available for the job) to EU Blue Card applicants in any situation.
- e) The EU Blue Card is issued for a standard validity of three years regardless of the length of the work contract, and after three years it will be directly possible to apply for a long-term resident status.
- f) EU Blue Card holders get very extensive intra-EU mobility rights: the required period of residence in the first Member States is shortened from 18 to 12 months, the maximum processing time is shorter, working in the second Member State can begin immediately after applying for an EU Blue Card in that Member State, and the second Member State issuing an EU Blue Card can only check that the salary corresponds to the regular level in that labour market.
- g) Member States are allowed to have national schemes for TCN workers as in status quo.

*a) Introducing an exclusive but adaptable salary threshold*

Under this option there would also be a fork of possible factors provided for Member States, but it would be higher than in option POP2(a), namely from 1.5 to 1.7 times the national average salary. The threshold would be calculated similarly as in option POP2(a), i.e. the reference salary would be the gross average salary according to EUROSTAT data. The resulting salary threshold could be either more inclusive or exclusive than the current one applied in each individual Member State, as the current Directive only sets a minimum factor of 1.5 but no maximum. The purpose of the higher threshold would be to select migrants in a way to include only the most highly skilled, who could then be granted extensive rights. However, Member States would still be limited in how high they can set the threshold, as unlike in the current system, a maximum would be determined. Therefore, the level of harmonisation would increase.

*b) Eliminating the lower threshold for shortage occupations*

As this option would focus only on attracting the very highly skilled, there would be no reason to set a lower salary threshold for shortage occupations and this existing option would be deleted from the Directive. Instead, there would be only one threshold applicable in each Member State.

*c) Maintaining the current level of required qualifications*

As the idea would be to address only the very highly skilled workers, the current approach to the assessment of qualifications would be justified. Member States would continue to require a higher education diploma or if they wish, alternatively accept five years of professional experience.



*d) Preventing Member States from applying a labour market test to EU Blue Card applicants*

This option would be the same as under POP2(a), but without the possibility of re-introducing labour market tests for any reason. The control measure left for Member States would be to determine the volumes of admission under Article 79(5) TFEU.

*e) Introducing a standard 3-year validity for the initial EU Blue Card*

According to the current Directive, Member States have to determine a standard validity for the EU Blue Card which has to be between 1 and 4 years. However, if the work contract or job offer covers a shorter period than this standard validity, the EU Blue Card shall be issued for the validity of the contract plus three months. Therefore, the standard validity has only limited impact and there is great variety across Member States as to how many times a person has to renew the EU Blue Card before being eligible for long-term or permanent residence under EU or national law. This could be addressed by harmonising the standard validity of the EU Blue Card across the EU to match the residence period required for long-term residence (which would be shortened from 5 to 3 years under POP2), without paying attention to the validity of the work contract.

For Member States there is interest in having migrant workers renew their permits at regular intervals in order to provide occasions for competent authorities to check that the conditions for the permit are still fulfilled. The justification for the more liberal approach under POP2(b) is that the very highly skilled are unlikely to end up in a situation (apart from very short-term unemployment between jobs) where the conditions for the EU Blue Card would no longer be fulfilled, and therefore the need for Member States to have regular checks would be less pronounced.

*f) Providing extensive intra-EU mobility*

One of the most pronounced characteristics of the scheme for the very highly skilled under POP2(b) would be the extensive right to intra-EU mobility. Also in this scenario, the required period of residence in the first Member State would be shortened from 18 to 12 months – similarly to sub-option POP2(a). The difference would be that the second Member State could not re-check any of the specific conditions of the EU Blue Card, but only the general conditions for a residence permit, such as having a valid travel document and not being a threat to public policy, public security, and public health. Furthermore, the market conformity of the salary would be examined, which aims at avoiding social dumping by guaranteeing that the mobile TCN is being paid a corresponding amount to what a person in a similar position is regularly paid. However, the national salary threshold for the EU Blue Card would not be applied in the second Member State.

*g) Allowing parallel national schemes as in status quo*

As POP2(b) would only address the very highly skilled workers, there would be a lot of room left for national schemes to address workers at different skills levels. It is a more selective, elite scheme that is more pan-EU and would limit the number of HSW, especially in shortage occupations, and be less adaptable to the national labour markets. The rationale would be to make the EU Blue Card attractive enough to be competitive in the eyes of employers and workers and to become the primary scheme in the EU to address very top talent on an EU wide basis. Therefore, Member States would retain the liberty to have subsidiary national schemes in place according to their choice and complement the EU wide scheme.

### 1.2.3. *Policy Option Package 2 – Sub-option (c)*

<b>POP2(c): Creating a two-tiered EU Blue Card for different categories of highly skilled</b>
This sub-option would be a combination of sub-options POP2(a) and (b) by creating an EU Blue Card with two levels to address different categories of highly skilled workers (most of the horizontal elements of POP2 would apply to both):
<p>a) POP2(a) represents the <u>first level</u> of EU Blue Card accessible to a wide group of highly skilled workers, including recent graduates, with facilitated access to shortage occupations. In contrast to POP2(a), accelerated access to long-term residence is not granted to level 1 Blue Card holders.</p> <p>b) POP2(b) is a more <u>advanced level</u> which some applicants could reach right away and others over time in transition from the first stage. The salary threshold is higher and the rights more advanced than in level 1.</p> <p>c) Intra-EU mobility is more facilitated for level 2 (only check that the salary meets relevant minimum requirements, such as collective agreements, prevailing wage etc.) than for level 1 (waiving some conditions in the second Member State, e.g. qualifications, labour market test, but maintaining the other conditions, e.g. salary threshold). Both levels benefit from the shorter period in the first Member State, shorter maximum processing time, and the right to start working immediately after applying for an EU Blue Card in that Member State.</p> <p>d) Any parallel national schemes are abolished and merged into the EU Blue Card: all applicants who qualify will be granted an EU Blue Card, while there can be national schemes for other categories of workers not falling under the scope of the Blue Card</p>

The rationale behind this option would be to create a tiered scheme combining the different approaches foreseen under POP2(a) and POP2(b) respectively. There would no longer be one single EU Blue Card but instead, two levels with different admission conditions and different rights. It can be noted that already the lower level would be more advantageous than the current scheme. In terms of admission conditions, the main difference between the levels would be the salary requirement: for the first level the general threshold would be lower and there would be a specific, even lower threshold for recent graduates and workers in shortage occupations.

#### *a) First level of EU Blue Card accessible to a wide group of highly skilled workers*

The first level of EU Blue Card would address the group of "regular" highly skilled workers as specified under option POP2(a), including facilitated admission for workers in shortage occupations and for recent graduates. In derogation from the list of common elements listed for POP2, the first level EU Blue Card holders would not get quicker access to long-term residence but instead, the regular five-year residence period would be required from them.

#### *b) Second, more selective level of EU Blue Card*

The second level of EU Blue Card would be reserved for very highly skilled workers as defined in option POP2(b). The idea would be that the second level could also be attained over time after being admitted as a first level EU Blue Card holder.

*c) Intra-EU mobility is more facilitated for level 2*

The main difference between the different levels of EU Blue Card would be the mobility rights. For level 1 Blue Card holders the national salary threshold would still be applied in the second Member State, whereas for level 2 Blue Card holders only the fulfilment of the minimum standards of that Member State would be required to avoid social dumping.

*d) Abolishing parallel national schemes and merging them into the EU Blue Card*

This option would be the same as under POP1.

### 1.3. Policy Option Package 3 (POP3)

<b>POP3: EU legislative action that introduces a standard EU-wide Blue Card</b>
<p>This policy option package would introduce a standard EU-wide set of Blue Card rules applicable across the Member States. There would be no scope for the Member States to adapt any of the conditions or other rules of the EU Blue Card to national labour market circumstances or to apply a labour market test. An EU Blue Card issued by one Member State would be mutually recognised by all Member States and provide unlimited intra-EU mobility. The legislative actions would entail the following:</p>
<ul style="list-style-type: none"> <li>a) An EU-wide salary threshold is introduced at a more exclusive level set by the Commission at a yearly basis. The same nominal salary threshold would apply EU-wide in all participating Member States and calculated as at least 1.4 times the average of the <i>highest one-third</i> (33%) of the average gross annual salaries of the Member States applying the Blue Card Directive. It would be set by the Commission by implementing measure via comitology (consulting Member States using the advisory procedure) taking into account of the economic and employment situation in the Member States applying the Blue Card Directive.</li> <li>b) The common elements of POP2 are included.</li> <li>c) An EU level online application management portal for applicants is created. This means that employers or TCN workers can lodge their application online using the portal which then forwards the application to national authorities to be further processed.</li> <li>d) Intra-EU mobility rights of EU Blue Card holders are made comparable to the free movement of EU citizens. The single EU Blue Card enables TCNs to reside and work under the Blue Card conditions in any Member State.</li> <li>e) Any parallel national schemes are abolished and merged into the EU Blue Card: all applicants who qualify will be granted an EU Blue Card, while there can be national schemes for other categories of workers not falling under the scope of the Blue Card.</li> </ul>

*a) Introducing one EU-wide salary threshold set by the Commission at a yearly basis*

Under this option the salary threshold would be determined annually by the Commission and there would be no room for Member States to adjust it according to national specificities. In order for the EU-wide Blue Card to be feasible, the salary threshold would have to be the same across the EU and correspond to the salaries of Member States with higher income. Any other solution would create major risks of social dumping and largely deprive the salary threshold of its purpose, if workers admitted under a low salary threshold in a low-income Member State would be able to use the same EU Blue Card to go and work in a higher-income Member State.

In practice, the Commission would first use Eurostat data to determine the average salaries of the highest one-third of Member States applying the Blue Card Directive (currently 8 Member States, which were LU, BE, SE, FI, AT, NL, FR and DE according to 2014 data). Then, the average of these salaries would be calculated to serve as a basis for the uniform salary threshold. The minimum factor would be 1.4, but the Commission would be able to adapt the applicable threshold to the EU-wide labour market situation. Member States would participate in setting the threshold through the advisory procedure, which would enable taking into account the existing labour market situations across the EU. However, as the threshold would be uniform for all issued EU Blue Cards, the labour market situations of individual Member States could not be directly reflected in the level of the threshold.

*b) Introducing the common elements of POP2*

All the elements aimed at making the scheme more streamlined and attractive as proposed for POP2 would apply to this option; see POP2 for details.

*c) Creating a single EU level online application management portal for applicants*

In order for the EU to be able to manage and monitor the inflow of applications, there would be a new online application portal created at EU level where employers or TCNs could lodge the application for an EU Blue Card. It would still be the competent authorities of the Member State concerned (where the employment would take place) who would actually process the application and issue the permit.

Currently, there are some Member States providing for online application facilities for residence permit applicants, whereas some rely on traditional paper-based procedures. The EU portal would practically push Member States to adopt online tools as the applications lodged in the EU-wide portal would be forwarded to competent national authorities of the (first) Member State of destination to be further examined.

*d) Introducing intra-EU mobility comparable to the level of free movement for EU citizens*

As the EU Blue Card would be issued as an EU-wide instrument, there would not be any specific conditions for intra-EU mobility: the permit would enable the TCN worker to reside and work freely in the territories of Member States applying the Blue Card Directive. However, the Blue Card conditions would still have to be continuously fulfilled and they would be the same across the EU. It would require some system of notification to keep track of the place of residence of EU Blue Card holders in order to know which Member State is responsible for renewing the permit or otherwise reviewing the grounds for residence at a given moment. As there are no EU-level residence permits in this sense yet, there are no direct models to base this system on.

*e) Abolishing parallel national schemes and merging them into the EU Blue Card*

This option would be the same as in POP1.

## 2. HORIZONTAL OPTIONS

These horizontal options could be combined with any of the policy option packages or introduced as self-standing changes.

### 2.1. Non-legislative actions (PO-A)

<b>Non-legislative actions to improve the effectiveness of the EU Blue Card</b>
This policy option would involve non-legislative actions aimed at enhancing the implementation of the EU Blue Card and the promotion of the brand. Key elements:
<ul style="list-style-type: none"><li>a) The Commission enhances the implementation of the Blue Card Directive and supports practical cooperation between Member States. Member State experts exchange information on best practices and perceived trends, as well as on possible fraud and abuse of the Blue Card system.</li><li>b) The use of the EU Blue Card scheme is made easier by improving – by practical measures - recognition of foreign qualifications between Member States and in cooperation with third countries.</li><li>c) EU and Member States increase the visibility and attractiveness of the EU Blue Card brand through information sharing, promotion, and advertisement activities. The Commission launches a dedicated, user-friendly website on the EU Blue Card within the EU Immigration Portal. Possible promotion tours in third countries can be organised in cooperation with different stakeholders.</li><li>d) Measures are developed to improve skills and job matching to make EU employers and TCN (TCN) highly skilled workers more attainable to each other.</li></ul>

A number of non-legislative initiatives could be undertaken to either optimise the status quo without legislative changes or to be combined with any legislative changes. Some of the considered actions imply reinforcing measures already taken and others would require completely new initiatives.

#### *a) Enhancing the implementation of the Blue Card Directive and supporting practical cooperation between Member States*

Details on the transposition of the current Directive in Member States are provided in Annex 5; there are some conformity issues to be noted and especially, many Member States were late in their transposition. Infringement proceedings were opened against all Member States that were late in transposing the Directive. A letter of formal notice was sent to 20 Member States and a reasoned opinion to 11 Member States. By October 2013 all cases were closed, as in August 2013 the Directive was transposed and entered into force in all Member States that apply the Directive.

The first implementation report on the application of the Blue Card Directive was adopted in May 2014, based on a detailed conformity assessment of national transposition, and statistics provided by Member States. The report identified a general lack of communication by Member States of data and measures taken in application of the Directive, while the availability of reliable information is essential for the functioning of the EU Blue Card and to evaluate its attractiveness. Therefore, after the adoption of the report the Commission has actively organised the collection and exchange of information between Member States. The Commission requests Member States to regularly submit specific information on topics such as salary thresholds, volumes of admission, labour market tests, return and readmission, and ethical recruitment via the National Contact Points on the Blue Card Directive. This information is then distributed to Member States.

In order to improve coherence in practices across the EU, these exchanges could be still reinforced, either within the Contact Group Legal Migration or in dedicated expert meetings with the National Contact Points. The exchange of best practices would be useful to make sure that the EU Blue Card scheme is applied effectively and efficiently across the EU, but also to combat possible fraud and abuse. The Commission could contribute to a better implementation of the Directive also by developing guidelines on the interpretation of the different provisions.

*b) Improving by practical measures the recognition of foreign qualifications between Member States and in cooperation with third countries*

The recognition of foreign qualifications is a broad issue of clear relevance also for the EU Blue Card, as applicants may face problems trying to validate their qualifications necessary for obtaining the permit. While often not included in the formal processing time of the application (which is currently limited to 90 days), the recognition procedure adds weeks or even months to the overall time required for obtaining a permit. It is necessary to distinguish unregulated professions from the regulated ones. For regulated professions<sup>367</sup> the required qualifications are mandatory for being able to exercise the profession in the Member State in question. On the contrary, unregulated professions are free of such requirements and in practice it is up to the employer to assess whether the applicant is qualified for the position at hand. Therefore, the significance of the recognition procedure differs greatly depending on whether the profession for which the EU Blue Card is applied for is regulated or not in the Member State concerned.

Whereas there is already a Directive<sup>368</sup> in place regarding the recognition of qualifications obtained in the EU (for the purposes of regulated professions)<sup>369</sup>, it is largely up to the Member States to regulate on qualifications obtained in third countries. The recognition of qualifications could be improved by non-legislative measures such as supporting practical cooperation and exchange of information between Member States. There are well-functioning databases and other mechanisms at national level which could be spread further. Cooperation with third countries would be necessary to get a better understanding of different educational systems and other factors relevant for the evaluation of diplomas and other qualifications.

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<sup>367</sup> Professions to which access is conditional upon the possession of specific qualifications or for which the use of a specific title is protected, e.g. pharmacists or architects.

<sup>368</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255, 30.9.2005, p. 22–142.

<sup>369</sup> The recognition of professional qualifications as laid down in Directive 2005/36/EC enables the free movement of professionals such as doctors or architects within the EU. Other professions such as sailors or aircraft controllers do not fall under Directive 2005/36/EC and are governed by specific legislation. Special laws also exist for lawyers and commercial agents. There is an EU database of regulated professions across Member States: <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?newlang=en>

Recognition of qualifications is a long-standing issue going well beyond the scope of the EU Blue Card review; actions foreseen in the context of the forthcoming EU Skills Initiative (e.g. the revision of the Recommendation on the European Qualification Framework) will also be relevant in this context.

*c) Increasing the visibility and attractiveness of the EU Blue Card brand through information sharing, promotion, and advertisement*

The EU Blue Card could be more effectively promoted to make it a better-known and more workable tool for all relevant stakeholders: migrants, employers and competent authorities. Currently, information on the EU Blue Card can be found on a few EU level webpages with general information on the Blue Card Directive, on a number of websites of the immigration authorities of several Member States with specific information on the nationally set entry conditions, procedures and rights in the Member State concerned, and on the separate Member State specific pages of the EU Immigration Portal that are drafted by the Member States in collaboration with the Commission. Furthermore, there are a number of private websites that provide general information on the Blue Card and also some Member State specific information on entry conditions, procedures and rights. These private initiatives are often for-profit, sometimes inaccurate and not up-to-date, and sometimes have unclear or confusing affiliations.

