



Legal Migration Fitness check

Contextual Analysis : Historical overview

Annex 1Bi



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1 Evolution of the EU legal migration acquis

This section provides an overview of the origins and evolution of the EU's legal migration acquis. It covers:

- The origins of the EU migration policy, identifying the officially stated objectives of developing 'common' legal migration policies and the different positions held by key stakeholders at the Tampere Council of 1999, the baseline year for this study (Section 1.1);
- The development of the EU's legal migration policy since 1999, identifying the evolution of the policy's stated objectives and the instruments adopted during the reference period. The analysis focuses on the coverage and gaps of the different instruments, and the arguments put forward by stakeholders involved in the negotiations (Section 1.2);
- The baseline of national legislation on the admission and stay conditions of the specific categories of third-country nationals subsequently covered by the EU legal migration acquis (Section 1.3);
- The intended EU added value and intended impacts of the EU legal migration Directives (Section 1.4).

The aim of this historical overview is to provide a sound understanding of the economic, legal and political arguments which have shaped the evolution of the EU's legal migration acquis. This, in turn, will inform the evaluation of the relevance, effectiveness and EU added value of the acquis during Task IV of the study.

1.1 Origins of the EU legal migration acquis

The elaboration of the EU migration and home affairs policy is a relatively recent product of EU integration. The abolition of internal borders and the related right to free movement of EU citizens within the EU have created the need for EU cooperation in cross-border activities, such as movement of third-country nationals to and around the EU and the fight against cross-border crime. Although at the time of the adoption of the Single European Act, in 1986, there were differences in view as to whether free movement within the internal market, which was to be implemented by 1992, would apply to third-country nationals, the majority of Member States and the Commission considered that it would.¹ It was understood that, with the abolition of border controls, the migration decisions of one Member State would affect other Member States and therefore it was necessary to establish a series of minimum guarantees ('a level playing field') in a number of areas, from security (to control the European Community's external border) as well as in relation to admission conditions and procedures and the rights of third-country nationals following admission.²

The original Treaty on European Union (TEU) signed in Maastricht on 7 February 1992 introduced for the first time rules concerning EU decision-making and competence as regards immigration law. The rules set out in Title IV of the **Treaty of Maastricht**, which entered into force in 1993, were known as the "Third Pillar" and were strongly intergovernmental in character. The rules permitted only non-binding joint positions or the elaboration of international treaties – not supranational Directives and Regulations. They required unanimous voting in the Council, a very limited role for the European Parliament and only a shared power of initiative for the Commission. At that stage, the EU produced very little binding output in the field of migration. The exception were initiatives focused on the creation of a common external border,

¹ Papagianni, G. *Institutional and Policy Dynamics of EU Migration Law*, Martinus Nijhoff Publishers, p. 11.

² Thym, D. *Legal Framework for EU Immigration Policy*, in Hailbronner and Thym (eds), *EU Immigration and Asylum Law*, Second Edition, 2016.

including the adoption of a common list of countries whose nationals would be under a visa obligation and rules governing the crossing of external borders.³

The **Treaty of Amsterdam**, which entered into force in 1999, established a more robust Treaty base for migration policy with supranational elements. The Treaty of Amsterdam moved controls on the external borders, asylum, immigration and judicial cooperation on civil matters into a new Title IV (Articles 62 and 63) of the EC Treaty. These areas were now placed within the "First Pillar", governed by the so-called Community Method. According to Article 67(1) of the Treaty, the rules for decision-making in all areas of immigration would be based, for the next five years (until 1 May 2004) on unanimity in the Council, after consultation of the European Parliament, on a proposal from either the Commission or a Member State. In other words, decision-making was to remain subject to unanimous voting in the Council and consultation of the European Parliament unless the Council decided unanimously to alter the voting rules and apply the co-decision procedure (including QMV). Whilst the Council was allowed to start voting by qualified-majority as of 2004, it made use of the so-called '*passerelle* clause' that allowed Member States to keep voting under the unanimity rule, and consulting the European Parliament, on issues concerning legal migration.⁴ This structure, which implied long and arduous negotiations before proposals were approved, was preserved under the **Treaty of Nice**.⁵

The Treaty of Amsterdam acknowledged the link between the internal market and a European policy on immigration in Article 61 (a) which referred to establishing 'flanking policies' with respect to external border controls, asylum and immigration'.⁶ However, it specifically highlighted as a rationale for the establishment of a legal migration policy the need for Member States to cooperate in order to safeguard the rights of third-country nationals.⁷ The Treaty of Amsterdam foresaw not only an internal market, but also an "area of freedom, security and justice" (AFSJ). In order to establish the AFSJ, the Treaty called on the Council to adopt, among others, measures to regulate the "conditions of entry and residence, and standards on procedures, for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunification" (Article 63(3)(a) TEC). The Treaty further called for measures "defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States" (Under Article 63(4) TEC).

The Treaty of Amsterdam granted the UK, Ireland and Denmark a series of 'opt-outs' from Justice and Home Affairs matters. The Protocol on the position of the United Kingdom and Ireland grants these two countries an opt-out from Title IV EC. According to Article 3 of the Protocol, Ireland and the UK have the possibility to opt-in for the adoption and application of any measure under Title IV EC, but this decision must be taken at the latest three months after the measure has been proposed. Ireland attached a Declaration to the Final Act, stating that it intended to participate in the adoption of measure under Title IV EC to the maximum extent compatible with the maintenance of the Common Travel Area with the United Kingdom. The Protocol on the Position of Denmark grants Denmark a complete opt-out from Title IV EC. In contrast to Ireland and the UK, it is therefore not possible for Denmark to opt-in to measures adopted in the area of legal migration. Due to the fact that Denmark (in contrast to the UK and Ireland) is a member of Schengen, Article 5 of the Protocol

³ Peers, S. Guild, E., Acosta Arcaz, D., Groenendijk, K and Moreno-Lax, V. *EU Immigration and Asylum Law (Text and Commentary)*, Second Revised Edition, 2012, p. 5.

⁴ Hailbronner and Thym (eds), *EU Immigration and Asylum Law*, Second Edition, 2016, p.2.

⁵ Azoulai, L. and de Vries, K. (ed.), 2014, *EU Migration Law: Legal Complexities and Political Rationales*, Oxford University Press.

⁶ Azoulai, L. and de Vries, K. (ed.), 2014, *EU Migration Law: Legal Complexities and Political Rationales*, Oxford University Press.

⁷ Ibid.

allows the Danish government to decide within six months on the implementation into national law of any Council decision building on the Schengen acquis.⁸

Further expansion of EU competences in the field of migration took place in 2009, with the entry into force of the **Treaty of Lisbon**.⁹ The Treaty of Lisbon streamlined decision-making procedures by extending qualified majority voting in the Council and co-decision with the Parliament (which was renamed the 'ordinary legislative procedure') to measures concerning legal migration. Besides changes to the framework for taking decisions on immigration, the Treaty of Lisbon introduced extensive changes to the scope of EU competences in this field.

The Lisbon Treaty takes up, in Article 79(1) TFEU, the objective of developing a "common immigration policy" in order to ensure "the efficient management of migration flows", as well as to ensure the "fair treatment of third-country nationals" and to prevent/combat illegal immigration and trafficking in human beings. Analysis of the provisions of Article 79(2) TFEU reveals the extensive competences granted to the EU legislature for core aspects of immigration law, compared to the previous situation. While the competences remain shared with the Member States, and must therefore comply with the principles of subsidiarity and proportionality, they include the freedom to regulate different immigration statuses, of short and long-duration; to adopt legal rules on the conditions of entry and stay of third-country nationals; to determine common procedures for third-country nationals to acquire residence permits; and to harmonise rules regarding the rights of third-country nationals during periods of legal residence. Article 79(2) TFEU also permits the EU legislature to adopt rules on free movement and residence rights within the European Union for third-country nationals who have already been granted access to the EU territory (Article 79(2)).

Restrictions of EU competence to regulate migration – economic migration, employment conditions and integration

The Lisbon Treaty also clarified that the EU legislature can establish rules on economic migration – a topic which had previously been controversial. This competence derives from the newly conferred power to develop a "common immigration policy", would be incomplete if it did not include the power to regulate economic migration within the scope of Article 79(2) TFEU.¹⁰ At the same time, the Lisbon Treaty introduced the caveat that Member States retain a certain flexibility regarding economic migration: Article 79(5) TFEU maintains the right of Member States to determine the volume of admission of third-country nationals admitted for work-related purposes. It stipulates that "This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed."

The implications of Article 79(5) have been analysed by various observers. They note that, while it introduces an express restriction to the EU's competence as regards the regulation of economic migration, it does so only with respect to the volumes of admissions, rather than the question of access to employment for persons who have already been admitted. They also note that the paragraph does not prevent the EU from regulating other "technical" aspects of admission of economic migrants, such as the procedures for admission or the grounds for admission, as long as these do not prevent Member States from regulating the volumes.¹¹ Therefore, while EU Directives can establish individual rights for third-country nationals to access employment, "the conditions for the existence of these rights prescribed in EU legislation should provide sufficient flexibility for Member States to influence the volumes of admission through

⁸ Wiesbrok, A. *Legal Migration to the European Union*, Martinus Nijhoff (Leiden/Boston, 2010), pp. 134-135.

⁹ Hailbronner and Thym. *Op Cit*, p. 3.

¹⁰ Peers et al, 2012, *Op Cit*, p. 13.

¹¹ Peers et al, 2012, *Op Cit*, p. 13-15.

national immigration law".¹² For example, Directives can allow Member States to apply labour market tests, quota systems or similar requirements. Finally, the restriction established by Article 79(5) only applies to third-country nationals who come directly from third countries – not third-country nationals moving from one Member State to another.