Consequently, there is currently no single official and easy-to-use website that provides reliable and up-to-date information on the EU Blue Card in general and practical information on specific entry conditions, procedures and rights the 25 Member States that apply the Blue Card. A first step to improve the visibility of the Blue Card would be to develop a dedicated and extensive section within the EU Immigration Portal, which provides up-to-date information on the EU Blue Card and details of its application in all relevant Member States in a user-friendly format. The maintenance of the website, including the national pages, would be carried out at EU level to ensure full coverage. Visibility could be enhanced with online banner campaigns to target groups.

As a completely new concept, joint EU Blue Card "road shows" could be organised in key third countries to reach potential applicants. These would be coordinated by the Commission with possible participation by Member States, recruiters, employers, and sector organisations. The road shows could offer information sessions on the EU Blue Card, presentations of employment opportunities and living conditions in the EU, and possibilities for job interviews on the spot.

*d) Developing measures to improve skills and job matching*

In a demand-driven system such as the EU Blue Card, the first prerequisite is the employment relationship between a TCN worker and an EU employer. Therefore, skills and job matching is extremely relevant if the EU is to attract more highly skilled workers. The skills and job matching could include different action going beyond the scope of the Blue Card review, for example cooperation with third countries to improve the visibility and attainability of the EU-wide labour market to TCN workers. Information campaigns targeted to EU employers could be envisaged to make them better aware of practicalities linked to searching for and hiring TCN workforce.

## **2.2. Extending the EU Blue Card scheme to innovative entrepreneurs (PO-B)**

The European Agenda on Migration indicated that the Blue Card review would examine the possibility to cover entrepreneurs willing to invest in Europe. This option would entail

creating a new EU legal migration route within the scope of the Blue Card directive for this professional category, which could – especially if the focus is on innovative entrepreneurs – contribute to economic growth. Some Member States have schemes in place to allow the entry and residence of entrepreneurs. These schemes however diverge widely in terms of both admission conditions and supporting measures.

Extending the scope of the Blue Card Directive to entrepreneurs would bring self-employed activity within the EU Blue Card, which now only covers employed workers. The existing admission conditions or rights would not be directly applied on entrepreneurs as they are targeted at situations of employment. Therefore, an entirely new scheme would have to be created within the existing Directive.

### **2.3. Making the EU Blue Card available for highly-skilled beneficiaries of international protection and asylum applicants (PO-C)**

This option would make the EU Blue Card accessible to highly skilled migrants who have applied for or received international protection and who are already present in the EU territory. These categories of migrants are currently explicitly excluded from the scope, which means that they cannot apply for an EU Blue Card even if they fulfil the conditions.

The different variations of this option and their implications are described in detail in Annex 16. Apart from beneficiaries of international protection, asylum seekers and rejected asylum seekers present in the EU, a fourth group to be discussed there are potential beneficiaries of protection who still reside outside the EU. For them, there is no legal impediment to apply for an EU Blue Card, as they do not have any specific status in the EU and are treated as any other third-country nationals. For them, however, targeted non-legislative support could be needed, and some of the actions envisaged under PO-A could be particularly relevant.

#### *a) Extend the scope to beneficiaries of international protection*

Beneficiaries of international protection are currently excluded from the personal scope of the Blue Card Directive, so they cannot apply for an EU Blue Card. It is clear that a protection status is more favourable in many aspects (especially social rights, security of residence and protection against return) than the status of an EU Blue Card holder. However, the latter does offer the possibility for intra-EU mobility and it also gives the signal to potential employers that its holder is a person of interest. In any case, it would be crucial to maintain the high level of protection enjoyed by these individuals, and the acquired EU Blue Card should in no way jeopardise the parallel protection status.

#### *b) Extend the scope to asylum seekers*

Asylum seekers whose process in the EU is pending cannot apply for an EU Blue Card, as they are excluded from the scope of the Directive. According to Directive 2013/33/EU<sup>370</sup>, Member States are obliged to grant asylum seekers access to the labour market at the latest after nine months from lodging the application. However, no given job opportunity can lead to obtaining an EU Blue Card, which may deter employers from engaging highly skilled asylum seekers, whose future status in the country is still uncertain. If filing an application for an EU Blue Card was to be allowed during the asylum procedure, an important issue to be addressed would be how to deal with the pending asylum request.

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<sup>370</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96–116.



Finally, if an asylum seeker receives a negative decision on the asylum application, he or she becomes an irregular migrant having no legal status in the country. Therefore, applying for an EU Blue Card in the Member State territory is not possible, as this facility is only reserved for those staying legally in the country. No changes to that principle are proposed under this option.

## ANNEX 14

# CALCULATION OF ECONOMIC IMPACTS: ANALYTICAL MODEL, ASSUMPTIONS AND RESULTS ANALYTICAL DESCRIPTION OF POLICY OPTIONS

### DISCLAIMER ON THE NUMBERS OF BLUE CARDS USED IN THE KEY ASSUMPTIONS

The numbers of Blue Cards used in the key assumptions in the analysis of impacts (chapter 6) are not target numbers for Blue Cards to be issued but technical assumptions, based on a number of elements such as variations in admission conditions, to be able to generate scenarios to quantify the potential economic impacts and the variations of magnitude according to the various Policy Options Packages.

The calculations in this annex are based on the methodology used by an external contractor in the impact assessment study commissioned by DG Home Affairs in preparation of this impact assessment.

#### 1. ASSUMPTIONS REGARDING THE NUMBER OF PERMITS FOR HIGHLY-QUALIFIED WORK

##### 1.1. Baseline

As shown in Annex 12 of this Impact Assessment (Statistics), there were 13 724 Blue Cards and 24 913 national **permits for highly-qualified work** issued in 2014 by Member States applying the EU Blue Card, totalling 38 637 permits. These figures represent a lower bound on the estimated number of highly-qualified workers admitted to these Member States, since some highly-qualified migrants admitted for the purposes of work are not designated as such by Member States and/or Eurostat and are not included in the statistics on permits for highly-qualified employment. They are instead included in the overall number of permits issued for the purposes of work – but cannot be distinguished from the other permits.<sup>371</sup> (see Annex 12 on statistics for detailed figures per Member State).

Eurostat data on the first issuance of long-term (1 year and longer) permits do not capture situations in which the TCN worker is given a shorter-term permit which is subsequently extended. However, data on shorter-term permits, in particular those for work, include a large share of seasonal workers, rendering such data unusable for the purposes of this study. Data on first issuance of permits issued for highly-qualified work excludes those highly-qualified workers which were admitted to Member States which do not have a dedicated admissions scheme in place, which do not identify highly-qualified workers as a separate category or which do not report them consistently

An alternative estimate for the number of permits issued to highly-qualified workers can be obtained by crossing the total number of permits issued for work<sup>372</sup> with the share of high-educated migrants among all those coming for work purposes (and with a job offer) as derived

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<sup>371</sup> First permits issued for remunerated activities by reason, length of validity and citizenship [migr\_resocc], Eurostat.

<sup>372</sup> Source: Eurostat. First permits issued for remunerated activities by reason, length of validity and citizenship [migr\_resocc]

from the 2014 EU Labour Force Survey ad hoc module on migrants.<sup>373</sup> In 2014 there were just over 173 000 **long-duration permits**<sup>374</sup> **issued for the purposes of work** in the 25 Member States that currently apply the EU Blue Card.<sup>375</sup> The Labour Force Survey module shows around 40 percent of TCN in employment who had found a job before migrating have high qualifications. People with medium and low qualification each make up 30 percent.<sup>376</sup> As a consequence, we can assume **around 69 000 highly-qualified workers**, or 40 % of 173 000, are admitted every year.

It is assumed that the baseline for admitting highly-qualified workers consists of 60 % regular highly-skilled workers, 20 % recent graduates and 20 % permits issued for shortage occupations. It is assumed this holds true at the baseline salary threshold. Lowering the salary threshold for selected categories will increase their share. This distribution is a technical assumption for the purposes of this impact assessment, justified by the BC scheme's overall objectives under the different policy options and how these may affect the flow of highly-skilled workers.<sup>377</sup>

The distribution of permits for highly-qualified work per Member State is shown in the table below. It is based on Member States' reports of both national permits for highly-qualified work and EU Blue Cards issued in the past three years (2012-2014). The table also contains the Member States' share of highly-qualified workers in the total employment of all EU Member States implementing the EU Blue Card.<sup>378</sup> This dataset takes into account all workers, native and foreign, and is considered more indicative of a country's labour market needs for high qualifications. A third column contains the anticipated share in job opportunities for highly-qualified workers between 2013 and 2025, based on replacement and expansion demand (CEDEFOP). For the purposes of this impact assessment, the distribution of any additional EU Blue Cards is based on the average of these three distributions.

**Table 1 — Estimating the distribution of future permits for highly-qualified workers in EU Blue Card countries**

	A. Share in permits issued to TCN for highly-qualified employment	B. Share in highly-qualified employment (all workers)	C. Share in job opportunities for HQ workers 2013-2025	Share in additional Blue Cards
	A.	B.	C.	Average A, B and C
DE	27.3%	20.3%	14.7%	20.8%

<sup>373</sup> 2014 EU Labour Force Survey ad hoc module on migrants.

<sup>374</sup> Long-duration is understood as one year and longer.

<sup>375</sup> Source: Eurostat. First permits issued for remunerated activities by reason, length of validity and citizenship [migr\_resocc]

<sup>376</sup> Source: specific data extraction based on the 2014 EU Labour Force Survey ad hoc module on migrants. The distribution by education level is calculated among TCN in employment, having arrived in 2014 since less than 6 years for reason of employment and with a job offer prior to migration; data covering all “Blue card countries” except DE, NL, IE who did not implement the survey.

<sup>377</sup> While these shares are technical assumptions, Blue Card statistics from Germany show that nearly half of all Blue Cards are issued at the lower salary threshold (i.e. for shortage occupations), and several of those are benefiting recent graduates. EU Blue Card Directive Implementation Report, COM(2014) 287. Available at:

<sup>378</sup> Source: Eurostat. EU Labour Force Survey 2014.

FR	9.7%	17.2%	20.4%	15.7%
NL	20.3%	5.4%	6.5%	10.7%
ES	5.8%	10.5%	13.1%	9.8%
IT	4.7%	8.4%	9.9%	7.7%
SE	14.9%	3.4%	2.7%	7.0%
PL	1.4%	9.3%	9.2%	6.6%
BE	2.8%	3.6%	3.0%	3.1%
AT	3.8%	2.1%	1.9%	2.6%
RO	0.3%	2.9%	3.5%	2.2%
FI	2.9%	1.9%	1.8%	2.2%
PT	2.1%	2.1%	1.4%	1.9%
CZ	0.4%	2.2%	2.2%	1.6%
HU	0.0%	2.1%	2.5%	1.6%
EL	0.0%	1.9%	2.0%	1.3%
BG	0.1%	1.6%	1.6%	1.1%
HR	0.6%	0.8%	0.9%	0.8%
SK	0.0%	1.0%	1.1%	0.7%
CY	1.5%	0.2%	0.2%	0.7%
LV	0.7%	0.6%	0.7%	0.7%
LT	0.4%	1.0%	0.5%	0.6%
SI	0.0%	0.6%	0.5%	0.4%
EE	0.0%	0.4%	0.4%	0.3%
LU	0.1%	0.3%	0.3%	0.2%
MT	0.0%	0.1%	0.1%	0.1%

## 1.2. Additional permits for highly-qualified work

Additional permits for highly-qualified work are calculated using the baseline figures described above, and by applying a percentage increase based on the hypotheses below. The number of additional Blue Card permits which can be expected under the different policy options will be mainly driven by:

- The **salary threshold**. The effect of a change in salary threshold on the number of permits is calculated using the salary data of the EU SILC<sup>379</sup> for the 25 Member States which currently apply the EU Blue Card Directive, in the same way as in Annex 7. Lowering the threshold enlarges the group of potential jobs which would qualify for an EU Blue Card; the number of Blue Cards issued is expected to increase proportionally. This applies if the salary threshold is set in relation to the prevailing salary in the host country (so, in effect, having 25 different thresholds) as it is the case with the current Blue Card Directive.  
Where a single, EU-wide salary threshold is set (POP 3), the impact on the number of Blue Cards issued can also be determined using the same method. However, the number of additional cards may be very low in lower-income countries while it may be high in the wealthiest of Member States.
- The **minimum duration** of the Blue Card permit. The Blue Card is currently issued for persons with a work contract of 1 year or more. If the minimum duration is lowered, it is expected that a larger number of assignments will qualify for an EU Blue Card. Current permit data, included in Annex 7 of this Impact Assessment, shows a ratio of 3:1 between permits for highly-qualified work issued for more than one year (17 210) and permits issued for 6 months to 1 year (5 712). Past years have shown significantly smaller differences, with ratios as low as of 1.4:1.<sup>380</sup> Also, there may be a significant overlap between jobs for which a shorter-term national permit is issued initially and those for which Blue Cards are currently issued. The effect of a reduction in the minimum duration of the Blue Card is therefore difficult to anticipate. For the purposes of this impact assessment, it is assumed the number of eligible jobs will increase by 25 percent. The baseline number of permits (69 000) was estimated using only data on long-term permits. This figure is increased by 25 percent (17 250 permits) in all scenarios to take into account the impact of including shorter-term permits, thereby totalling 86 250 (POP1, POP2A-B-C and POP3). This leads to a corresponding increase in the number of cards issued under all scenarios.
- In the current Blue Card Directive, the **minimum qualification level** required is post-secondary education corresponding to ISCED(97) 5A or higher (see Annex 7 for more details on ISCED levels) as well as an adequate salary. Equivalent professional experience can also be recognised, though this is optional for Member States to apply. If the qualification requirement is maintained as the sole admission condition (as in POP1), without the salary threshold and subject to safeguards, one can expect the number of additional Blue Cards to increase considerably. This increase is estimated by calculating the share of jobs held by highly-qualified workers below the current threshold of 1.5 times the average salary and applying this to the baseline. Given that in POP1 highly qualified workers are admitted without salary threshold only in ISCO groups 1-2, the increase was restricted by applying the share of highly qualified workers working in ISCO 1-2 in each Member State.  
For scenario's where the salary threshold is maintained but no qualifications are required, the estimated baseline cannot be used. The number of jobs which would be eligible cannot be estimated.

The possible removal of the **labour market test** is also considered in certain policy options, but its impact is not quantified and is assumed to be relatively small. Indeed, according to the OECD, a labour market test may not represent a real restriction on hiring foreign workers,

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<sup>379</sup> EU-Survey on Income and Living Conditions. Specific extractions based on micro-data. For Germany, data source is GSOEP 2013.

<sup>380</sup> Sources: Eurostat, First permits issued for remunerated activities by reason, length of validity and citizenship [migr\_resocc], Extracted on 11/12/2015.

because such a test is rarely the basis of a rejected application.<sup>381</sup> On the other hand, the labour market test may serve as a deterrent to potential applicants and may prevent some (or many) from applying for a permit in the first place. This effect is however hard to quantify.

Another potential source of Blue Card applicants is **highly-qualified migrants already present in the EU**, in particular if applications on the territory are allowed. According to the EU Labour Force Survey, there are currently around ninety thousand third-country nationals employed in ISCO 1-3 occupations among the 10% highest salary earners in the Member States which are using the EU Blue Card. This is a stock figure, so not an annual flow but the total number of people in the group. This group can be considered to consist of TCN who would qualify for an EU Blue Card and who may have an interest in applying from the EU territory. The pool is enlarged significantly if one adds the second-highest 10 percent earners, who may also qualify for an EU Blue Card depending on the salary threshold: over 155 000 TCN currently working in the EU fall into that category. If one looks only at those having arrived recently, a group which is particularly likely to be interested in the additional benefits offered by the EU Blue Card, the pool of potential applicants amounts to 40 700 (highest decile of earnings) or 61 700 (9<sup>th</sup> and 10<sup>th</sup> decile). The impact of **highly-qualified migrants already present in the EU but switching to an EU Blue Card** is not estimated. Replacing national permits with EU Blue Cards is expected to increase the overall attractiveness and recognition of the scheme. While this may lead to an increase in applications and cards being issued, the effect of this increase is not estimated for the purposes of this impact assessment. However, the additional mobility rights from which former national permit holders would benefit would have a positive economic impact and are taken into account (see below: *intra-EU mobility*).

An alternative way of estimating an upper bound for the number of additional EU Blue Cards which could be issued in the EU is to look at **unfilled vacancies in shortage occupations** which would meet the requirements of the EU Blue Card (qualifications, salary). Statistics on shortages are explored in depth in Annex 4 of this Impact Assessment (point 1.2 Skills needs and shortages in the EU). For instance, it is estimated that there will be 800 000 unfilled vacancies for ICT professionals in the EU between 2015 and 2020, amounting to 130 000 per year. This figure includes Member States not implementing the EU Blue Card such as the United Kingdom, which has reported relatively large shortages in the ICT sector compared to other Member States.<sup>382</sup> However, data on shortages are not fully available across countries and sectors (notably due to the difficulty of defining and measuring them in a harmonised manner) and can therefore not be used directly for the purpose of this impact assessment.

Rather than shortages, analysing Member States' overall labour needs (due to expansion of certain sectors and replacement demand) can provide some indication of the potential. The table below gives an overview of the estimated number of vacancies which will arise by 2025 (according to CEDEFOP estimates) in the 25 Member States implementing the EU Blue Card, including for highly-qualified workers and for the ISCO categories 1 to 3. Note that this forecast only looks at expected labour demand, and does not compare it to the labour supply.

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<sup>381</sup> OECD (2011), *Recruiting Immigrant Workers: Sweden 2011*, OECD Publishing, p. 69. Available at: <http://dx.doi.org/10.1787/9789264000000-en> and OECD/European Union (2014), *Matching Economic Migration with Labour Market Needs*, OECD Publishing, pp. 372-373. Available at: <http://dx.doi.org/10.1787/9789264216501-en>

<sup>382</sup> Synthesis Report for the EMN Focussed Study 2015. *Determining labour shortages and the need for labour migration from third countries in the EU*.