Article 153 TFEU should also be mentioned in the context of the EU's competence to regulate economic migration as this Article regulates the EU's competences in relation to the "conditions of employment" of third-country nationals. Article 153(1)(g) establishes that this shall be subject to unanimous voting by the Council and consultation with the European Parliament, unless the Council, acting unanimously on a proposal from the Commission, and after consulting the European Parliament, decides to render the ordinary legislative procedure applicable. Article 153 TFEU is also important because in paragraph (1)(c) it excludes social policy (i.e. "social security and the social protection of workers") from this possibility, establishing it as an area that must remain subject to unanimity voting and consultation with the European Parliament.¹³ Regarding integration, while the Council and the Parliament *may* adopt measures to provide incentives and support to Member States in promoting integration, the competence remains national, and harmonisation of the laws and regulations is expressly excluded (Article 79(4) TFEU).

¹² Thym, Op Cit, p. 284.

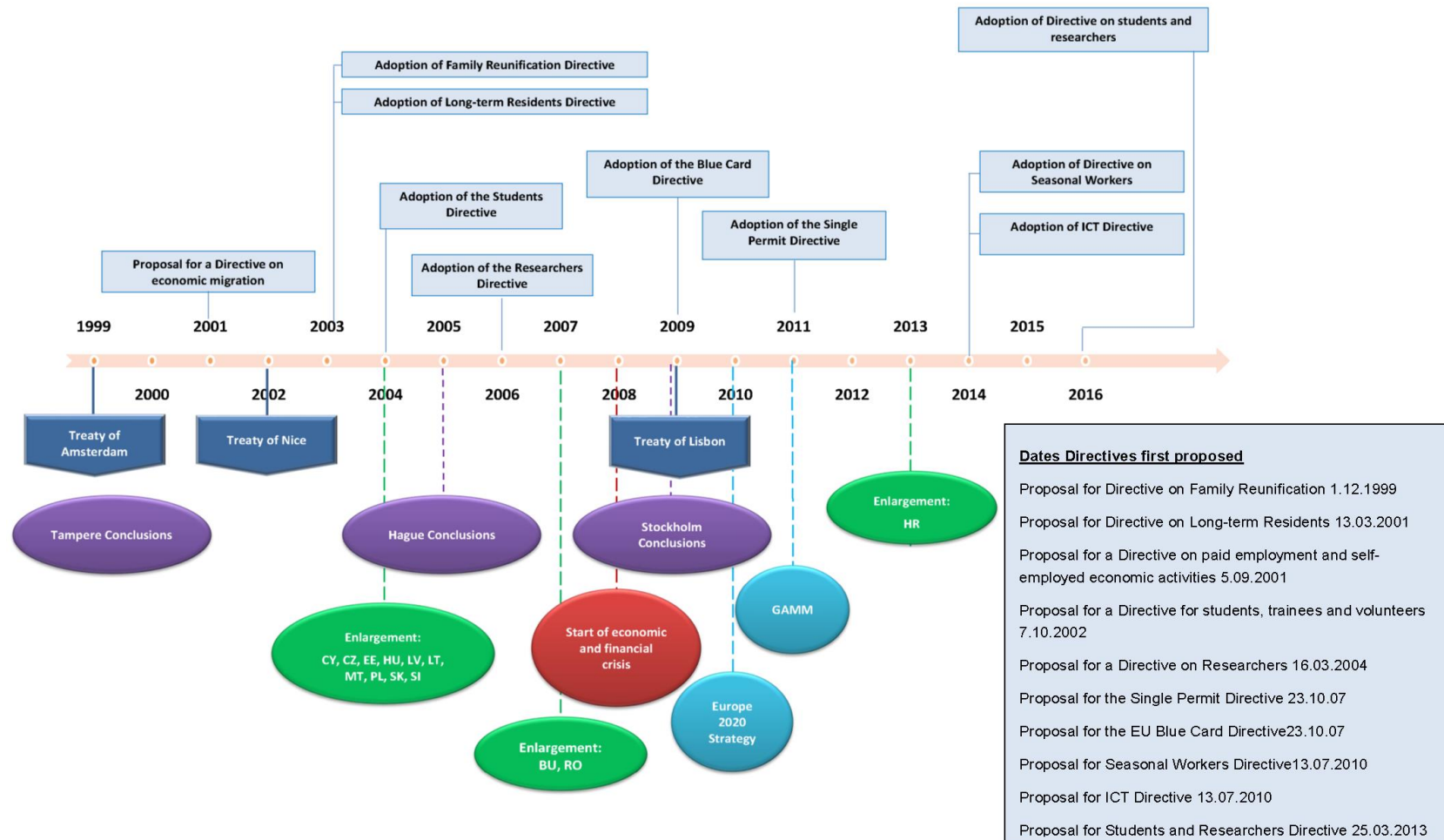
¹³ Peers et al, 2012, Op Cit, p. 13-15.

1.2 Evolution of the EU's legal migration acquis

In this section, the evolution of the EU's legal migration acquis is broadly organised into four phases. Each phase is examined in a separate sub-section, which reviews the legal and political context at the time, the legal migration Directives which were adopted, and the main changes which the Directives underwent between proposal and adoption stage. Where available, each sub-section also identifies the opinions of the different stakeholders involved in the negotiations i.e. the view of Council members, the Commission and (following the adoption of the co-decision procedure) the European Parliament. The evolution is summarised in **Figure 1** below which contains a timeline showing the key milestones of the EU legal migration acquis in the context of the EU's changing legal, economic and political landscape.

The evolution of the EU's legal migration acquis reveals a gradual increase in the level of ambition of the Directives, with more emphasis on harmonised common rules in the later Directives compared to the earlier ones, which focused more on setting common minimum standards. It also reflects an increasing acknowledgement over time of the role of migration for tackling labour market and demographic challenges. At the same time, it reveals a number of themes which persisted across the reference period, including a preference for a sectoral approach to managing migration rather than "cover-all" rules (although some of these have been adopted), and a preference for domestic workers (both EU citizens and already resident third-country nationals) rather than admitting new third-country nationals for addressing labour market needs.

Figure 1. Timeline showing the evolution of the EU legal migration acquis



1.2.1 Phase 1: The entry into force of the Amsterdam Treaty and the Tampere milestones, 1999-2004

Shortly after the Amsterdam Treaty came into force, the Heads of States and Government gathered at the Tampere European Council of 15 and 16 October 1999 to decide upon a five year programme in the fields of justice and home affairs. The **Tampere Presidency Conclusions** foresaw the creation of an "area of freedom, security and justice" and the development of a "common EU asylum and migration policy".¹⁴ The Tampere Council took place in a propitious economic context, including declining unemployment rates and rising GDP per capita. The late 1990s saw an influx of employment-related migration into the EU, especially in the high skilled sector.¹⁵ Traditional countries of emigration such as Greece, Italy, Portugal and Spain were transforming into countries of immigration. The period also saw significant changes in immigration policy at national level. Germany, for example, abandoned its traditional 'zero-immigration policy' in favour of a more positive approach towards legal migration, with the adoption of a Green Card which sought to attract third-country nationals in the Information Technology sector and later other sectors.¹⁶ There was a growing political consensus about the benefits of labour migration for addressing population ageing and skills shortages in key sectors of the economy.¹⁷ Finally, the Tampere Council also took place shortly after the Kosovo Crisis, when Member States volunteered to take in Kosovar refugees and so the general public was more receptive to a rights-based approach to asylum and migration issues than it had been in the past.¹⁸

The conclusions of the Tampere Council highlighted **the main objectives of EU migration policy**, which were to influence the subsequent evolution of the EU's legal migration acquis. These objectives consisted of ensuring:

1. The fair treatment of third-country nationals; and,
2. The efficient management of migration flows.

The Tampere conclusions called for the development of a common immigration policy driven by the principle of fair treatment of legally-residing third country nationals. This should include a "more vigorous integration policy" granting TCNs rights and obligations comparable to those of EU citizens; national programmes to advance the fight against discrimination; and the granting to third-country nationals who are long-term residents a "set of uniform rights which are as near as possible to those enjoyed by EU citizens".

The Tampere conclusions also stressed the need for "more efficient management of migration flows at all their stages". It called for the adoption of a number of measures in order to achieve this, both in the field of security (including closer cooperation between Member States' border control services) as well as establishing a common discipline among Member States in order to ensure a more harmonised approach to the regulation of migration flows. This should include a common active policy on visas, measures for tackling illegal immigration at its source, including preventing and combatting all forms of trafficking in human beings and a common approach to promoting the return and readmission of irregular migrants.

¹⁴ Point 18, Tampere European Council, 1999. Presidency Conclusions. Available at: http://www.europarl.europa.eu/summits/tam_en.htm.

¹⁵ Schneider, H., "Towards a European Migration Policy: from Maastricht to Amsterdam, from Tampere to the Hague" (2005), in Schneider, H., *Migration, Integration and Citizenship. A Challenge for Europe's Future*, Volume II, pp. 7–34.

¹⁶ Wiesbrock, Op Cit, p. 40.

¹⁷ Wiesbrock, Op Cit, pp 146-150.

¹⁸ Sperl, M. When Prime Ministers replace policemen', Migration Studies Unit Working Papers, No. 2009/02, London School of Economics.

The Tampere Council also called for “a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit.” This was the first time that the European Council used a development rationale to justify the creation of a common labour migration policy, whereby the facilitation of people-to-people contacts and legal channels for economic migration can contribute to economic development and respond to human displacements resulting from war in third countries.

Last but not least, the European Council at Tampere advanced an economic rationale for developing a common approach to legal migration. It acknowledged “the need for approximation of national legislations on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union”.