Table 2 — Job opportunities in absolute numbers (thousands) for 25 Member States - 2013-2025 - Cedefop 2015 Skills Forecast

	ALL JOB OPENINGS		HIGHLY QUALIFIED (ISCED11 level 6 or above)		MANAGERS (ISCO 1)		PROFESSIONALS (ISCO 2)		TECHNICIANS AND ASSOCIATE PROFESSIONALS (ISCO 3)	
	Value	Share	Value	Share	Value	Share	Value	Share	Value	Share
<b>TOTAL</b>	89347.8	100.0%	37679.2	100.0%	6447	100.0%	20823.8	100.0%	11978.3	100.0%
<b>AT</b>	1649.6	1.8%	728.2	1.9%	117.4	1.8%	352.8	1.7%	270.8	2.3%
<b>BE</b>	1959.3	2.2%	1123.3	3.0%	176.3	2.7%	581.7	2.8%	280.4	2.3%
<b>BG</b>	1961.4	2.2%	586.6	1.6%	61.6	1.0%	315	1.5%	128.4	1.1%
<b>CY</b>	179.5	0.2%	93.2	0.2%	6.8	0.1%	37.8	0.2%	18.5	0.2%
<b>CZ</b>	1978.3	2.2%	814.7	2.2%	98.4	1.5%	455.3	2.2%	389.4	3.3%
<b>DE</b>	17911.4	20.0%	5523.4	14.7%	679.4	10.5%	4576.8	22.0%	2983.9	24.9%
<b>EE</b>	382.9	0.4%	142.3	0.4%	10.1	0.2%	94	0.5%	40.6	0.3%
<b>EL</b>	2119.5	2.4%	763	2.0%	73.8	1.1%	386.2	1.9%	158.3	1.3%
<b>ES</b>	8846.1	9.9%	4922.1	13.1%	632.2	9.8%	1188.8	5.7%	1309.2	10.9%
<b>FI</b>	1485.7	1.7%	687.6	1.8%	70	1.1%	419.2	2.0%	169.7	1.4%
<b>FR</b>	13570.9	15.2%	7702.8	20.4%	1254.9	19.5%	3029.1	14.5%	2271.6	19.0%
<b>HR</b>	930.9	1.0%	348.8	0.9%	38.2	0.6%	237.7	1.1%	121.4	1.0%
<b>HU</b>	1979.1	2.2%	949.2	2.5%	191.6	3.0%	514.3	2.5%	201.9	1.7%
<b>IT</b>	11724.2	13.1%	3743.5	9.9%	1713.5	26.6%	2514.1	12.1%	2024.9	16.9%
<b>LT</b>	660.8	0.7%	172.5	0.5%	30.9	0.5%	193.3	0.9%	70.7	0.6%
<b>LU</b>	248.7	0.3%	124.9	0.3%	12.9	0.2%	108.4	0.5%	26.1	0.2%
<b>LV</b>	583.4	0.7%	265.1	0.7%	38.6	0.6%	162.4	0.8%	72.4	0.6%
<b>MT</b>	87.1	0.1%	37.7	0.1%	10.6	0.2%	22.4	0.1%	9.9	0.1%
<b>NL</b>	4285.1	4.8%	2438.5	6.5%	364.7	5.7%	1464.7	7.0%	411.6	3.4%
<b>PL</b>	5524.8	6.2%	3453.8	9.2%	477.5	7.4%	1874.5	9.0%	418.9	3.5%
<b>PT</b>	2303.1	2.6%	541.3	1.4%	198.1	3.1%	333.6	1.6%	113.2	0.9%

<b>RO</b>	4961.3	5.6%	1326.9	3.5%	17.5	0.3%	993.3	4.8%	142.8	1.2%
<b>SE</b>	2733.6	3.1%	1003.8	2.7%	117.2	1.8%	851.1	4.1%	302.2	2.5%
<b>SI</b>	361.9	0.4%	186	0.5%	54.8	0.9%	117.3	0.6%	41.5	0.3%
<b>SK</b>	919.2	1.0%	427.6	1.1%	79.8	1.2%	160.9	0.8%	176.8	1.5%

## 2. DETERMINING THE NUMBER OF ADDITIONAL EU BLUE CARDS UNDER DIFFERENT POLICY OPTIONS

The salary threshold is one of the main admission criteria in all policy options considered in this impact assessment. The level of the salary threshold will determine how many jobs could in theory be filled by a Blue Card holder in any scenario, and will thus help to determine the number of Blue Cards to be assumed for the purposes of this impact assessment.

The salary distribution of Blue Card jobs is assumed to be similar to that of the all jobs which would meet the Blue Card salary criteria (so, the salary distribution curves follow a similar pattern beyond/above the salary threshold, which is the tail end of a bell-shaped curve). This ignores the fact that salaries of highly-skilled migrant workers may tend to cluster just above the salary threshold – a result of employers setting the salary of TCN in such a way so as to just meet the entry conditions but not exceed them. The data used for determining salary distribution is based on full-time employees (see also data sources in Annex 7).

The salary distribution in each of the Member States implementing the EU Blue Card allows calculating the share of jobs held by highly-qualified employees which sits above a certain threshold. The table below shows these shares per Member State, for values such as 0.8, 1.0, 1.2, 1.4 or 1.5 times the average salary. The table also shows the increase in this share, if the threshold is lowered from currently 1.5 to certain values. Annex 7 contains a graphical representation of the effects of national thresholds at various levels.

**Table 3 — Share of population earning above the threshold, according to different thresholds, based on EU-SILC and GSOEP, 2013, only those in “high educated” category, equivalent to post-secondary non-vocational (ISCED 1997 5-6)**<sup>383</sup>

	Percentage highly-qualified workers earning more than..					Relative increase in jobs eligible for a Blue Card			
	0.8 x mean	1 x mean	1.2 x mean	1.4 x mean	1.5 x mean	from 1.5 to 0.8 x mean	from 1.5 to 1 x mean	from 1.5 to 1.2 x mean	from 1.5 to 1.4 x mean
<b>AT</b>	80%	67%	53%	39%	32%	+151.1%	+110.1%	+65.9%	+21.5%
<b>BE</b>	76%	53%	34%	22%	19%	+310.8%	+185.9%	+82.2%	+18.9%

<sup>383</sup> For Germany, data source is GSOEP 2013 and education attainment is classified in different way (less than high school/high school/more than high school). For other countries, 2013 EU-SILC was used.



<b>BG</b>	79%	62%	44%	30%	25%	+210.6%	+142.9%	+71.7%	+18.9%
<b>CY</b>	65%	54%	45%	35%	31%	+105.4%	+71.7%	+41.7%	+10.8%
<b>CZ</b>	87%	71%	53%	37%	32%	+168.7%	+118.9%	+64.1%	+13.6%
<b>DE</b>	81%	65%	48%	35%	31%	+163.9%	+114.1%	+56.7%	+15.4%
<b>EE</b>	67%	50%	39%	29%	27%	+152.1%	+89.4%	+45.7%	+9.8%
<b>EL</b>	76%	55%	36%	24%	18%	+329.2%	+207.9%	+100.6%	+32.6%
<b>ES</b>	74%	61%	48%	37%	32%	+133.7%	+92.1%	+52.4%	+18.1%
<b>FI</b>	75%	56%	39%	28%	24%	+216.9%	+134.2%	+65.8%	+17.3%
<b>FR</b>	77%	58%	40%	27%	23%	+234.9%	+151.5%	+73.4%	+19.7%
<b>HR</b>	85%	77%	65%	49%	40%	+113.4%	+93.5%	+64.0%	+23.4%
<b>HU</b>	83%	71%	56%	43%	39%	+112.3%	+82.8%	+43.6%	+10.0%
<b>IT</b>	78%	59%	41%	28%	25%	+215.0%	+138.1%	+66.0%	+14.2%
<b>LT</b>	73%	59%	45%	34%	29%	+147.3%	+100.0%	+54.4%	+15.3%
<b>LU</b>	81%	72%	59%	46%	39%	+110.1%	+86.0%	+53.2%	+18.3%
<b>LV</b>	71%	59%	47%	35%	31%	+129.1%	+92.2%	+50.5%	+14.2%
<b>MT</b>	84%	68%	46%	31%	27%	+218.5%	+157.4%	+74.7%	+16.2%
<b>NL</b>	80%	61%	44%	28%	22%	+257.0%	+174.0%	+97.3%	+25.1%
<b>PL</b>	76%	60%	46%	35%	31%	+147.7%	+97.1%	+48.7%	+13.1%
<b>PT</b>	85%	77%	66%	52%	47%	+83.0%	+65.5%	+41.4%	+12.0%
<b>RO</b>	87%	72%	59%	42%	35%	+145.9%	+102.5%	+67.4%	+17.6%
<b>SE</b>	74%	49%	32%	21%	17%	+329.7%	+182.0%	+83.7%	+20.3%
<b>SI</b>	80%	69%	56%	42%	34%	+132.8%	+99.1%	+62.2%	+21.2%
<b>SK</b>	81%	67%	42%	25%	22%	+262.8%	+198.7%	+89.2%	+12.6%

## 2.1. POP 1

The effect of having no salary threshold while maintaining the qualification requirement can be determined by calculating the share of highly-qualified workers currently earning less than 1.5 times the average salary. Assuming the share of third-country nationals currently not admitted due to the salary threshold is similar, the additional number of permits which can be expected in the absence of a salary criterion can be calculated using the same baseline of 69 000, increased by 25 percent due to the inclusion of shorter-duration permits. The scheme

would be limited to ISCO 1 or 2 occupations, which make up between 46 and 85 percent of all jobs held by highly-qualified workers (according to 2014 Labour force survey data).

Compared to other options, the effect is large in all Member States. It would lead to **142 610** additional cards across the 25 Member States applying the EU Blue Card.

**Table 4 — Increase in EU Blue Cards for highly-qualified workers without salary threshold**

	Share in additional Blue Cards	Calculated baseline for all HSW	Additional Blue Cards of short duration at 1.5 x mean	Share of HSW below 1.5 x mean (%)	Share of highly-qualified working in ISCO 1-2	Additional Blue Cards without salary threshold (%)	Additional Blue Cards without salary threshold (number)
	A	B	C	D	E	$F = D / (1-D)$	$G = E \text{ and } F \text{ applied to } B + C$
<b>AT</b>	2.6%	1 808	452	68.3%	49%	+215.5%	2 389
<b>BE</b>	3.1%	2 135	534	81.5%	61%	+440.5%	7 129
<b>BG</b>	1.1%	742	185	74.6%	60%	+293.7%	1 646
<b>CY</b>	0.7%	458	114	68.6%	47%	+218.5%	592
<b>CZ</b>	1.6%	1 108	277	67.7%	66%	+209.6%	1 905
<b>DE</b>	20.7%	14 291	3 573	69.5%	55%	+227.9%	22 339
<b>EE</b>	0.3%	193	48	73.5%	54%	+277.4%	362
<b>EL</b>	1.3%	900	225	82.2%	46%	+461.8%	2 909
<b>ES</b>	9.8%	6 731	1 683	68.5%	54%	+217.5%	8 468
<b>FI</b>	2.2%	1 523	381	76.3%	50%	+321.9%	3 310
<b>FR</b>	15.7%	10 814	2 703	77.1%	56%	+336.7%	22 971
<b>HR</b>	0.8%	536	134	60.3%	68%	+151.9%	696
<b>HU</b>	1.5%	1 065	266	61.0%	68%	+156.4%	1 414
<b>IT</b>	7.6%	5 266	1 317	75.3%	52%	+304.9%	10 450
<b>LT</b>	0.6%	429	107	70.6%	70%	+240.1%	903
<b>LU</b>	0.2%	163	41	61.3%	85%	+158.4%	273
<b>LV</b>	0.7%	454	113	69.1%	60%	+223.6%	761
<b>MT</b>	0.1%	45	11	73.5%	73%	+277.4%	113
<b>NL</b>	10.7%	7 382	1 845	77.7%	66%	+348.4%	21 114

<b>PL</b>	6.6%	4 551	1 138	69.4%	66%	+226.8%	8 552
<b>PT</b>	1.9%	1 309	327	53.4%	74%	+114.6%	1 396
<b>RO</b>	2.2%	1 541	385	64.7%	73%	+183.3%	2 562
<b>SE</b>	7.0%	4 820	1 205	82.8%	65%	+481.4%	18 783
<b>SI</b>	0.4%	248	62	65.6%	74%	+190.7%	439
<b>SK</b>	0.7%	489	122	77.7%	53%	+348.4%	1 133
<b>TOTAL</b>		<b>69 000</b>					<b>142 610</b>

The effect of having a salary threshold but no qualification requirements cannot be reliably estimated using the method described above. However, as above, SILC data can show the share of medium-skilled jobs which surpass a certain salary threshold. This shows the size of the labour market which would be open to the scheme as proposed in POP1: between 3.8 and 8 million jobs.

Table 5 — Medium-skilled jobs surpassing a certain salary threshold (share and absolute numbers)<sup>384</sup>

	Total number of medium-skilled jobs	1.4*mean	1.7*mean	1.4*mean	1.7*mean
<b>AT</b>	1 966 346	14%	7%	269 389	131 745
<b>BE</b>	1 519 431	5%	2%	71 413	24 311
<b>BG</b>	1 512 209	11%	5%	164 831	72 586
<b>CY</b>	114 750	13%	7%	14 344	7 573
<b>CZ</b>	2 975 378	10%	4%	282 661	116 040
<b>DE</b>	21 833 683	10%	5%	2 248 869	1 048 017
<b>EE</b>	293 181	14%	8%	40 752	23 161
<b>EL</b>	3 363 484	8%	4%	262 352	141 266
<b>ES</b>	961 483	15%	7%	142 300	67 304
<b>FI</b>	10 249 615	5%	2%	512 481	204 992
<b>FR</b>	942 380	7%	3%	66 909	29 214
<b>HR</b>	841 380	11%	4%	89 186	30 290

<sup>384</sup> The total number of jobs held by workers with medium level of education in table 8 (first column) is taken from the EU Labour force survey (2014).

<b>HU</b>	2 255 229	9%	4%	198 460	99 230
<b>IT</b>	8 278 890	13%	6%	1 092 813	529 849
<b>LT</b>	600 019	10%	5%	60 002	28 201
<b>LU</b>	77 856	13%	5%	10 277	3 737
<b>LV</b>	452 463	13%	7%	57 010	30 315
<b>MT</b>	51 093	13%	7%	6 642	3 423
<b>NL</b>	2 964 856	7%	2%	198 645	68 192
<b>PL</b>	7 493 638	10%	6%	734 377	419 644
<b>PT</b>	956 698	16%	10%	155 942	99 497
<b>RO</b>	3 755 364	8%	4%	281 652	135 193
<b>SE</b>	2 019 681	10%	5%	203 988	92 905
<b>SI</b>	423 289	5%	2%	22 434	10 159
<b>SK</b>	1 454 700	10%	4%	142 561	53 824
<b>Total</b>	<b>77 357 095</b>	<b>10%</b>	<b>5%</b>	<b>8 045 138</b>	<b>3 790 498</b>

## 2.2. POP 2A

The figures in [Table 3](#) above can be combined with the baseline figure of 69 000 permits — separated into 60 % regular Blue Cards, 20 % for shortage occupations and 20 % for recent graduates — and the distribution per Member State calculated in [Table 1](#), as well as the 25 percent increase across the board due to the inclusion of shorter-duration permits. This shows the impact on the number of EU Blue Cards which can be expected from a decrease in the salary threshold — all other effects being equal — included in the table below. This method does entail some double-counting: some national schemes for admitting highly-qualified workers do not currently have a salary threshold, or have one which is below the one set for the EU Blue Card (see Annex 7). In such cases, the increase in admissions resulting from lowering the EU Blue Card threshold is likely to be lower. The extent of this double-counting is not estimated.

[Table 6](#) shows the effect on the number of permits for highly-skilled work. The combined effect of a decrease in salary threshold and an extension of the scope to shorter-duration permits would be an increase in the number of cards issued between **9 278** (if the salary threshold is lowered to 1.4 times the average salary in each Member State) and **68 280** (with the threshold set at the average salary in each Member State). This wide range stems from the flexible fork from 1.0 to 1.4 to be applied in POP 2A and the uncertainty about what decisions Member States would take.

[Table 7](#) shows the effect of applying the lower threshold range to shortage occupations and jobs for recent graduates. The baseline is lower — 40 percent of the total baseline — but the lower

salary thresholds result in a larger impact. As above, the effect of extending of the scope to shorter-duration permits is also taken into account. Lowering the threshold to between 1.2 and 0.8 times (i.e. 80% of respectively 1.4 and 1.0) the average salary would result in between **23 206** and **69 410** cards being issued additionally.

**Table 6 — Increase in regular EU Blue Cards for highly-qualified workers with thresholds at 1.4 and 1.0 times the average salary instead of the current 1.5**

	Share in additional Blue Cards	Estimated baseline	Additional Blue Cards of short duration at 1.5 x mean	Additional Blue Cards at 1.0 x mean (%)	Additional Blue Cards at 1.4 x mean (%)	Additional Blue Cards at or above 1.0 x mean (number)	Additional Blue Cards at or above 1.4 x mean (number)
	A	B	C	D	E	F = applying D to B and C	G = applying E to B and C
<b>AT</b>	2.6%	1 085	271	+110.1%	+21.5%	1 493	291
<b>BE</b>	3.1%	1 281	320	+185.9%	+18.9%	2 978	303
<b>BG</b>	1.1%	445	111	+142.9%	+18.9%	795	105
<b>CY</b>	0.7%	275	69	+71.7%	+10.8%	246	37
<b>CZ</b>	1.6%	665	166	+118.9%	+13.6%	988	113
<b>DE</b>	20.7%	8 575	2 144	+114.1%	+15.4%	12 229	1 652
<b>EE</b>	0.3%	116	29	+89.4%	+9.8%	129	14
<b>EL</b>	1.3%	540	135	+207.9%	+32.6%	1 404	220
<b>ES</b>	9.8%	4 038	1 010	+92.1%	+18.1%	4 647	913
<b>FI</b>	2.2%	914	228	+134.2%	+17.3%	1 533	198
<b>FR</b>	15.7%	6 488	1 622	+151.5%	+19.7%	12 289	1 594
<b>HR</b>	0.8%	322	80	+93.5%	+23.4%	376	94
<b>HU</b>	1.5%	639	160	+82.8%	+10.0%	662	80
<b>IT</b>	7.6%	3 160	790	+138.1%	+14.2%	5 453	560
<b>LT</b>	0.6%	258	64	+100.0%	+15.3%	322	49
<b>LU</b>	0.2%	98	24	+86.0%	+18.3%	105	22
<b>LV</b>	0.7%	272	68	+92.2%	+14.2%	314	48
<b>MT</b>	0.1%	27	7	+157.4%	+16.2%	53	5
<b>NL</b>	10.7%	4 429	1 107	+174.0%	+25.1%	9 633	1 390
<b>PL</b>	6.6%	2 730	683	+97.1%	+13.1%	3 313	446

<b>PT</b>	1.9%	785	196	+65.5%	+12.0%	643	118
<b>RO</b>	2.2%	925	231	+102.5%	+17.6%	1 185	203
<b>SE</b>	7.0%	2 892	723	+182.0%	+20.3%	6 578	736
<b>SI</b>	0.4%	149	37	+99.1%	+21.2%	184	39
<b>SK</b>	0.7%	293	73	+198.7%	+12.6%	728	46
<b>TOTAL</b>		<b>41 400</b>	<b>10 350</b>			<b>68 280</b>	<b>9 278</b>

Table 7 — Increase in EU Blue Cards for highly-qualified recent graduates and workers in shortage occupations with thresholds at 0.8 and 1.2 times the average salary (i.e. 80% of the 1 - 1.4 fork)

	Share in additional Blue Cards	Calculated baseline for graduates and shortage	Additional Blue Cards of short duration at 1.5 x mean	Additional Blue Cards at 0.8 x mean (%)	Additional Blue Cards at 1.2 x mean (%)	Additional Blue Cards at or above 0.8 x mean (number)	Additional Blue Cards at or above 1.2 x mean (number)
	A	B	C	D	E	F = applying D to B + C	G = applying E to B + C
<b>AT</b>	2.6%	723	181	+151.1%	+65.9%	1 366	596
<b>BE</b>	3.1%	854	214	+310.8%	+82.2%	3 318	877
<b>BG</b>	1.1%	297	74	+210.6%	+71.7%	781	266
<b>CY</b>	0.7%	183	46	+105.4%	+41.7%	241	95
<b>CZ</b>	1.6%	443	111	+168.7%	+64.1%	935	355
<b>DE</b>	20.7%	5 716	1 429	+163.9%	+56.7%	11 714	4 053
<b>EE</b>	0.3%	77	19	+152.1%	+45.7%	147	44
<b>EL</b>	1.3%	360	90	+329.2%	+100.6%	1 482	453
<b>ES</b>	9.8%	2 692	673	+133.7%	+52.4%	4 498	1 763
<b>FI</b>	2.2%	609	152	+216.9%	+65.8%	1 652	501
<b>FR</b>	15.7%	4 326	1 081	+234.9%	+73.4%	12 703	3 967
<b>HR</b>	0.8%	214	54	+113.4%	+64.0%	304	172
<b>HU</b>	1.5%	426	107	+112.3%	+43.6%	598	232
<b>IT</b>	7.6%	2 107	527	+215.0%	+66.0%	5 661	1 738
<b>LT</b>	0.6%	172	43	+147.3%	+54.4%	316	117

<b>LU</b>	0.2%	65	16	+110.1%	+53.2%	90	43
<b>LV</b>	0.7%	181	45	+129.1%	+50.5%	293	115
<b>MT</b>	0.1%	18	4	+218.5%	+74.7%	49	17
<b>NL</b>	10.7%	2 953	738	+257.0%	+97.3%	9 484	3 592
<b>PL</b>	6.6%	1 820	455	+147.7%	+48.7%	3 361	1 108
<b>PT</b>	1.9%	524	131	+83.0%	+41.4%	544	271
<b>RO</b>	2.2%	616	154	+145.9%	+67.4%	1 124	520
<b>SE</b>	7.0%	1 928	482	+329.7%	+83.7%	7 945	2 018
<b>SI</b>	0.4%	99	25	+132.8%	+62.2%	165	77
<b>SK</b>	0.7%	195	49	+262.8%	+89.2%	642	218
<b>TOTAL</b>		<b>27 600</b>				<b>69 410</b>	<b>23 206</b>

### 2.3. POP 2B

Policy option package 2B entails setting the salary threshold at between 1.5 and 1.7 times the average salary. In this analysis, any salary threshold above 1.5 times the average has a negative impact on the number of cards issued. The positive effect (+ 25 percent) of extending the scope of the EU Blue card to shorter-duration permits remains and, in some countries, outweighs the negative impact of the higher salary threshold.

The net impact of this scenario ranges from an increase in the number of cards of **17 250** (if the threshold is kept at 1.5 times the average salary) to a slight decrease (**- 8 149**) compared to the baseline (if the threshold is moved to 1.7 the average salary). The total number of Blue Cards issued would be between **86 250** and **60 851**.

A positive impact can be expected from the increase in intra-EU mobility for the remaining Blue Cards which would be issued (see further). If Member States maintain national schemes for admitting highly-qualified employees, the negative impact (fewer cards) resulting from any exclusion of lower-paid TCN workers (i.e. not meeting the threshold) could be mitigated.

Table 8 — Number of permits being issued with threshold for EU Blue Card set at 1.5 and 1.7 times the average salary

	Share in additional Blue Cards	Calculated baseline for regular threshold	Additional Blue Cards of short duration at 1.5 x mean	Net number of Blue Cards being issued at or above 1.5 x mean	Additional permits for HSW at 1.7 x mean (%)	Additional permits for HSW at or above 1.7 x mean (number)	Net number of Blue Cards being issued at or above 1.7 x mean
		A	B	A+B	C.	Effect B and C	Compared to

					<i>Applied to A+B</i>		A
<b>AT</b>	2.6%	1 808	452	2 260	-26.2%	- 140	1 668
<b>BE</b>	3.1%	2 135	534	2 669	-31.9%	- 317	1 818
<b>BG</b>	1.1%	742	185	927	-29.5%	- 88	653
<b>CY</b>	0.7%	458	114	572	-21.7%	- 9	448
<b>CZ</b>	1.6%	1 108	277	1 385	-28.5%	- 117	991
<b>DE</b>	20.7%	14 291	3 573	17 864	-31.8%	-2 109	12 182
<b>EE</b>	0.3%	193	48	241	-34.0%	- 34	159
<b>EL</b>	1.3%	900	225	1 125	-25.8%	- 66	835
<b>ES</b>	9.8%	6 731	1 683	8 413	-33.3%	-1 122	5 609
<b>FI</b>	2.2%	1 523	381	1 904	-32.5%	- 238	1 285
<b>FR</b>	15.7%	10 814	2 703	13 517	-27.1%	- 956	9 858
<b>HR</b>	0.8%	536	134	670	-37.8%	- 119	417
<b>HU</b>	1.5%	1 065	266	1 331	-24.6%	- 61	1 004
<b>IT</b>	7.6%	5 266	1 317	6 583	-19.8%	11	5 277
<b>LT</b>	0.6%	429	107	537	-28.6%	- 46	383
<b>LU</b>	0.2%	163	41	204	-35.9%	- 32	131
<b>LV</b>	0.7%	454	113	567	-23.6%	- 21	433
<b>MT</b>	0.1%	45	11	56	-23.4%	- 2	43
<b>NL</b>	10.7%	7 382	1 845	9 227	-35.4%	-1 423	5 959
<b>PL</b>	6.6%	4 551	1 138	5 688	-24.8%	- 275	4 275
<b>PT</b>	1.9%	1 309	327	1 636	-18.9%	18	1 327
<b>RO</b>	2.2%	1 541	385	1 926	-26.3%	- 122	1 419
<b>SE</b>	7.0%	4 820	1 205	6 025	-32.0%	- 722	4 098
<b>SI</b>	0.4%	248	62	310	-26.5%	- 20	228
<b>SK</b>	0.7%	489	122	611	-42.6%	- 138	351
<b>TOTAL</b>		<b>69 000</b>		<b>86 250</b>		<b>- 8 149</b>	<b>60 851</b>



## 2.4. POP 3

The effect of setting an EU-wide salary threshold based on the average salary in the top-third wealthiest Member States applying the EU Blue Card (POP 3) can be done using the same method as before. For the purposes of this calculation, the threshold is set at 49 700 EUR, equalling 1.4 times the average salary of the 7 highest-income countries as reported in SILC. The average salary of Germany is not taken into account since there was no corresponding value in the SILC data extraction used. As can be expected given the large differences in average salaries between Member States, the effect of a single EU-wide threshold on the number of eligible jobs compared to the baseline varies significantly. While nearly 56 percent of highly-qualified workers earn more than this threshold in Luxemburg, this share is less than 1 percent in 9 out of 25 Member States. If Member States maintain national schemes for admitting highly-qualified employees, the (in some Member States substantial) negative impact resulting from the exclusion of lower-paid TCN workers could be mitigated.

The introduction of an EU-wide salary threshold would reduce the number of cards issued by **24 926**. Combined with the (positive) effect of lowering the minimum duration, this would lead to **61 324** Blue Cards being issued.

**Table 9 — Number of EU Blue Cards per Member State if one EU-wide salary threshold, based on the wealthiest one-third of Member States, is applied. (\*) SILC data for Germany was not available & an approximation was made based on GSOEP. The salary threshold for this exercise was set at 49 700 EUR.**

	Share in additional Blue Cards	Calculated baseline	Additional Blue Cards of short duration at 1.5 x mean	Share of jobs at or above the set EU wide threshold	Change in eligible jobs compared to baseline	Additional permits at set EU-wide threshold	Net number of Blue Cards being issued at or above set EU-wide threshold
<b>AT</b>	2.6%	1 808	452	29.0%	-9%	-193	2 068
<b>BE</b>	3.1%	2 135	534	20.7%	12%	317	2 986
<b>BG</b>	1.1%	742	185	0.1%	-100%	-923	4
<b>CY</b>	0.7%	458	114	11.6%	-63%	-361	211
<b>CZ</b>	1.6%	1 108	277	1.0%	-97%	-1 342	43
<b>DE (*)</b>	20.7%	14 291	3 573	29.0%	41%	-879	16 985
<b>EE</b>	0.3%	193	48	0.6%	-98%	-236	5
<b>EL</b>	1.3%	900	225	2.4%	-87%	-974	152
<b>ES</b>	9.8%	6 731	1 683	8.0%	-75%	-6 277	2 137
<b>FI</b>	2.2%	1 523	381	27.2%	15%	281	2 185
<b>FR</b>	15.7%	10 814	2 703	14.1%	-38%	-5 194	8 323
<b>HR</b>	0.8%	536	134	0.4%	-99%	-664	7

<b>HU</b>	1.5%	1 065	266	0.1%	-100%	-1 328	3
<b>IT</b>	7.6%	5 266	1 317	12.7%	-49%	-3 198	3 385
<b>LT</b>	0.6%	429	107	0.0%	-100%	-537	0
<b>LU</b>	0.2%	163	41	55.9%	44%	91	294
<b>LV</b>	0.7%	454	113	0.7%	-98%	-554	13
<b>MT</b>	0.1%	45	11	5.1%	-81%	-45	11
<b>NL</b>	10.7%	7 382	1 845	35.7%	60%	5 545	14 772
<b>PL</b>	6.6%	4 551	1 138	0.6%	-98%	-5 577	112
<b>PT</b>	1.9%	1 309	327	4.0%	-91%	-1 496	140
<b>RO</b>	2.2%	1 541	385	0.0%	-100%	-1 926	0
<b>SE</b>	7.0%	4 820	1 205	21.2%	23%	1 401	7 426
<b>SI</b>	0.4%	248	62	6.6%	-81%	-250	59
<b>SK</b>	0.7%	489	122	0.1%	-100%	-608	3
<b>TOTAL</b>		<b>69 000</b>				<b>-24 926</b>	<b>61 324</b>

### 3. ASSUMPTIONS REGARDING THE SALARY LEVELS FOR DETERMINING ECONOMIC IMPACT

The economic impact of an additional EU Blue Card is determined by the salary which the corresponding job will pay. This figure will be corrected (reduced) to take into account remittances. Newly admitted workers are assumed to be net additions to the economy, with no displacement effect as far as highly-qualified workers is concerned.

Salary levels differ significantly between the Member States implementing the EU Blue Card. Therefore, the impact of any additional Blue Cards will be based on average salary levels per Member State, except for those policy options where an EU-wide salary threshold is set. The salary used in this calculation of impacts should be above the relevant salary threshold. The **salary levels used in the impact calculations** are derived from the Structure of Earnings Survey (SES), which is a 4-yearly survey which provides EU-wide harmonised structural data on gross earnings, hours paid and annual days of paid holiday leave. Member States' average salaries in each of the Blue Card's target groups can be derived from the survey's results and are listed in the table below.

Three categories of reference salaries are calculated per Member State, and shown in [Table 10](#) below. The policy options for which the salaries are relevant are mentioned between brackets.

- For **highly-qualified workers**, based on the average salary for ISCED97 5a and (where available) ISCED97 6 workers as reported in the 2010 SES,<sup>385</sup> weighted according to the sizes of the respective populations of ISCED 5a and ISCED 6 workers in that Member State.<sup>386</sup> If the salaries of ISCED 6 were not reported, the salary for 5A is taken by itself. These values are shown in italic and marked by (\*) in the table below. [*POP2(a), POP2(c)*]

A separate calculation shows the average salary for highly-qualified workers admitted under a scheme with a higher salary threshold (1.7 x average salary, with their average salary estimated at 1.8 x the average salary as reported in SES), as well as the salary of those highly-qualified workers excluded from such a scheme (estimated at around 1.6 times the average salary as reported in SES) [*POP2(b)*]

For the scenario where an EU-wide salary threshold is taken, the average salary of the admitted workers is assumed to be equal to the average salary for highly-qualified workers in the Member State concerned if this is above the EU-wide threshold. In countries where the average salary of highly-qualified workers is below the EU-wide threshold, the threshold itself is used to calculate the economic impact; this is an underestimation, since some cards would be issued for jobs offering wages above the threshold. [*POP3*].

- For **managers, professionals, technicians and associate professionals** (ISCO 1, 2 & 3), by taking the weighted average of salaries of the relevant jobs in that Member State. If the salaries of occupational categories were not given, the ISCO 1-2 salary is estimated at 130 percent of the average salary for workers in that Member State, while ISCO 1-3 is estimated at 120 percent.<sup>387</sup> The latter are shown in italic and marked by a (\*\*) in the table below. [*POP2(a), POP2(c), POP(1)*]
- For **recent graduates**, by reducing the average wage for highly-qualified workers in a Member State with the age penalty evident from SES data. SES data shows wages on under-30s are between 66 and 99 percent of average wages.<sup>388</sup> Although these figures show there is a large variety across countries, the age penalty is fairly stable between job categories within the same country.<sup>389</sup> [*POP2(a), POP2(c), POP(1)*]
- An **EU-wide reference salary**, based on the salary of highly-qualified workers in the top-third most prosperous Blue Card Member States. This sits above the EU-wide threshold of 49 700 EUR and is estimated at 61 596 EUR, based on SES data [*POP(3)*]

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<sup>385</sup> No salary data for ISCED97 level 6 were available for AT, DE, HU in the dataset (*Mean annual earnings by sex, economic activity and educational attainment* [earn\_ses10\_30]). ISCED97 level 5A salaries were used instead.

<sup>386</sup> Level 5A according to ISCED97 as reported in dataset "*Mean annual earnings by sex, size class of the enterprise and occupation*" [earn\_ses10\_30] of the Structure of Earnings Survey 2010.