Between 1999 and 2004 the Commission put forward four proposals in other areas of legal migration, namely, a proposal for a Directive on family reunification,¹⁹ a proposal for a Directive on long-term third-country national residents,²⁰ a proposal for a Directive on students²¹ and a proposal for a Directive on researchers.²² It also put forward a proposal Economic Migration Directive, which later withdrew. Difficult negotiations also followed these proposals, but the Directives on the right to family reunification and long term residents were finally adopted in 2003; the Directive for the conditions of entry and residence of students was adopted in 2004; and the Directive on a specific admission procedure for researchers in 2005. In all cases, the applicable standards in the Directives that were finally adopted were lower (in the case of the Family Reunification Directive, significantly lower) than in the original proposals. The main changes to the Directives between their proposal and adoption are summarised below.

- **Family Reunification Directive**²³ (proposed December 1999, adopted September 2003):

The first proposal from the Commission on family reunification was submitted in December 1999. The final text of the Directive was negotiated for approximately three years, within which the Commission submitted two other modified proposals in 2000 and 2002.²⁴ The Commission’s 1999 proposal envisaged an almost complete harmonisation of the conditions for family reunification family reunification of third-country nationals, with little scope for discretion left to the Member States.²⁵ During

¹⁹ Proposal for a Council Directive on the right to family reunification, COM/99/0638 final - CNS 99/0258, Brussels, 1.12.1999, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51999PC0638&from=EN>.

²⁰ Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, COM/2001/0127 final - CNS 2001/0074, Brussels, 13.03.2001, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001PC0127&from=EN>.

²¹ Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service, COM/2002/0548 final - CNS 2002/0242, Brussels, 7.10.2002, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52002PC0548&from=EN>.

²² Communication from the Commission to the Council and the European Parliament on the presentation of a proposal for a directive and two proposals for recommendations on the admission of third-country nationals to carry out scientific research in the European Community, COM/2004/0178 final, Brussels, 16.3.2004, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0178&from=EN>.

²³ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003.

²⁴ COM (2000) 624 final, 10 October 2000 and COM (2002) 225 final, 2 May 2002.

²⁵ COM(1999) 638 final; A. Wiesbrock, *Legal migration to the EU*, 2010, p. 254; and C. Roos, *The EU and Immigration Policies: Cracks in the Walls of Fortress Europe?*, 2013, p. 93. Restricted discretion of Member States for example on resource requirements (minimum income level) and time periods for the submission of an application (6 months), rights granted to family members (education and training and immediate access to the labour market).

the negotiations, the content of this initial proposal was gradually changed to reach the lowest common denominator between Member States on conditions for family reunification.²⁶

The starting point of the Commission's 1999 proposal was a wide **personal scope**: sponsors included third-country nationals lawfully residing in a Member State with a residence permit valid for at least one year "irrespective of the reasons for their residence there", including refugees and "persons enjoying subsidiary protection" as well as Union citizens who have not exercised their right to free movement. The only excluded category of third-country nationals were seasonal workers as they held a residence permit that was valid for less than a year. The proposal also included "unmarried partners" in the definition of eligible family member in Member States where unmarried couples are treated for legal purposes in the same way as married couples. These provisions were defended by the Commission based on the Tampere Conclusions to offer 'fair treatment' and a 'dynamic integration policy' for third-country nationals.²⁷

The Commission incorporated a number of the European Parliament's suggestions²⁸ in a **second proposal** adopted in October 2000. The latter made a number of changes to the scope of the Directive by excluding beneficiaries of subsidiary protection and family members of EU citizens who have not made use of their right to free movement.²⁹ As discussions in the Council lead to a deadlock between Member States supportive of Commission's proposal and others calling for a more restrictive position on family reunification rules at EU level,³⁰ in December 2001 the European Council invited the Commission to revise its proposal. A **third proposal** was presented by the Commission in May 2002. This third proposal further reduced the scope of the proposal by excluding the right to family reunification of direct relatives in the ascending line and unmarried partners.

During the negotiations, Member States took issue with a number of aspects of the Commission's proposal, including:³¹

- **Personal scope** of the Directive as mentioned above and the definition of family members. In particular, family reunification with children was framed in stricter terms (integration requirements for children younger than 12 years old and possibility to request that the application regarding minor children be submitted before the age of 15).
- **Procedural aspects of the application for family reunification**: for example, the time limit imposed on the authorities to examine an application for family reunification was extended from a maximum six-month deadline in the proposal to nine months in the final text. Additionally, in exceptional cases, this time limit may be extended without any concrete deadline for reply.
- **Rights of family members**: for example, compared to the initial proposal by the Commission, the access of family members to the labour market may be limited for twelve months. Similarly, regarding the autonomous residence permit which in principle is granted no later than after five years of residence, the Council added a derogation to limit the granting of an autonomous residence permit only to the spouse in cases of breakdown of the family relationship.

²⁶ G. Pappagianni, *Institutional and Policy Dynamics of EU migration law*, 2006, p. 160.

²⁷ COM(1999) 638 final, p.9.