<sup>387</sup> Source: Eurostat, Structure of Earnings Survey 2010. *Mean annual earnings by sex, size class of the enterprise and occupation* [earn\_ses10\_32]

<sup>388</sup> Source: Eurostat, Structure of Earnings Survey 2010. *Mean annual earnings by sex, age and occupation - NACE Rev. 2, B-S excluding O* [earn\_ses10\_28]

<sup>389</sup> Source: Eurostat, Structure of Earnings Survey 2010. *Mean annual earnings by sex, age and economic activity* [earn\_ses10\_27] and *Mean annual earnings by sex, age and occupation - NACE Rev. 2, B-S excluding O* [earn\_ses10\_28]

Table 10 — Average / Reference salaries in the Blue Card Member States according to the Structure of Earnings Survey

	All workers	Highly-qualified workers			Managers and professionals	Managers, professionals, associate professionals and technicians	Recent graduates
		Average highly-qualified	1.6 x average all workers	1.8x average all workers	ISCO 1-2	ISCO 1-3	
<b>AT</b>	38 895	68 020*	62 232	70 011	50 564**	46 674**	46 511
<b>BE</b>	43 388	69 365	69 421	78 098	56 404**	52 066**	53 099
<b>BG</b>	4 618	7 599	7 389	8 312	6 033	5 477	6 940
<b>CY</b>	26 927	41 147	43 083	48 469	35 005**	32 312**	27 267
<b>CZ</b>	12 592	21 665	20 147	22 666	18 611	15 866	18 522
<b>DE</b>	38 735	62 873*	61 976	69 723	55 681	48 803	39 654
<b>EE</b>	10 395	15 900	16 632	18 711	13 708	12 876	15 109
<b>EL</b>	25 669	33 180	41 070	46 204	33 370**	30 803**	22 572
<b>ES</b>	27 057	37 670	43 291	48 703	34 847	31 006	27 781
<b>FI</b>	40 281	51 587	64 450	72 506	55 711	48 764	43 108
<b>FR</b>	33 897	49 172	54 235	61 015	53 451	47 215	34 601
<b>HR</b>	12 494	21 769	19 990	22 489	16 242**	14 993**	16 997
<b>HU</b>	9 916	17 056*	15 866	17 849	12 707	10 978	14 141
<b>IT</b>	31 680	52 261	50 688	57 024	41 184**	38 016**	37 726
<b>LT</b>	7 138	10 494	11 421	12 848	8 602	7 965	10 342
<b>LU</b>	51 663	86 058	82 661	92 993	66 958	61 861	59 724
<b>LV</b>	8 357	12 582	13 371	15 043	9 809	9 260	12 478
<b>MT</b>	18 744	24 635	29 990	33 739	24 367**	22 493**	20 762
<b>NL</b>	41 149	62 355	65 838	74 068	53 494**	49 379**	43 237
<b>PL</b>	10 426	15 660	16 682	18 767	12 191	11 394	12 462
<b>PT</b>	18 354	35 920	29 366	33 037	23 860**	22 025**	23 684
<b>RO</b>	5 991	10 845	9 586	10 784	6 451	5 435	9 173

<b>SE</b>	38 716	43 339	61 946	69 689	49 535	47 258	39 293
<b>SI</b>	21 135	35 062	33 816	38 043	27 476**	25 362**	28 007
<b>SK</b>	10 232	16 421	16 371	18 418	12 814	11 865	14 646
<b>Wealthiest 1/3 of MS</b>	40 841	61 596					

#### 4. APPLICABLE SALARY THRESHOLDS

The average salaries calculated above are based on survey data and give an idea of what an average employee will earn and hence the impact he or she will have on the host country's economy. It should be noted that for the purposes of the implementation of the EU Blue Card, it is unlikely that survey data will be used to set the salary threshold. Instead, the salary threshold is likely to be set based on actual labour market data (administrative data or National accounts). The wage thresholds can be calculated based on the actual average salary — dividing a Member State's wages and salaries<sup>390</sup> by the number of employees.<sup>391</sup> These thresholds are not used in calculation of impacts. However, they do place a lower bound on the salaries calculated before and can serve as a reality check. Thresholds which are underlined are at a level which risks excluding a (significant) part of their target population (see salary levels in Table 10).

- The salary threshold of POP2a and POP1 for HSW are set at 1.0 – 1.4 times the average salary in the Member State concerned. The salary threshold for shortage occupations is set at 80 percent of the same range (i.e. 0.8 to 1.2 times the average).
- The salary threshold of POP2b is set at 1.5 to 1.7 times the average salary.
- The salary threshold for POP3 should be at least 1.4 times the average salary in the third most prosperous EU Member States implementing the EU Blue Card (8 Member States: LU, BE, SE, FI, AT, NL, FR, DE).

Table 11 — Salary threshold ranges using national accounts (high to low)

					<i>Selective scheme</i>	
	<i>1.0 x mean</i>	<i>1.4 x mean</i>	<i>0.8 x mean</i>	<i>1.2 x mean</i>	<i>1.5 x mean</i>	<i>1.7 x mean</i>
<b>LU</b>	€ 55 426	€ 77 596	€ 44 341	€ 62 077	€ 83 138	€ 94 224
<b>BE</b>	€ 38 809	€ 54 332	€ 31 047	€ 43 466	€ 58 213	€ 65 974
<b>SE</b>	€ 38 373	<u>€ 53 722</u>	€ 30 698	€ 42 978	€ 57 559	€ 65 234
<b>FI</b>	€ 37 453	<u>€ 52 435</u>	€ 29 963	€ 41 948	€ 56 180	€ 63 671

<sup>390</sup> *Wages and salaries — current prices* [nama\_10\_gdp]. Eurostat. Data from Croatia is missing.

<sup>391</sup> *Employees domestic concept* [naida\_10\_pe]. Eurostat.

<b>AT</b>	€ 35 322	€ 49 451	€ 28 258	€ 39 561	€ 52 983	€ 60 048
<b>NL</b>	€ 35 070	€ 49 097	€ 28 056	€ 39 278	€ 52 604	€ 59 618
<b>FR</b>	€ 33 455	€ 46 837	€ 26 764	<u>€ 37 469</u>	€ 50 182	€ 56 873
<b>DE</b>	€ 31 615	€ 44 260	€ 25 292	€ 35 408	€ 47 422	€ 53 745
		€ 53 466				
<b>IT</b>	€ 25 972	€ 36 360	€ 20 777	€ 29 088	€ 38 958	€ 44 152
<b>ES</b>	€ 25 244	€ 35 341	€ 20 195	<u>€ 28 273</u>	€ 37 866	€ 42 915
<b>CY</b>	€ 21 229	€ 29 721	€ 16 983	€ 23 777	€ 31 844	€ 36 090
<b>SI</b>	€ 21 151	€ 29 612	€ 16 921	€ 23 690	€ 31 727	€ 35 957
<b>MT</b>	€ 19 552	<u>€ 27 373</u>	€ 15 642	<u>€ 21 898</u>	€ 29 328	€ 33 239
<b>EL</b>	€ 16 521	€ 23 130	€ 13 217	€ 18 504	€ 24 782	€ 28 086
<b>PT</b>	€ 15 738	€ 22 033	€ 12 590	€ 17 626	€ 23 606	€ 26 754
<b>EE</b>	€ 12 487	<u>€ 17 482</u>	€ 9 990	<u>€ 13 986</u>	€ 18 731	€ 21 228
<b>SK</b>	€ 11 572	€ 16 201	€ 9 258	<u>€ 12 961</u>	€ 17 358	€ 19 673
<b>CZ</b>	€ 10 892	€ 15 249	€ 8 714	€ 12 199	€ 16 338	€ 18 517
<b>LV</b>	€ 10 808	<u>€ 15 132</u>	€ 8 647	<u>€ 12 105</u>	€ 16 213	€ 18 374
<b>PL</b>	€ 10 422	€ 14 591	€ 8 338	<u>€ 11 673</u>	€ 15 633	€ 17 718
<b>LT</b>	€ 9 845	<u>€ 13 783</u>	<u>€ 7 876</u>	<u>€ 11 026</u>	€ 14 767	€ 16 736
<b>HU</b>	€ 9 142	€ 12 798	€ 7 313	€ 10 239	€ 13 713	€ 15 541
<b>RO</b>	€ 6 431	€ 9 004	€ 5 145	<u>€ 7 203</u>	€ 9 647	€ 10 933
<b>BG</b>	€ 5 973	<u>€ 8 362</u>	€ 4 778	€ 6 689	€ 8 959	€ 10 153

## 5. DISPLACEMENT EFFECT ON LOCAL WORKERS

Some studies indicate labour migration may lead to displacement of local workers,<sup>392</sup> while others find no such effect. Leaving aside the obvious concerns this would raise with policy makers and stakeholders, any displacement would affect the economic benefit as calculated here for the purposes of this impact assessment.

In light of existing research, it seems reasonable to distinguish between displacement effect on (and by) highly-skilled workers on the one hand, and the effect on the medium-skilled job-

<sup>392</sup> UK Migration Advisory Committee. *Analysis of the Impacts of Migration*. January 2012. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/257235/analysis-of-the-impacts.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257235/analysis-of-the-impacts.pdf)

market. The Blue Card scheme is aimed at highly-qualified (tertiary-educated) and relatively well-paid employees. However, at least one option proposes to apply a salary threshold without additional requirements as regards the person's qualifications.

Studies on displacement which disaggregate according to levels of skill or qualification show impacts vary considerably. At least one study has found the negative impact on natives' employment is limited to workers with O-level (or secondary) qualifications, while finding no effect for graduates.<sup>393</sup> Several studies find a positive effect of highly skilled migration on productivity, investment, innovation<sup>394</sup> and, ultimately, growth.<sup>395</sup>

There are a number of elements specific to the EU Blue Card scheme which would limit any displacement effect. The salary threshold acts as a barrier to labour market entry and as a proxy for skills, and will therefore provide some protection against labour competition, above and beyond schemes which do not have a salary threshold. Where lower-level qualifications are considered in the revised Blue Card proposal, it would be limited to the highest ISCO categories, further limiting the scope for displacement.

The EU Blue Card requires the applicant to have a binding job offer before being granted a permit. In the absence of a displacement effect for highly-qualified jobs, no downward pressure of wages is to be expected.

For the purposes of this impact assessment, it is assumed highly-qualified workers do not displace native workers. The economic impact of admitting medium-skilled workers (one element of POP 1) could not be calculated.

## 6. INTRA-EU MOBILITY OF BLUE CARD HOLDERS

The impact study includes an estimate of the share of BC holders which will avail themselves of intra-EU mobility rights. The impact of intra-EU mobility is calculated by multiplying the number of Blue Card holders who make use of this facility with the expected rise in pay.

The **upper bound** of the mobility rate, applicable to the most mobile of HSW, is based on the rate which was assumed for intra-corporate transferees.<sup>396</sup> The impact assessment for the proposal for a Directive on intra-corporate transferees, a highly-mobile kind of employee, assumed around 10-25 percent of these ICT permit holders would need mobility.<sup>397</sup> Actual mobility by ICT permit holders can be assumed to be a bit lower given the constraints which remain.

The **lower bound** for mobility rates is based on mobility figures of EU citizens. Annual cross-border mobility rates of EU citizens is estimated to be around 0.2 – 0.3 percent, but recently-arrived TCN holding intra-EU mobility rights can be assumed to be more mobile than the general population.

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<sup>393</sup> Christian Dustmann, Francesca Fabbri and Ian Preston. *The impact of immigration on the British labour market*. The Economic Journal, 115 (November), F324–F341. Available at: [http://www.ucl.ac.uk/~uctpb21/Cpapers/ecoj\\_1038.pdf](http://www.ucl.ac.uk/~uctpb21/Cpapers/ecoj_1038.pdf)

<sup>394</sup> Claudio Fassio, Fabio Montobbio and Alessandra Venturini. *How Do Native and Migrant Workers Contribute to Innovation? A Study on France, Germany and the UK*. IZA Discussion Paper No. 9062, May 2015.

<sup>395</sup> European Commission, Employment and Social Developments in Europe 2015.

<sup>396</sup> Covered by Directive 2014/66/EU

<sup>397</sup> European Commission, SEC(2010) 884. Available at: [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2010/sec\\_2010\\_0884\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2010/sec_2010_0884_en.pdf)

In light of the evidence above, mobility of Blue Card holders is estimated at 2 percent annually, increasing to 4 percent if far-reaching mobility rights are given to a select group of workers (POP 2b and POP 3).

Intra-EU mobility by Blue Card holders for the purposes of taking up employment in a second Member State is expected to be accompanied or driven by an **increase in salary**. For the purposes of this impact assessment, it is assumed that EU Blue Card holders who decide to take up a job in another Member State will benefit from a 15 % pay rise on average. Although this is a technical assumption for the purposes of this impact assessment, it seems unlikely a HSW would wish to relocate for a smaller increase.

Some policy options presume the EU Blue Card scheme will replace national schemes for highly-qualified workers, which do not offer mobility. Under such scenarios, the positive impact from intra-EU mobility derives from all admissions (and not just the additional Blue Cards resulting from the new EU Blue Card scheme).

## 7. ADMINISTRATIVE COSTS AND GAINS

**Administrative costs** are explored and detailed in **Annex 15** and are included in the overall calculations of impacts.

In terms of **gains for public authorities**, additional income tax revenue linked to the increase in HSW paying taxes per policy option is included in **table 12**.

## 8. REMITTANCES

In 2014, the World Bank estimated that the total remittance flow to developing countries to be \$ 436 billion.<sup>398</sup> This was three times the official development aid to developing countries.<sup>399</sup> However remittances mainly originate from low skilled migration. It has been argued that HSW are more likely to come from wealthier families in the sending countries so the need to remit is lower<sup>400</sup> and that HSW tend to bring their families with them to the host countries reducing the need to remit.<sup>401</sup>

In light of these findings, remittances are estimated at 10 % for highly skilled workers and 20 % for medium-skilled workers.

Remittances constitute a transfer from the host country to the country of origin. They are reduced from the economic impact calculated here.

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<sup>398</sup> Vidal, P. (2015). 'The emigration of health-care workers: Malawi's recurring challenges'. Migration Policy Institute. Available at <http://www.migrationpolicy.org/article/emigration-health-care-workers-malawis-recurring-challenges>

<sup>399</sup> Vidal, P. (2015). 'The emigration of health-care workers: Malawi's recurring challenges'. Migration Policy Institute. Available at <http://www.migrationpolicy.org/article/emigration-health-care-workers-malawis-recurring-challenges>

<sup>400</sup> Faini, R. (2006). 'Remittances and the Brain Drain'. University of Rome Tor Vergata, LdA, CEPR and IZE Bonn. Available at: <http://ftp.iza.org/dp2155.pdf>

<sup>401</sup> Faini, R. (2006). 'Remittances and the Brain Drain'. University of Rome Tor Vergata, LdA, CEPR and IZE Bonn. Available at: <http://ftp.iza.org/dp2155.pdf>



## 9. ADDITIONAL REVENUE FOR HIGHER EDUCATION

The impact assessment assumes the revised EU Blue Card may attract **additional foreign students** to the EU, who will generate revenue through tuition fees. The EU is the world's most attractive destination for international students, with around 1 million non-EU students residing here. Therefore, a small positive effect on the EU's attractiveness may result in a significant increase in the number of students.

The lower requirements for young graduates are likely to attract foreign students. The number of additional students is estimated to equal the number of additional EU Blue Cards which will be issued to recent graduates. While these may not necessarily be the same people, the size of both groups can be expected to be correlated.

The increase in student admissions generates revenue for the Member States, both through tuition and through sustenance spending by the student. Tuition fees are estimated at €8 600 per year,<sup>402</sup> while living costs are estimated at €10 400 per year.<sup>403</sup>

It is assumed that all additional students complete their three years of study. Only direct economic benefits — tuition fees and sustenance spending — are taken into account. Indirect economic benefits such as visitor spending are not considered. Financial assistance received by students is not considered, but use of public services is. Evidence from the UK indicates that public expenditure may be about five times less than the income international students help to generate.<sup>404</sup> We assume a similar ratio for the EU (i.e. 20% of income generated are spent on the provision of public services).

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<sup>402</sup> EU average - tuition fees is based on data from [mastersportal.eu](http://www.mastersportal.eu) which indicate that average tuition fees for a Bachelors programme in the EU is about € 8,600 for non-EEA students per annum. See <http://www.mastersportal.eu/articles/405/tuition-fees-at-universities-in-europe-overview-and-comparison.html>

<sup>403</sup> Data on students' living expenses are based on averages in the four MS where uptake of permits for HSW scheme was highest, i.e. DE, NL and SE. See below. Living costs are estimated to be an average of €865 per month or 10,400 per annum.

- Data from [study-in.de](https://www.study-in.de) suggest that living costs for students in Germany is in line with the EU average which are estimated at about €800 per month or €9,600 per annum; [https://www.study-in.de/en/plan-your-stay/money-and-costs/cost-of-living\\_28220.php](https://www.study-in.de/en/plan-your-stay/money-and-costs/cost-of-living_28220.php)
- Data from [studyinholland.nl](https://www.studyinholland.nl) suggest that living costs for students in the Netherlands are an estimated €1,000 per month or €12,000 per annum; <https://www.studyinholland.nl/practical-matters/daily-expenses>
- Data from Lund University suggest that living costs for students in Sweden are an estimated €860 per month or €10,320 per annum <http://www.lunduniversity.lu.se/student-life/preparing-to-come/money-and-living-costs>

<sup>404</sup> <http://www.consultancy.uk/news/2115/international-students-add-23-billion-to-uk-economy>

## 10. IMPACT ON INNOVATION AND RESEARCH

Overall, increased numbers of HSW would have a positive impact on the capacity of companies for R&D and would benefit the EU's overall capacity for innovation and research. Especially for companies in highly innovative sectors the capacity for recruiting HSW would increase for much-in-demand STEM (science, technology, engineering and mathematics) fields which would increase their capacity for innovation and entrepreneurship<sup>405</sup>.

Also, research suggests that HSW have a small yet positive net effect on innovation in receiving countries due to increased workforce diversity, especially seen in export intensive sectors<sup>406</sup>. Various studies suggest a positive contribution to technological development measured through patent indicators in host countries<sup>407</sup>, exceptional scientific contributions<sup>408</sup>, and a positive contribution on the innovative performance of European regions<sup>409</sup>. In addition, allowing entrepreneurship on the side of employed activity sends a clear message of favouring entrepreneurial spirit (i.e. allowing entrepreneurial activities in the own time while keeping a day job). Research suggests that the risk and uncertainty associated with entrepreneurial activity deters entry and contributes to high rates of new business failure. Reduce these risks influences entrepreneurial entry and survival; the chances on failure would be 33% lower<sup>410</sup>.

## 11. OVERALL ADMINISTRATIVE COSTS AND GAINS ACROSS POPs

The overall administrative costs and gains across the POPs are summarised in table 12 below.