²⁸ European Parliament, Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, Report on the proposal for a Council Directive on the right to family reunification, A5/2000/201, 6 September 2000.

²⁹ COM (2000) 624 final.

³⁰ C. Roos, *The EU and Immigration Policies*, pp. 95-105.

³¹ Peers, S. and N. Rogers, *Migration and Asylum Law: Text and Commentary*, 2006, p. 598.

- **Renewal of residence permits:** the number of grounds to reject an application or refuse to renew a family member's residence permit were extended compared to the initial Commission proposal which contained only 3 situations while Article 16 of the final text of the Directive has almost tripled this number.

The text that was adopted also led to a significant distinction between the family reunification conditions applicable to third-country national sponsors and those applicable to family members of mobile EU citizens under the free movement rules. Indeed, Article 4 of the original proposal by the Commission which forbade reverse discrimination against Union citizens was deleted after it met with fierce opposition from certain Member States.³² They considered that the situation of family members of non-mobile Union citizens is only governed by national law and was a purely internal situation falling under Member States' competences.³³ In the final text of the Directive, both the sponsor and his/her family member need to be a third country national to fall under the scope of the Directive, so the family members of Union citizens are excluded from the Directive. They are partly covered by Directive 2004/38/EC, however this applies only to those Union citizens who move to or reside in a Member State other than that of which they are a national.³⁴

The final, agreed text of the Directive therefore includes a core of mandatory provisions; the minimum scope of family members includes only spouses and minor children and the majority of admission criteria are worded as 'may clauses'.³⁵

The European Parliament tried to annul parts of the Directive on grounds that it contravened fundamental rights. While the European Parliament's case was rejected by the European Court of Justice, its ruling helped to clarify various aspects³⁶ of the Directive which had been subject to interpretation, especially underlining the need for individual assessment of family reunification applications.³⁷ The CJEU also ruled that, although Member States have a certain margin of appreciation in implementing the provisions of the Directive and can make the right to family reunification subject to compliance with certain requirements if the Directive allows for this, the Directive also imposes precise obligations on Member States to authorise family reunification when conditions set by the Directives are met, without being left a margin of appreciation.³⁸

- **Directive on Long Term Residents**³⁹ (proposed March 2001, adopted November 2003):

The LTR Directive was proposed by the Commission to approximate the social and free movement rights of third-country nationals with those of Member State nationals. This would advance the Commission's long-term objective of developing a common EU immigration policy where a set of uniform rights would be granted to all immigrants,

³² COM (1999) 638 final of 1 December 1999.

³³ K. Groenendijk, *Family Reunification as a Right under Community Law*, European Journal of Migration and Law, Vol. 8, pp. 215–230, 2006.

³⁴ European Commission, Report on the application of directive 2003/86/EC on the right to family reunification, COM(2008) 610 final.

³⁵ K. Groenendijk, R. Fernhout, D. van Dam, R. van Oers, T. Strik, *The Family Reunification Directive in EU Member States, the first year of implementation*, Centre for Migration law, Nijmegen, 2007.

³⁶ The court ruling focused on analysing the Art. 4.1 (which was the core the EP's case,) stating that the final subparagraph of Article 4(1) of the Directive cannot be interpreted as authorising the Member States, expressly or impliedly, to adopt implementing provisions that would be contrary to the right to respect for family life.

³⁷ Peers, S. *EU Justice and Home Affairs Law*, Oxford University Press, 2011.

³⁸ CJEU judgment in case C-540/03 of 27 June 2006, *European Parliament v Council of the European Union*, ECLI:EU:C:2006:429.

³⁹ 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.

and the rights granted to long term residents would constitute the point of reference for this set of rights.⁴⁰ A key right in this context is the right of third-country nationals to equal treatment with EU citizens, enshrined in Article 11 of the adopted Directive on long-term residents. The provisions of this Article cover many of the same areas (albeit with restrictions as explained below) as the Racial Equality Directive 2000/43/EC⁴¹ and the Employment Equality Directive 2000/78/EC,⁴² which were adopted shortly before the Commission issued its proposal for a Directive on long-term residents and would therefore have served as an important point of reference.⁴³

The Commission proposal in 2001 was the first proposal to address the conditions for the mobility and residence of third-country nationals in a second Member State. Within the limited consultative role, that was defined under the Amsterdam Treaty, the European Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs issued a report which welcomed the proposal as helping to meet the commitment made at Tampere to strengthen the rights of third-country nationals. However, it considered that the Directive should also cover persons benefitting from subsidiary protection. Inspired by the Equal Treatment Directives (2000/46 and 78) the report also called for additional rights should be granted to the long-term residence permit holders, notably as regards religious and cultural identity.⁴⁴

Among the aspects of the Commission's proposal considered problematic by Member States were:

- The **personal scope** of the proposal. The proposal adopted a comprehensive approach and initially covered all third-country nationals who have legally resided in a Member State for more than 5 years. In contrast to the Commission's proposal, the final text that was agreed excluded various groups from the scope of the Directive. These are students or persons pursuing vocational training, seasonal workers, diplomats, applicants for the refugee status, and persons who reside on temporary grounds or hold a residence permit that has been formally limited. This is due to their precarious situation or because they are residing in a Member State only for a short time. While periods of study may be taken into account for the purposes of assessing eligibility to obtain a long-term residents permit, only half of the period of study will count.⁴⁵ In 2011, amendments were made to the Directive to extend the scope to beneficiaries of international protection.⁴⁶
- The **five year wait period to be granted the long-term status**, which was considered by some Member States as too short. The calculation of this period is set in rather broad terms in the Directive compared to the detailed provisions relating to the calculation of the five-year period and the calculation of the periods of absence outlined in the Commission's proposal,

⁴⁰ C. Roos, *The EU and Immigration Policies*, pp. 113-114.

⁴¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0043&from=en>

⁴² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0078&from=en>

⁴³ While they may have provided inspiration for the equal treatment provisions of the Directive on long-term residents scope, the Equal Treatment Directives exclude from their scope any differences in treatment based on nationality (as well as any differences in treatment which arise from the legal status of the third-country nationals), and therefore do not play a direct role in the management of legal migration.

⁴⁴ Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, Report on the proposal for a Council Directive concerning the status of third-country nationals who are long-term residents (COM(2001) 127 – C5-0250/2001 – 2001/0074(CNS))

⁴⁵ Article 4(2) of the final text of the LTR Directive compared to Commission's proposal where in Article 5(2)(b) this was an obligation on the Member States.

⁴⁶ Directive 2011/51/EU amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, OJ L 132, 19.5.2011.

thus leaving a wider margin of discretion for Member States.⁴⁷ Also, the long-term permit is granted for an initial duration of at least five years instead of the ten years that had been proposed by the Commission.⁴⁸

- The **conditions for acquiring the long-term residence status** and the documentary evidence supporting the application, which were considered insufficient; the Council introduced the possibility for Member States to make the status conditional upon fulfilling a number of integration requirements.
- The **rights granted to holders of the LTR status**. In comparison to the proposal of the Commission, the final text of the Directive provides for a list of equal treatment rights and a number of exceptions and derogations from the rights included in the Directive. One of the rights most subject to such exceptions is the right to access the labour market, and the related rights of access to social assistance and social protection.
- The **ability to move to another Member State**: certain Member States wanted to limit the long-term residents' employment possibilities in the second Member State.⁴⁹ Even though such limitations were not foreseen in the Commission's initial proposal, they were subsequently adopted. As a result, Member States may use a quota system for long-term residents wishing to move to their territory and thus give preference to EU citizens regarding the access to their labour market.⁵⁰ Limitations are applicable also to their family members, as access to the labour market is possible only to the spouse and children, with the possibility of access to the labour market being withheld for up to a year.
- The Commission's proposal provided for a two-year absence with a list of concrete exceptions as a frame for **the loss or withdrawal of status**. The final text includes a shorter period and is drafted in more general terms.⁵¹

Another limitation inserted in the final text of the Directive is that the Directive does not replace the equivalent national regimes for granting long-term residence, and third-country nationals that have acquired the status on the basis of national law do not benefit from the advantages of the Directive. This is a limitation to the added value of an EU long-term residence status.

- **Economic Migration Directive** (proposed 2001, withdrawn in 2005):

While the Tampere Council did not call for the development of EU legislation on economic migration, the economic rationale for developing a common approach to legal migration was taken up by the Commission in a 2001 **proposal for a Directive on economic migration**.⁵² The proposal had the objective of determining the conditions of entry and residence as well as the standards on procedures for the issuing of permits to third-country nationals to enter and reside in order to exercise employed or self-employed activities. In order to become eligible for entry and residence, third-country nationals would be required to pass a labour market test (in the case of those wishing to exercise an employed activity) or a beneficial effects test

⁴⁷ Article 4(3) of the final text of the LTR Directive compared to Article 5(3) of the Commission's proposal.

⁴⁸ Article 8 of the LTR Directive compared to Article 9 of the Commission's proposal for a LTR Directive.

⁴⁹ Peers, S. *EU Justice and Home Affairs Law*, Oxford University Press, 2011

⁵⁰ Article 14 of the LTR Directive.

⁵¹ Article 9 of the LTR Directive and Article 10 of the Commission's proposal for a LTR Directive.

⁵² Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, COM/2001/0386 final - CNS 2001/0154, Brussels, 5.09.2001, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001PC0386&from=EN>.

(in the case of those wishing to exercise a self-employed activity).⁵³ Thus, at the core of the proposal was the principle of preference of EU citizens and of third-country nationals who are legally resident and who enjoy access to the labour market. Special provisions were foreseen for certain categories of third-country nationals, namely seasonal workers, trans-frontier workers, intra-corporate transferees and trainees/au pairs.