### POP 1

- The impact is calculated for additional permits to highly-qualified workers who do not meet the salary threshold in the baseline scenario
- The benefits from mobility are calculated assuming the lower rate of mobility (2%)
- The number of students attracted by the new scheme is equal to the maximum impact scenario under POP 2A

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<sup>405</sup> Kerr, W. R. (2013). 'U.S. High-Skilled Immigration, Innovation, and Entrepreneurship: Empirical Approaches and Evidence.' National Bureau of Economic Research Working Paper Series No. 19377.

<sup>406</sup> Nathan, M. (2013). 'The wider economic impacts of high-skilled migrants: A survey of the literature'. National Institute of Economic and Social Research.

<sup>407</sup> Hunt, J. 2013. Are Immigrants the Best and Brightest U.S. Engineers? *National Bureau of Economic Research Working Paper Series*, No. 18696; Breschi, S., Lissoni, F., Tarasconi, G., 2013, Inventor Data for Research on Migration & Innovation, 'WIPO Experts Meeting on Intellectual Property, the International Mobility of Knowledge Workers and the Brain Drain', World Intellectual Property Organization, Geneva

<sup>408</sup> Stephan, P.E., Levin, S.G., 2001. Exceptional contributions to US science by the foreign-born and foreign-educated. *Population Research and Policy Review*, 20, 59-79; Hunt, J. 2013. Are Immigrants the Best and Brightest U.S. Engineers? *National Bureau of Economic Research Working Paper Series*, No. 18696.

<sup>409</sup> Ozgen, C., Nijkamp, P., Poot, J. *Immigration and innovation in European regions*. Discussion paper, Forschungsinstitut zur Zukunft der Arbeit; Niebuhr, A. 2010. Migration and Innovation: Does Cultural Diversity Matter for Regional R&D Activity? *Papers in Regional Science*, 89, 563-85.

<sup>410</sup> Raffiee, J. & Feng, J. (2014). 'Should I quit my day job? A hybrid path to entrepreneurship', *Academy of Management Journal*, 57, p. 936-963.

### **POP 2A**

- The minimal impact is obtained with the salary threshold at 1.4 x average salary for regular highly-skilled workers and 1.2 x average salary for graduates and workers in shortage occupations
- The maximum impact is obtained with the salary threshold at 1.0 x average salary for regular highly-skilled workers and 0.8 x average salary for graduates and workers in shortage occupations
- The benefits from mobility are calculated assuming the lower rate of mobility (2%)

### **POP 2B:**

- The minimal impact is obtained with the salary threshold at 1.7 x average salary for all highly-skilled workers. The salary on which basis the impact is calculated corresponds to 1.8 x the average salary.
- The maximum impact is obtained with the salary threshold at 1.5 x average salary for all highly-skilled workers. The salary on which basis the impact is calculated corresponds to the average salary of a highly-skilled worker, as in other POPs.
- No additional third-country students are attracted as the scheme does not provide any advantages to them
- The benefits from mobility are calculated assuming the higher rate of mobility (4%)

### **POP 2C:**

- The impacts from POP 2A and POP 2B are combined

### **POP 3**

- Salary threshold is set at €49 700 for all Member States applying the EU Blue Card.
- The benefits from mobility are calculated assuming the higher rate of mobility (4%)

Table 12 — Overall administrative costs and gains across POPs	POP 1		POP 2A		POP 2B		POP 2C		POP 3
			min	Max	min	max	min	max	
Baseline permits	69000		69000				69000		0
for HSW			41400				41400		
for shortage occupations			13800				13800		
for recent graduates			13800				13800		
New permits	142 610		32 484	137 690	- 8 149	17 250	24 334	154 940	61 324
for HSW	142 610		9 278	68 280	- 8 149	17 250	1 129	85 530	61 324
for shortage occupations	n.a.		11 603	34 705	n.a.	n.a.	11 603	34 705	n.a.
for recent graduates	n.a.		11 603	34 705	n.a.	n.a.	11 603	34 705	n.a.
Additional TCN students	34 705		11 603	34 705	0	0	11 603	34 705	0
Wages paid to additional permits	€ 6 868 477 298		€ 1 377 426 238	€ 6 151 956 003	- € 491 376 338	€ 816 547 863	€ 886 049 900	€ 6 968 503 866	€ 3 578 598 683
Impact of add HSW	€ 6 868 477 298		€ 449 918 206	€ 3 335 742 226	- € 491 376 338	€ 816 547 863	- € 41 458 132	€ 4 152 290 089	€ 3 578 598 683
Impact of add shortages	0		€ 524 006 821	€ 1 592 873 503			€ 524 006 821	€ 1 592 873 503	

Impact of add grad students	0	€ 403 501 211	€ 1 223 340 274			€ 403 501 211	€ 1 223 340 274	
Impact of mobility	€ 20 605 432	€ 29 478 427	€ 43 802 016	-€ 2 948 258	€ 4 899 287	€ 6 875 115	€ 48 701 303	€ 21 471 592
baseline permits	€ 20 605 432	€ 25 346 148	€ 25 346 148			€ 25 346 148	€ 25 346 148	
regular mobility rights		€ 4 132 279	€ 18 455 868			€ 4 132 279	€ 18 455 868	
enhanced mobility rights				-€ 2 948 258	€ 4 899 287	-€ 2 948 258	€ 4 899 287	€ 21 471 592
Reduction for remittances	-€ 686 847 730	-€ 137 742 624	-€ 615 195 600	€ 49 137 634	-€ 81 654 786	-€ 88 604 990	-€ 696 850 387	-€ 357 859 868
Added higher education revenue	€ 659 398 596	€ 220 453 692	€ 659 398 596	€ 0	€ 0	€ 220 453 692	€ 659 398 596	
From tuition fees	€ 298 464 628	€ 99 784 302	€ 298 464 628			€ 99 784 302	€ 298 464 628	0
From sustenance	€ 360 933 968	€ 120 669 389	€ 360 933 968	€	€	€ 120 669 389	€ 360 933 968	0
Administrative impact on Member States	-€ 28 703 995	-€ 6 534 881	-€ 27 864 864	€ 1 674 373	-€ 3 367 907	-€ 4 860 509	-€ 31 232 771	€ 2,843,324
TOTAL	€ 6 832 929 601	€ 1 483 080 851	€ 6 212 096 151	-€ 443 512 590	€ 736 424 456	€ 1 039 568 262	€ 6 948 520 608	€ 3 245 053 730
Of which income tax revenue	€ 1 575 134 126	€ 310 338 210	€ 1 404 058 750	-€ 110 720 251	€ 184 509 792	€ 199 617 958	€ 1 588 568 541	€ 839 074 775

## ANNEX 15 ADMINISTRATIVE BURDEN

### *DISCLAIMER ON THE NUMBERS OF BLUE CARDS USED IN THE KEY ASSUMPTIONS*

The numbers of Blue Cards used in the key assumptions in the analysis of costs (in section 2) are not target numbers for Blue Cards to be issued but technical assumptions, based on a number of elements such as variations in admission conditions, to be able to generate scenarios to quantify the potential economic impacts and the variations of magnitude according to the various Policy Options Packages (POP).

The calculations in Section 2 of this annex are broadly based on the methodology used by an external contractor in the impact assessment study commissioned by DG Home Affairs.

### 1. ADMINISTRATIVE BURDEN ON APPLICANTS

Administrative costs to applicants, third-country nationals and/or employers, would be broadly in line with existing practices for issuing permits for work. The main benefits stemming from several of the options are due to:

- 1) reduced processing times in general and even more for options that foresee a "trusted employers scheme" and, to a certain extent, reduced fees;
- 2) easier and quicker procedures when moving to a second Member State— or no procedure at all if there is no second Blue Card needed as in POP3— as well as limited to no possibility to carry out a labour market test;
- 3) practical simplifications in the procedure for recognition of qualifications and skills.

Such benefits entail first of all **time savings** for applicants and employers, but also **reduced administrative formalities**. It was not possible to provide a monetary estimation of such benefits due to a lack of comprehensive data, but a qualitative assessment is provided below based on stakeholders' input.

#### 1.1. Reduced processing times and fees, and easier procedures

The time required to submit and have applications processed is one of the critical issues for employers, as raised by several business' stakeholders. According to a survey by the Council for Global Immigration, 86 % of employers report that ability to obtain permits in a timely, predictable, and flexible manner is critical to their business objectives.<sup>411</sup> In another survey conducted by PwC, 63% of the responding CEO's were concerned about prompt skills availability.<sup>412</sup> **Long processing times** run counter to these employers' requirements and constitute a **clearly identifiable burden hampering international recruitment**. This is also confirmed in the public consultation launched by the Commission on labour migration and the

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<sup>411</sup> CGI, *2014 Employer Immigration Metrics Survey* (EIM).

<sup>412</sup> PwC, *Skills gap is hampering business's recruitment efforts*, 20<sup>th</sup> May 2014.

Blue Card (*see annex 2*) where 25 % of the employers who had never before employed a TCN explained that this was due to the high administrative burden involved.

The current Blue Card Directive imposes a maximum processing time of 90 days, with an obligation to decide as soon as possible. The same procedural deadline applies to intra-EU mobility of EU Blue Card holders. This deadline is often shorter under national schemes. POP2 (all sub-options) and POP3 would propose reducing processing times compared to the baseline by setting the target deadline regarding all applicants to 30 days, and the maximum processing time would be shortened to 60 days. Moreover, under those POPs Member States could introduce a system of recognised employers who would be guaranteed quicker processing, and the same goes for applications for an EU Blue Card in a second Member State (intra-EU mobility). POP3, which entails an EU-wide permit recognised by all Member States, would bring further time savings and no additional administrative formality in that no application would be necessary in any second Member State in case of intra-EU mobility.

Moreover, in POP2 (all sub-options) and POP3, Member States would no longer be allowed to impose a **labour market test** on EU Blue Card applicants as a general measure: in POP 2(b) and POP3 they cannot be imposed even in exceptional circumstances (contrary to POP2(a) and(c)). In addition, in those options facilitating intra-EU mobility (POP 2(all sub-options) and POP 3), the labour market test would not be applied in the second Member State in any situation. Even if the timing and modalities for carrying out the labour market test are not harmonised and vary across Member States, this would greatly contribute to reducing processing times, especially given that the labour market test is often carried out by a different authority than the one issuing the permit.

**Legal fees paid by employers or individuals** to obtain legal assistance when applying for an EU Blue Card, are an equally significant burden, particularly for SMEs. The public consultation showed that 23 % of the responding employers used third party help with the immigration procedures (e.g. a lawyer or specialised firm) when recruiting from abroad. The majority of the respondents who relied on professional help reportedly did so because the application procedures are too complex and the consequences in the case of non-compliance with the requirements (even when involuntary) are severe. In addition, using a third party saves time. For instance, one major company explained that they used a global service provider because legal requirements are complicated and in-house legal professionals often do not have enough expertise. TCN workers residing in the EU also reported to be relying on third-part help (24 % of respondents). According to the KPMG's Global assignment Policies and Practices (GaPP) Survey, 44 % of the employers highlight that there has been an increase in the overall number of international assignments for the last two years and expect long-term overseas assignments to increase.<sup>413</sup>

**Application fees** (i.e. the fees paid directly to Member States authorities for the issuance of a residence permit) charged by Member States vary considerably according to data collected by

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<sup>413</sup> KPMG, *Global Assignment Policies and Practices*, Survey 2015

the European Migration Network as well as the impact assessment study by ICF consulting.<sup>414</sup> The Blue Card Directive does not harmonise the level of application fees, nor is this proposed in any of the policy options. However, under POP3 a single, EU-wide Blue Card would preclude having to apply for a new EU Blue Card in case of intra-EU mobility. Under this policy option, mobility is assumed to be high (4 % of EU Blue Card holders per year) given the favourable regime that would apply. As shown in Annex 14, this would amount to more than 2 500 EU Blue Card holders yearly who would not be subject to a second application fee.

Application fees are also relevant in terms of gains for public administration (see section 2 below).

## 1.2. Facilitation of the recognition of qualifications

The EU Blue Cards targets highly skilled third-country nationals, which imply that applicants will have to demonstrate they possess the required qualifications. The maximum time for examining the application for an EU Blue Card (currently 90 days) does not include the time needed for the possible recognition of professional qualifications.

The length of the procedure for getting foreign qualifications recognised — which remains a national competence — varies considerably between Member States and between individual cases. For instance in Germany, if an applicant requests the recognition of a degree which has been previously recognised and exists in the database (*Anabin*), the procedure takes mere minutes. However, if the degree is previously unknown to the German authorities, the procedure takes from 4 to 12 weeks. The latter timeline is similar to several other EU Member States' practices, where processing times for recognition range between 1 and 4 months.<sup>415</sup>

The recognition of foreign qualifications in the destination country is often cited by applicants and employers as a major source of administrative burden. In the public consultation, employers considered that the **recognition of foreign qualifications remains a lengthy procedure**. Of all respondents who stated that they had to have their qualifications recognised, more than half said it took more than 3 months.<sup>416</sup>

While none of the different policy options harmonises the recognition procedure — as this would go beyond the EU competence — in several of them Member States are encouraged to facilitate this recognition procedure at least for unregulated professions<sup>417</sup>.

For example, the fact of considering the recognition of professional experience as equivalent to formal qualifications (as in POPs 2(a) and 2(c)) is an important element of simplification.

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<sup>414</sup> See EMN Inform, *Applicable fees for issuance of residence permits to third-country nationals*. European Migration Network, 2014. Available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/emn-informs/emn\\_inform\\_applicable\\_fees\\_in\\_member\\_states\\_october2014\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn-informs/emn_inform_applicable_fees_in_member_states_october2014_en.pdf)

<sup>415</sup> EMN Ad Hoc Query 465/2013. In total, 22 Member States responded to the query, however not all specified the timeframe for the procedure of the recognition of foreign qualifications specifically.

<sup>416</sup> See Annex 2

<sup>417</sup> For regulated professions (e.g. lawyers, doctors) this is not feasible since, given that this usually involves professional bodies that have to check that the person fulfils the conditions for exercising that profession in the Member State.



POP1 goes even further: in case the applicant fulfils the relevant salary threshold, there is no longer the need to present formal qualifications.

Moreover, in case of recognised employers (POP2 (all sub-options) and POP3) this aspect is even further simplified, i.e. Member States cannot ask the applicant to present qualifications in case of unregulated professions if the employer is recognised, leading to considerable time savings for the applicant.

In case of intra-EU mobility, for *unregulated professions*, in POP2 (all sub-options) it is proposed that an EU Blue Card holder will not need to re-submit his or her qualifications when applying for a new EU Blue Card in a second Member State. The EU Blue Card issued by the first Member State and the period of work already carried out there would provide sufficient guarantees that the TCN is highly skilled. In light of the lengthy procedures cited above, this facilitation would result in considerable time savings for the applicant and the employer. Under POP3, no new Blue Card would have to be applied for in the second Member State so the savings would be even higher.

## 2. ADMINISTRATIVE BURDEN ON MEMBER STATES' ADMINISTRATION

**Administrative costs to Member States** in all legislative options consist of the transposition and implementation of the revised Directive, as well as variable costs related to the issuance of the EU Blue Cards (see 2.1).

Member States already have implemented the EU Blue Card Directive in its current form and organisational or administrative changes would therefore be minimal. The EU Blue Card would be built on existing provisions for residence permits (Council Regulation 1030/2002) and mirror the provisions of the Single Permit Directive (Directive 2011/98/EU), further limiting the costs of introducing the new EU Blue Card.

The implementation of the revised Directive may entail costs of providing information, such as on a government website. This is not estimated for the purposes of this impact assessment. The revised Directive may also require closer cooperation between Member States to facilitate the implementation of the intra-EU mobility provisions and to fight abuses. Where intra-EU mobility rights of Blue Card holders are based on nationally-issued Blue Cards, rather than a mutual recognition of permits, this cost is not estimated and is likely to be small. Where a mutual recognition is envisaged (POP3), efforts would be comparable to those needed for the implementation of the Directive on intra-corporate transferees.<sup>418</sup>

**Cost savings** compared to the status quo would be due to both the simplification linked to further harmonisation and reduced fragmentation — particularly in POP1, POP2(a) and POP3 — to the additional income provided by the taxes paid by additional HSW (the fiscal impact

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<sup>418</sup> See financial and administrative costs of policy option 3, as outlined in paragraph 5.2 of the *Impact Assessment accompanying the proposal for the ICT Directive the framework of an intra-corporate transfer*. European Commission, SEC(2010) 884, 13 July 2010. [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2010/sec\\_2010\\_0884\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2010/sec_2010_0884_en.pdf)

for this category being generally positive)<sup>419</sup> and to the fees paid by applicants that would partly compensate the additional administrative burden due to an increased number of applications and permits issued in several options. While it was not possible to quantify the savings related to simplification, an estimate is made as regards gains deriving from fees paid by the applicants and from additional income deriving from taxes paid by HSW. Calculation of administrative costs to Member States<sup>420</sup>.

The cost for processing an individual application and issuing an EU Blue Card was calculated on the duration (in minutes) of related activities and the labour cost per minute in each Member State's administration.

The duration of processing an individual application is expected to vary depending on the number of applications a Member State receives each year. If the Member State receives less than 100 applications every year (i.e. less than two per week), processing times are assumed to be significantly longer due to a lack of economies of scale (e.g. learning effects, routine, automation).

The following assumptions were made:

**Volume:**

- The number of Blue Cards per POP is taken from the calculations in Annex 14
- Rejection rates for highly skilled applicants tend to be lower than for other categories of labour migrants; for every 100 successful applicants, there are assumed to be 5 non-successful ones.<sup>421</sup> It is assumed rejected applicants do not resubmit an application for the Blue Card in the same year nor appeal the decision via the courts.

**Time:**

- The average time to receive and acknowledge receipt of an application is estimated at *15 minutes*. This time is applicable to all applications, successful or unsuccessful.
- For different POPs, the average time to examine and decide on an application has been assumed to be *6 hours* for Member States processing less than 100 applications and *2 hours* for Member States processing more than 100 applications. This time is applicable to all applications, successful or unsuccessful. Actual processing times may vary significantly from case to case and between Member States. They will be influenced by the complexity of the file and/or the nature of the checks to be carried out in each Member State.

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<sup>419</sup> OECD (2013), "The fiscal impact of immigration in OECD countries", in *International Migration Outlook 2013*, OECD Publishing. [http://dx.doi.org/10.1787/migr\\_outlook-2013-6-en](http://dx.doi.org/10.1787/migr_outlook-2013-6-en), p. 128

<sup>420</sup> The external contractor in the impact assessment study commissioned by DG Home Affairs in preparation of this impact assessment developed a cost model for estimating the cost implications of amending the EU Blue Card Directive.

<sup>421</sup> This success rate is derived from data on labour migration to Germany, as reported in OECD (2013), *Recruiting Immigrant Workers: Germany*, OECD Publishing. <http://dx.doi.org/10.1787/9789264189034-en>, p. 93.

- Average time to produce the Blue Card and notify the applicants of the decision is estimated at *1 hour*. This time is applicable to all applications, successful or unsuccessful.

#### Unit cost:

- The per-minute costs of processing Blue Card applications are estimated to be commensurate to the Hourly Labour cost, wages and salaries in 2012 - NACE Rev. 2 [lc\_ncostot\_r2] for Public administration and defence for each Member States. This cost is relevant for all applications, including those which are unsuccessful.
- The costs of producing and sending the Blue Card and are estimated at €35 per EU Blue Card. This cost is relevant for successful applicants only.

By multiplying the unit cost with the time spent at each stage of the application, it is possible to calculate a cost per card issued. The cost of 5% non-successful applications is also included in this.

**Table 12 — Unit labour cost and administrative cost per EU Blue Card issued, estimated for the purposes of this impact assessment (Source: ICF impact assessment study)**

	Unit labour cost	Cost per card issued	
	<i>Per minute</i>	<i>If &gt; 100 applications per year</i>	<i>If =&lt; 100 applications per year</i>
AT	€0.50	€212	€407
BE	€0.50	€212	€407
BG	€0.07	€75	€102
CY	€0.31	€150	€268
CZ	€0.18	€109	€178
DE	€0.55	€226	€438
EE	€0.16	€105	€168
EL	€0.20	€118	€197
ES	€0.37	€171	€315
FI	€0.59	€238	€466
FR	€0.50	€211	€405
HR	€0.18	€97	€150
HU	€0.14	€97	€150
IT	€0.50	€210	€402
LT	€0.12	€93	€141
LU	€0.50	€212	€407
LV	€0.12	€92	€139
MT	€0.44	€191	€360
NL	€0.69	€271	€538
PL	€0.16	€103	€163
PT	€0.23	€126	€214
RO	€0.07	€77	€105
SE	€0.50	€212	€407
SI	€0.31	€150	€269
SK	€0.14	€99	€154

The total administrative cost of the different policy options depends on the number of *additional* EU Blue Cards assumed to be issued under each scenario (taken from Annex 14). The cost also depends on whether national schemes are maintained in parallel (as is the case in POP 2b); this would reduce the economies of scale which can be achieved when issuing permits of one kind, i.c. EU Blue Cards. Where no national schemes are foreseen, the total number of EU Blue Cards is taken into account to determine whether economies of scale are present or not, while the additional administrative burden is obtained by considering only to the number of additional EU Blue Cards.

Below is an overview of the number of additional cards assumed to be issued under each of the policy options. Scenario's leading to 100 cards or fewer being issued per year are underlined.

**Table 13 — Additional number of EU Blue Cards estimated, for the purposes of this impact assessment, to be issued under the different POPs**

	POP1	POP 2a		POP 2b		POP2c		POP3
		<i>low</i>	<i>high</i>	<i>low</i>	<i>high</i>	<i>low</i>	<i>high</i>	
<b>AT</b>	2389	887	2859	-140	452	747	3311	-193
<b>BE</b>	7129	1180	6296	-317	534	863	6830	317
<b>BG</b>	1646	371	1576	-88	185	282	1761	<u>-923</u>
<b>CY</b>	592	133	487	-9	114	123	602	-361
<b>CZ</b>	1905	468	1923	-117	277	351	2200	<u>-1342</u>
<b>DE</b>	22339	5705	23943	-2109	3573	3596	27516	-879
<b>EE</b>	362	58	276	-34	48	25	324	<u>-236</u>
<b>EL</b>	2909	673	2885	-66	225	607	3110	-974
<b>ES</b>	8468	2676	9145	-1122	1683	1554	10828	-6277
<b>FI</b>	3310	699	3185	-238	381	461	3565	281
<b>FR</b>	22971	5560	24992	-956	2703	4604	27696	-5194
<b>HR</b>	696	266	680	-119	134	147	814	<u>-664</u>
<b>HU</b>	1414	312	1260	-61	266	251	1526	<u>-1328</u>
<b>IT</b>	10450	2297	11114	11	1317	2308	12430	-3198
<b>LT</b>	903	166	638	-46	107	120	746	<u>-537</u>
<b>LU</b>	273	66	195	-32	41	33	236	91
<b>LV</b>	761	163	607	-21	113	142	720	<u>-554</u>
<b>MT</b>	113	<u>22</u>	102	<u>-2</u>	<u>11</u>	20	113	<u>-45</u>
<b>NL</b>	21114	4982	19117	-1423	1845	3559	20962	5545
<b>PL</b>	8552	1554	6673	-275	1138	1279	7811	-5577
<b>PT</b>	1396	389	1186	18	327	407	1513	-1496
<b>RO</b>	2562	723	2309	-122	385	600	2695	-1926
<b>SE</b>	18783	2753	14523	-722	1205	2032	15728	1401
<b>SI</b>	439	117	349	-20	62	97	411	<u>-250</u>
<b>SK</b>	1133	264	1370	-138	122	126	1492	<u>-608</u>
	<b>142 610</b>	<b>32 484</b>	<b>137 690</b>	<b>-8 149</b>	<b>17 250</b>	<b>24 334</b>	<b>154 940</b>	<b>-24 926</b>

The additional administrative cost per Member State of the policy options is given in the table below. The main factor is the volume of cards issued under each scenario. Application fees levied by Member States will reduce or fully offset the total burden on Member States' finances.

Table 14 — Administrative cost for issuing EU Blue Cards under various POPs

	POP1	POP 2a		POP 2b		POP2c		POP3
		low	high	low	high	low	high	
AT	€ 505 960	€ 187 820	€ 605 433	-€29 592	€ 95 722	€ 158 228	€ 701 155	-€40 765
BE	€ 1 509 680	€ 249 908	€ 1 333 251	-€67 212	€ 113 039	€ 182 696	€ 1 446 290	€ 67 212
BG	€ 123 605	€ 27 840	€ 118 322	-€6 631	€ 13 920	€ 21 209	€ 132 242	-€69 327
CY	€ 88 642	€ 19 848	€ 72 902	-€1 418	€ 17 121	€ 18 430	€ 90 023	-€53 981
CZ	€ 207 898	€ 51 114	€ 209 885	-€12 825	€ 30 238	€ 38 289	€ 240 122	-€146 507
DE	€ 5 050 962	€ 1 289 827	€ 5 413 564	-€476 733	€ 807 797	€ 813 094	€ 6 221 361	-€198 639
EE	€ 38 015	€ 6 111	€ 28 971	-€3 533	€ 5 061	€ 2 578	€ 34 032	-€24 731
EL	€ 342 547	€ 79 207	€ 339 755	-€7 742	€ 26 502	€ 71 465	€ 366 257	-€114 641
ES	€ 1 444 122	€ 456 387	€ 1 559 551	-€191 300	€ 286 950	€ 265 087	€ 1 846 501	-€1070 369
FI	€ 788 611	€ 166 511	€ 758 679	-€56 652	€ 90 720	€ 109 859	€ 849 399	€ 66 987
FR	€ 4 851 173	€ 1 174 283	€ 5 278 042	-€201 947	€ 570 936	€ 972 336	€ 5 848 978	-€1096 995
HR	€ 67 221	€ 25 685	€ 65 697	-€11 521	€ 12 957	€ 14 164	€ 78 653	-€64 130
HU	€ 136 641	€ 30 155	€ 121 740	-€5 939	€ 25 734	€ 24 216	€ 147 474	-€128 339
IT	€ 2 193 198	€ 482 167	€ 2 332 526	€ 2 237	€ 276 323	€ 484 405	€ 2 608 849	-€671 230
LT	€ 83 583	€ 15 378	€ 59 078	-€4 258	€ 9 936	€ 11 119	€ 69 015	-€49 682
LU	€ 57 899	€ 13 934	€ 41 268	-€6 867	€ 8 628	€ 7 067	€ 49 896	€ 19 174
LV	€ 69 848	€ 14 950	€ 55 660	-€1 886	€ 10 405	€ 13 065	€ 66 065	-€50 845
MT	€ 21 554	€ 4 239	€ 19 451	-€ 363	€ 2 140	€ 3 876	€ 21 591	-€8 639
NL	€ 5 717 262	€ 1 349 056	€ 5 176 609	-€385 444	€ 499 733	€ 963 611	€ 5 676 342	€ 1 501 441
PL	€ 878 875	€ 159 708	€ 685 825	-€28 274	€ 116 915	€ 131 434	€ 802 740	-€573 113
PT	€ 175 507	€ 48 897	€ 149 075	€ 2 295	€ 41 130	€ 51 192	€ 190 205	-€187 999
RO	€ 196 007	€ 55 276	€ 176 682	-€9 352	€ 29 475	€ 45 924	€ 206 157	-€147 374
SE	€ 3 977 608	€ 583 047	€ 3 075 463	-€152 809	€ 255 176	€ 430 238	€ 3 330 639	€ 296 716
SI	€ 65 968	€ 17 516	€ 52 441	-€3 005	€ 9 313	€ 14 511	€ 61 754	-€37 632
SK	€ 111 607	€ 26 017	€ 134 995	-€13 602	€ 12 037	€ 12 415	€ 147 032	-€59 914
	€ 28 703 995	€ 6 534 881	€ 27 864 864	-€1 674 373	€ 3 367 907	€ 4 860 509	€ 31 232 771	-€2 843 324

## 2.1 Cost savings

### 2.1.1 Fees perceived by public administration

While the number of cards issued drives the administrative cost for Member States, it also drives the revenue generated from application fees. There is a large variety in application fees

currently charged by Member States<sup>422</sup> which cannot be explained by differences in cost structure (e.g. salaries of officials) alone. Permits for workers can be subject to relatively high fees, since the administration may decide that the economic actors recruiting from abroad should (fully) bear the costs linked to the process. Some Member States offer expedited procedures, at an additional cost. This approach reflects the concerns of employers, confirmed in the public consultation, that fast and simple procedures are important, while fees considered less relevant in light of other expenses linked to international recruitment and the salaries to be paid to the highly-qualified worker.

The table below gives a partial overview of the standard fees currently in place in selected Member States, collected through the European Migration Network. These generally concern first applications (not extensions) and do not visa fees.

**Table 15 — Reported application fees for a permit for highly-qualified work (EU Blue card or equivalent national permit, source: European Migration Network)**

<b>AT</b>	100 EUR
<b>BE</b>	215 EUR
<b>CY</b>	200 EUR
<b>CZ</b>	92.50 EUR
<b>DE</b>	100 – 110 EUR
<b>EE</b>	96 – 100 EUR
<b>EL</b>	150 EUR
<b>ES</b>	85.85 EUR
<b>FI</b>	450 – 500 EUR
<b>FR</b>	260 EUR
<b>HR</b>	ca. 137 EUR
<b>IT</b>	273.50 EUR
<b>LT</b>	142 EUR
<b>LU</b>	80 EUR
<b>LV</b>	99.60 EUR
<b>NL</b>	870 EUR
<b>PL</b>	113 EUR
<b>SE</b>	214 EUR
<b>SK</b>	0 EUR

### *2.1.2. Revenue from income tax*

Member States will also generate revenue from income tax on the highly-qualified workers. Since the revised Blue Card would remain a demand-driven system, requiring the TCN to be employed, this tax revenue is significant. The following table shows the estimated income tax rates which would apply to the salary of an average highly-qualified worker. This revenue is

**included in the overview of impacts in Annex 14.** In order to gauge the impact on national administrations, it includes only income taxes and not social contributions, which is an additional source of revenue. This income tax rate can be applied to the relevant salaries included in Annex 14 to calculate the total income tax revenue under each of the POPs (see section 7 of Annex 14).

**Table 16 — estimated income tax rates at average salary of a highly-qualified worker (source: calculations based on OECD Tax-Benefit Calculator, available at <http://www.oecd.org/els/soc/benefitsandwagestax-benefitcalculator.htm>)**

<b>AT</b>	22%
<b>BE</b>	34%
<b>BG</b>	9%
<b>CY</b>	n/a
<b>CZ</b>	16%
<b>DE</b>	24%
<b>EE</b>	n/a
<b>EL</b>	18%
<b>ES</b>	20%
<b>FI</b>	28%
<b>FR</b>	18%
<b>HR</b>	15%
<b>HU</b>	17%
<b>IT</b>	29%
<b>LT</b>	15%
<b>LU</b>	25%
<b>LV</b>	20%
<b>MT</b>	15%
<b>NL</b>	22%
<b>PL</b>	8%
<b>PT</b>	26%
<b>RO</b>	13%
<b>SE</b>	24%
<b>SI</b>	18%
<b>SK</b>	12%
<b>EU-25 average</b>	<b>18%</b>

## ANNEX 16

### HIGHLY SKILLED WORKERS AND INTERNATIONAL PROTECTION

#### 1. CONTEXT

The lives of many resourceful, highly-skilled and entrepreneurial people are uprooted due to conflict and other hardship. For reasons out of their control they may look at years of great adversity and professional inactivity before acquiring some degree of certainty again.

To date international protection and other, especially economically driven channels of migration have been kept rather separate. This is also the approach taken by the EU in all labour migration directives in not allowing asylum seekers or beneficiaries of international protection to apply for residence permits under these instruments<sup>423</sup>. However, even for those persons who do or might qualify for international protection, choosing a labour migration route or opting to get a labour migrant status in addition to the protection status can be a relevant option, enabling them to avoid some negative aspects associated with the asylum route/status, such as the hazardous initial journey, long processing times as well as the sometimes perceived stigmatisation effect.

The Blue Card is a specific and relatively selective scheme for the admission of highly skilled workers and as such, it does not serve as a large-scale alternative to asylum seeking. The review of the Blue Card Directive should therefore not be seen as a measure to address the refugee crisis. However, particularly as the EU is faced with unprecedented numbers of asylum seekers<sup>424</sup>, it is a legitimate question to ask whether the highly skilled persons amongst the third-country nationals seeking or enjoying international protection should not have the possibility to apply for a Blue Card and benefit from the rights and advantages linked to that status (for example, facilitated intra-EU mobility). This is especially relevant as almost 75 % of the asylum seekers who arrived in the EU during 2015 were of working age (between 18 and 64 years old)<sup>425</sup>. In terms of family reunification, there is already a very favourable scheme in place for refugees' family members in certain situations<sup>426</sup>, but for those who do not qualify for that, the facilitations under the Blue Card Directive (e.g. no waiting period, shorter maximum processing time) might be welcome.

The table below shows the different categories of third-country nationals concerned, and the rights they enjoy under the asylum acquis<sup>427</sup>, compared to those associated with the status of a Blue Card holder. Beneficiaries of international protection have no intra-EU mobility rights (apart from regular mobility under the Schengen acquis) before they acquire the EU long-term

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<sup>423</sup> Apart from the Blue Card Directive 2009/50/EC, asylum seekers and beneficiaries of international protection in the EU are also excluded from the scope of Directives 2011/98/EU (Single Permit), 2014/36/EU (Seasonal Workers), and 2014/66/EU (Intra-Corporate Transferees). For the last two the exclusion is not explicit, but only persons residing outside the EU can apply for admission under those Directives.

<sup>424</sup> According to Eurostat data [migr\_asyapp], during 2015, 1 255 640 persons sought asylum in the EU for the first time – more than twice as much as during 2014 (562 680).

<sup>425</sup> Eurostat [migr\_asyappctzm]

<sup>426</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, Chapter V; OJ L 251, 3.10.2003, p. 12–18

<sup>427</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, 20.12.2011, p. 9–26; Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96–116



resident status, for which they can apply after five years of residence in the Member State concerned.

<b>RIGHTS OF DIFFERENT CATEGORIES OF THIRD-COUNTRY NATIONALS LINKED TO INTERNATIONAL PROTECTION AND POSSIBLE ADDED VALUE OF THE BLUE CARD</b>				
	<b>Residence rights</b>	<b>Access to the labour market</b>	<b>Intra-EU mobility rights</b>	<b>Benefits from obtaining an EU Blue Card** (accessible to highly skilled worker)</b>
<b>Asylum seekers</b>	Right to stay while their application is being processed	Access at the latest after 9 months from lodging the application, if no first instance decision has been taken*	No rights	<ul style="list-style-type: none"> <li>• Right of residence (possibly parallel to future protection status)</li> <li>• Access to highly skilled employment</li> <li>• Mobility rights after 18 months</li> <li>• Favourable family reunification scheme</li> </ul>
<b>Rejected asylum seekers</b>	No right to reside	No access	No rights	Same as for asylum seekers
<b>Beneficiaries of international protection</b>	Temporary or permanent residence permit, high level of protection against expulsion, access to long-term resident status after 5 years of residence	Immediate access to the labour market	Mobility rights only after obtaining the long-term resident status	<ul style="list-style-type: none"> <li>• Right of residence parallel to the protection status</li> <li>• Mobility rights after 18 months</li> <li>• Favourable family reunification scheme for those who do not profit from the most advantageous refugee regime</li> </ul>
<b>Potential beneficiaries of international protection residing outside the EU</b>	No residence right yet in the EU, possibility to apply for any residence permit for which they qualify	No access	No rights	Same as for asylum seekers
<p>* The period of 9 months is the maximum allowed by Directive 2013/33/EU. In practice, the 25 Member States applying the Blue Card Directive (excluding DK, IE, UK) currently have various periods in place:</p> <ul style="list-style-type: none"> <li>• three Member States give immediate labour market access</li> <li>• five Member States apply a period between 2 and 4 months</li> <li>• seven Member States apply a period of 6 months</li> <li>• nine Member States apply the maximum period of 9 months</li> <li>• one Member State gives no labour market access to asylum seekers</li> </ul> <p>As further conditions for access Member States may e.g. require obtaining a work permit, apply a labour market test, or limit accessible professions.</p> <p>** Reference is made to the current Blue Card scheme; changes are envisaged to grant e.g. more extensive mobility rights to EU Blue Card holders.</p>				

## 2. SKILL LEVELS OF ASYLUM SEEKERS AND BENEFICIARIES OF INTERNATIONAL PROTECTION IN THE EU

Persons having arrived in the EU to seek protection have a variety of educational and professional backgrounds. Information on education level and actual skill sets of asylum seekers and beneficiaries of international protection is heterogeneous and different studies provide contradicting results. Anecdotal evidence suggests that the majority of these people - whose reason for migration is primarily not work but escaping war and persecution - are not highly educated, their skill set is comparatively low<sup>428</sup>, and they usually do not speak the language of the host country. However, other anecdotal information suggests that there are differences across countries of origin. Syrians in particular seem to have a higher level of education, but even in those cases there are contradicting accounts. In any case Syrian nationals, who filed the highest number of asylum claims in the EU in 2014, were in sixth place among accepted Blue Card applicants during the same year with 554 issued permits<sup>429</sup>.

As there is no extensive data on the professions and skill sets of asylum seekers or beneficiaries of international protection in the EU, it is not possible to reliably predict how many such persons would be interested in applying for a Blue Card or end up qualifying for it. However, in the following there are some examples of information gathered on the issue of education and skill levels:

In Sweden, statistics from 2014 show that over 40 % of Syrians have at least upper secondary education, compared to 20 % of Afghans, 10 % of Eritreans and 68 % of Swedes<sup>430</sup>. Surveys of refugees arriving in the Netherlands show that, in the first half of 2015, over 1/3 of registered refugees aged between 18 and 65 had university-level education, and up to 70 % had concluded secondary schooling, especially those fleeing the conflict in Syria. A significant proportion has skills and experience in various professions and trades.<sup>431</sup> According to a UNHCR survey with 1 139 respondents, 43% of Syrians arriving in Greece had secondary education and 43 % had university level education. In terms of occupations, 16 % were students, 9 % merchants or working in trade, 8 % worked in the private sector, 7 % represented technical professions (carpenters, electricians etc.), 5 % were engineers and architects, 5 % were teachers, and 4 % were pharmacists, doctors, veterinarians, biologists or chemists. A total of 78 % were under the age of 35, and 21 % were aged between 36 and 59.<sup>432</sup> Eurostat data shows that newcomers are typically younger than the populations of the countries they are fleeing to: of the 729 000 asylum seekers registered between May and October 2015 in the EU, 82% were younger than 34 years of age. Their median age is around half of that of Germany, the latter being 46 years.<sup>433</sup>

In a German survey, 81 % of unemployed refugees had no professional qualifications or even high school diploma. Illiteracy and non-literacy in the Latin alphabet were identified as major

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<sup>428</sup> Institut für Arbeitsmarkt- und Berufsforschung (IAB), 'Asyl- und Flüchtlingsmigration in die EU und nach Deutschland.' Aktuelle Berichte 8/2015; IAB, 'Flüchtlinge und andere Migrantinnen am deutschen Arbeitsmarkt: Der Stand im September 2015.' Aktuelle Berichte, 14/2015

<sup>429</sup> Eurostat [migr\_resbc1]

<sup>430</sup> Statistics Sweden

<sup>431</sup> Dutch Central Agency Asylum Seekers Reception (COA) in 'Getting the new arrivals to work', Economist, 12/12/2015

<sup>432</sup> UNHCR, *Syrian Refugee Arrivals in Greece*, April - September 2015

<sup>433</sup> Eurostat data

problems.<sup>434</sup> In another survey, 63 % of German employers saw little chance of hiring refugees as trainees, 78 % for skilled positions and 97 % for management roles. Employers mentioned barriers such as lacking knowledge of German, low qualifications, strict employment rules, and the German minimum wage. Yet, those who are educated are more likely to have a degree than the domestic population (37 % versus 21 %).<sup>435</sup>

### **3. IMPLICATIONS OF A POSSIBLE EXTENSION OF THE BLUE CARD TO THIRD COUNTRY NATIONALS SEEKING OR ENJOYING INTERNATIONAL PROTECTION**

This Section presents the different groups of third-country nationals who have either applied for or been granted international protection in the territory of a Member State and who are currently excluded from the scope of the Blue Card. The inclusion of asylum seekers and beneficiaries of international protection is covered in the Impact Assessment report under policy option PO-C. However, rejected asylum seekers have not been included in that policy option as it seems sufficient to address the applicants still in process; with the latter also the risk of creating a pull factor for irregular migration is likely to be smaller.

#### **3.1 Asylum seekers in the territory of the EU**

As a result of the substantial influx of asylum seekers into the EU, the question of labour market integration of these migrants has become ever more topical. Some of the newcomers may have specific skills immediately relevant for the labour market of the host country, but this resource may be lost if the skills are not used from the outset. According to the recently recast Directive 2013/33/EU, Member States are obliged to grant asylum seekers access to the labour market at the latest within nine months from lodging the application. Asylum seekers may provide for valuable workforce and their integration is likely to get a swift start through entering the labour market quickly. The sooner the skills are identified, the sooner they can be put to full use. Obviously, not all asylum seekers will get recognised as refugees or other beneficiaries of international protection, and those rejected might be eventually returned.

While the question of labour market access for asylum seekers is regulated by the asylum acquis (see details in the table above), the current Blue Card Directive explicitly excludes asylum applicants from its scope (points (a) to (c) of first subparagraph of Article 3(2)). This means that even if they have access to the labour market of the Member State concerned, they cannot apply for a Blue Card while awaiting a decision on their application.

If submitting an application for a Blue Card was to be allowed during the asylum procedure, an important issue to be addressed would be how to deal with the pending asylum request. The main options would be to:

- a) *Examine both applications in parallel and grant both permits to eligible applicants*  
This would be the most flexible option for applicants as no choice would have to be made between the two tracks. The two applications would be processed in parallel and if both applications were successful, two distinct permits would be granted.

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<sup>434</sup> Survey of the German Federal Labour Agency, October 2015 in 'Frustrations mount for refugees navigating Germany's jobs market', Financial Times, 3/1/2016

<sup>435</sup> Survey of Ifo institute in 'German companies gloomy on employing refugees, survey says', Financial Times, 26/11/2015

- b) *Suspend the examination of the asylum claim and resume it in case the Blue Card application is rejected or the initially granted Blue Card is subsequently withdrawn or not renewed*

In this option no double processing or double status would be envisaged, but instead, the Blue Card application would take priority over the asylum claim at the first stage. Member States should find a practical solution for suspending the asylum application and reactivating it in case the Blue Card application either is not successful or the permit is subsequently withdrawn or not renewed. It would be particularly important to guarantee that the asylum claim is properly examined before any expulsion measure is taken.

- c) *Suspend the examination of the Blue Card application and pursue it only in case the asylum request is rejected*

Under this option the application for a Blue Card would have to be submitted while the asylum request is still pending, but the application would only become effective in case the asylum claim was rejected. This option would enable access to international protection for those who qualify, however without providing for a double status. The Blue Card would become accessible only after being rejected in the asylum process.

- d) *Discontinue the examination of the asylum claim*

In this option no system of parallel or suspended applications would be created. It would still be possible for a Blue Card holder to subsequently seek asylum, and it should be ensured that the first claim set aside by the Blue Card application would not negatively affect the assessment of the second claim.

### **3.2 Rejected asylum seekers**

Third-country nationals whose expulsion decision has been suspended for reasons of fact or law (point (i) of first subparagraph of Article 3(2)) as well as those whose stay is not legal (Article 10(3)) may not apply for a Blue Card in the territory of Member States. This means that a rejected asylum applicant cannot immediately apply for a Blue Card even if he or she had a highly skilled job, but has to exit the Member State territory before doing so. If asylum seekers still in process were granted the possibility to apply for a Blue Card, it could be considered to extend this right to rejected applicants as well. This could be limited to cases where the relevant employment relationship began already during the asylum-seeking period, and there would only be a short grace period for applying for a Blue Card after being rejected as an asylum seeker. Some minimum period of preceding work and other conditions could be envisaged. In practice, this would be close to option c) under 2.2.

### **3.3 Beneficiaries of international protection in the EU**

Beneficiaries of international protection are currently excluded from the personal scope of the Blue Card Directive (points (b) to (c) of first subparagraph of Article 3(2)); this means that they cannot apply for a Blue Card. This group consists of persons whose right of residence in the host country is already well secured and access to rights and benefits is extensive. They already have immediate access to employment under Article 26(1) of Directive 2011/95/EU. Therefore, the main added value of the Blue Card for this group would be facilitated intra-EU mobility, which is under the current EU rules only accessible to them only after obtaining the

status of long-term resident under Directive 2003/109/EC<sup>436</sup> (i.e. after at least five years of continuous residence in the host Member State) .

The main options would be either to (1) allow applying for a Blue Card in any Member State or (2) allow it in any other Member State apart from the one having granted international protection. Under the first option the third-country national could choose to apply for an EU Blue Card already in the Member State having granted the protection status, which would mean that in case the application is successful, he or she would have a double status in that Member State. The person could profit from the mobility scheme of the Blue Card Directive similarly to any other EU Blue Card holder, which means that moving to a second Member State under the mobility rules would be possible after having been employed as highly skilled for a certain period in the first Member State. Alternatively, the person could directly apply for a first EU Blue Card in another Member State like any first applicant. Under the second option the double status would not be possible, but instead, only applying in other Member States than the one having granted protection would be allowed. In either case, this extension would make the highly skilled labour markets of different Member States accessible to beneficiaries of international protection.

As Member States do not mutually recognise asylum decisions, if the beneficiary of international protection obtained a Blue Card in a second Member State or a double status holder moved to a second Member State under the Blue Card mobility scheme, he/she would not enjoy international protection in that Member State. Therefore, the first Member State (having granted the protection status) would necessarily remain obliged to readmit the person who would otherwise be expelled to his or her country of origin or other third country against which the protection has been granted. This kind of system was already envisaged when the EU long-term resident status was opened to beneficiaries of international protection upon a modification of Directive 2003/109/EC<sup>437</sup>.

Furthermore, the rationale behind including beneficiaries of international protection in the Blue Card scheme would also be to promote their labour market integration by making them more visible to employers. Currently, many highly skilled third-country nationals residing in the EU end up unemployed or in positions not corresponding to their level of education and expertise<sup>438</sup>. Naturally, this problem has many other dimensions than those related to the type of residence permit, such as the recognition of qualifications and integration challenges.

#### **4. THE SPECIFIC CASE OF POTENTIAL BENEFICIARIES OF INTERNATIONAL PROTECTION OUTSIDE OF THE EU TERRITORY**

This group of third-country nationals has not been explicitly mentioned under any of the policy options in the Impact Assessment report, as addressing challenges faced by them is not primarily a question of amending the Blue Card scheme as such, but rather of practical facilitation, which is dealt with at a general level in policy option PO-A. Many of the non-legislative actions under that policy option could have a specific significance for this group of potential Blue Card applicants.

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<sup>436</sup> Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53

<sup>437</sup> Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection; OJ L 132, 19.5.2011, p. 1–4;

<sup>438</sup> See e.g. a joint OECD/EC publication *Indicators of Immigrant Integration 2015: Settling In*, table 1.3., p. 31.

For persons outside the EU who are potentially in need of international protection there is no legal impediment to apply for a Blue Card. These persons are treated like any applicant residing outside the EU under the current scheme. However, they may experience pronounced practical obstacles related to e.g. matching with potential employers in the EU and presenting the required formal qualifications. Verification of diplomas can be difficult in countries where basic infrastructure has been compromised because of war or conflict, or where there is persecution or systematic discrimination of certain population groups by relevant authorities. It may also be the case that due to periods of professional inactivity some re-training would be required in order for these people to be able to resume their career in the EU – this is especially relevant for regulated professions.

In principle, existing resettlement programmes could provide a framework for giving information and assistance to those who wish to enter the EU under the Blue Card umbrella. However, any access based on employment and skills should not replace or compromise the resettlement of refugees with specific protection needs and vulnerability.

It is clear that if third-country nationals are admitted as Blue Card holders to the EU, even if they had been previously recognised as refugees by UNHCR or by other actors outside the EU, they will not be *ipso facto* considered as beneficiaries of international protection by the Member States. On the other hand, it is equally clear that every person admitted in the EU territory has the right to apply for asylum to get his/her need of protection examined. Therefore, these persons might also end up as double status holders, if this was to be allowed in the Blue Card Directive. In any case, the initial Blue Card application or permit should not have the effect of hindering subsequent access to international protection, if the grounds are present.

Waiving the condition of presenting formal qualifications in the Blue Card Directive for a defined group of migrants (e.g. refugees recognised by the UNHCR or other relevant body or authority) and if necessary, replacing it with less burdensome safeguards might help to bring more people within the scheme. However, there would be equal treatment and non-discrimination concerns to take into account. In any case, non-legislative measures such as better skills validation and matching with potential employers are a big part of the solution. Also other practical ways and means could be sought to enhance this additional legal avenue for highly skilled people in refugee camps outside the EU. It could for example be promoted as a possible part of the social responsibility strategies of European companies to recruit highly skilled people from refugee camps or similar circumstances, and projects for the involvement of private recruitment companies operating in third countries could also be envisaged.

## **5. STAKEHOLDER AND EXPERT OPINIONS**

The United Nations Refugee Agency (UNHCR) has in its position paper on the Blue Card review stated that this instrument could provide for a pertinent legal avenue for highly qualified persons having fled from conflict or other hardship. It is recognised that the labour market integration of this group can be challenging, and specific support measures should be designed for different stages of the process. These may include matching with employers, facilitation of the recognition of qualifications, targeted skills development, issuance of travel documents, and the guaranteed respect for family unity. UNHCR stresses that persons recognised as refugees outside the EU should not end up in a less favourable position than

they previously were, if they take the Blue Card route to enter the EU. Essentially, *non-refoulement*<sup>439</sup> and other principles of international and refugee law should be respected. In addition, opting for the labour migration route should be based on correct information on relevant rights and obligations, and the final decision to participate should always be the migrant's own.<sup>440</sup>

In its position paper a German Employers' Association BDA is in favour of allowing rejected asylum seekers access to the Blue Card, if they fulfil the conditions and especially if they are to work in a shortage occupation<sup>441</sup>. In a written contribution replying to the Public Consultation on labour migration carried out by the Commission (described in Annex 2), the Confederation of German Trade Unions (DGB) advocates the inclusion of beneficiaries of international protection in the Blue Card scheme.

The issue of making the Blue Card more accessible to migrants either applying for or enjoying international protection has been discussed in the first and second meeting of the Expert Group on Economic Migration in March and December 2015 respectively. Concerning the possibility of opening access to the Blue Card for highly skilled *asylum seekers*, participants expressed some concerns, related e.g. to picking and choosing people based on skills. It was often felt that the two tracks should be kept separate. Also, it was pointed out that if this option was to be opened in terms of the Blue Card, there would be pressure to give asylum seekers access to other residence permit categories as well. Some found that any inclusion could become a pull factor, creating incentives for more people to apply for asylum. However, others suggested that schemes that allow an application change from asylum to work, and possibly back to asylum in case of unemployment, could be taken into consideration. This is particularly pertinent as it seems that Europe will continue to face important numbers of asylum seekers and their (labour market) integration is a big task at hand.<sup>442</sup>

Regarding the group of *beneficiaries of international protection*, most experts were in favour of including them in the Blue Card scheme as double status holders. It was agreed that the added value might be limited, but there seems to be no major objections to the inclusion, either. It was underlined that no separate category of Blue Card holders should be created, but grant double status holders all the same rights as the "regular" Blue Card holders enjoy. Also, any contribution to the creation of a specific labour market with inferior work conditions and pay should be carefully avoided. There were also more general views expressed that all third-country nationals legally residing in Member States should be granted access to apply for any kind of permit without undue restrictions.

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<sup>439</sup> The principle of *non-refoulement* has first been laid out in 1954 in the United Nations Convention relating to the Status of Refugees( Article 33(1)): "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

<sup>440</sup> UNHCR's Contribution to the EU's New European Policy on Legal Migration and the Review of the Blue Card Directive, p. 3-4

<sup>441</sup> *Make future-oriented use of labour market potential of asylum seekers and tolerated residents*; Updated position paper on labour market access for asylum seekers and tolerated residence, BDA, 12 June 2015

<sup>442</sup> <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=19237&no=2>, Summary of discussions, p. 5 (+second meeting once uploaded)