The most notable feature of the proposal was its ambition of setting “cover-all” rules in the field of labour migration, without distinguishing between high or low-skilled migrants. It also proposed to simplify existing application procedures by offering successful candidates a single ‘combined title’, encompassing both residence and work permit within one administrative act (Recital 7 and Article 11(1)(d) and (e)). The permit would have an initial validity of three years, during which Member States could restrict the professional activities of the third-country national to a particular field or region, but not to a particular employer. The permits could be renewed for another three years, during which time the third-country national would have free access to the labour market of the Member State concerned (Article 8). The proposal also contained equal treatment provisions for the third-country nationals with respect to Union citizens; however in some areas, the principle of equal treatment could be restricted by Member States (in respect of vocational training and in respect of access to goods and services, including public housing).

The arguments which the Commission put forward in the proposal, in favour of such comprehensive approach to regulating economic migration focused on the increasingly global labour market and the shortages of skilled labour in certain sectors of the European economy. In these circumstances, the European Community “needs to reinforce its competitiveness to recruit and attract third country workers”, and the proposed Directive would help it to do so by simplifying administrative procedures and enhancing access to relevant information.⁵⁴ In 2001, the governance framework for adopting measures in the field of migration relied on unanimity within the Council, with the European Parliament only to be consulted. The European Parliament and the European Economic and Social Committee supported the arguments put forward by the Commission.⁵⁵ However, in 2005 the proposal was withdrawn by the European Commission after its first reading in the JHA Council because it failed to reach unanimous agreement.⁵⁶

Even if the Commission’s rationale for the proposal echoed the call made in Tampere to approximate national legislation on the conditions for admission and residence of third-country nationals, the proposal as such had not been foreseen by the Tampere European Council which may explain the resistance it met from Member States. The representatives of certain Member States expressed deep concern about the possibility of having ‘more Europe’ in these nationally sensitive fields.⁵⁷ The Commission re-addressed the issue in a 2005 policy plan on legal migration, which laid the basis for a sectoral approach to economic migration.

⁵³ Articles 5(3)(d), 6, 18(3)(d) and 19 of the proposal on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, COM/2001/0386 final - CNS 2001/0154, Brussels, 5.09.2001.

⁵⁴ Preamble to the proposal for a Council Directive on the

⁵⁵ Opinions of the: European Parliament of 12.2.2003 (A5-0010/2003); European Economic and Social Committee of 16.1.2002 (SOC/084, CES 28/2002); Committee of the Regions of 13.3.2002 (CdR 386/2001).

⁵⁶ Communication from the Commission to the Council and the European Parliament - Outcome of the screening of legislative proposals pending before the Legislator, COM/2005/0462 final, Brussels, 27.9.2005, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005DC0462&from=EN>. Also see D. Acosta and C. Murphy (eds), 2014, *EU Security and Justice Law: After Lisbon and Stockholm*, Hart Publishing, p.137.

⁵⁷ Carrera et al, Labour Immigration Policy in the EU: A Renewed Agenda for Europe 2020, CEPS Policy Brief, No. 240, 5 April 2011.

The main elements of the proposal are listed in Annex 1 (Table 1), which also maps the extent to which the provisions were taken up in subsequent Directives. The most important features which were dropped, and have not been retained in subsequent proposals, include the general rules on admission and residence for persons in paid employment and self-employed activities. The general provisions on equal treatment were also abandoned in the current sectoral approach, where the coverage of the equal treatment provisions varies somewhat for certain categories of third-country nationals. The current employment related Directives (Blue Card Directive, Seasonal Workers Directive, ICT Directive and the Single Permit Directive) retain many of the admission procedures and conditions included in the 2001 proposal, such as the possibility for Member States to determine volumes of admission for particular categories of third-country nationals (e.g. through the imposition of national ceilings or quotas); equal treatment provisions (in respect to working conditions, access to vocational training; social security; social services and public housing); provisions for inter-corporate transferees. Finally, the current employment-related Directives depart from the 2001 proposal by including provisions on intra-EU mobility (with the exception of the Single Permit Directive and the current Seasonal Workers Directive, that do not include such a provision).

- **Students Directive**⁵⁸ (proposed October 2002, adopted December 2004):

The Commission's 2002 proposal included aspects which raised difficulties for some Member States during the negotiations. One of these concerned having binding EU rules not only on the admission and residence conditions of international students but also for volunteers, trainees and pupils. Therefore, in the final text of the Directive, students were the only category for which admission and conditions of residence were harmonized at EU level. Another point of contention was the right of students to work. The proposal did not establish a maximum number of hours per week that students can work, but gave Member States a 10 to 20 hours range within which they could do so. Some Member States also had issues with the proposal to allow students benefitting from Erasmus and other such programmes facilitated access to intra-EU mobility.

In April 2003, again within the limits of the consultative role afforded to it by the Amsterdam and Nice Treaties, the European Parliament adopted a draft legislative resolution on the proposed Directive which suggested to extend the scope of the Directive.⁵⁹ The European Parliament pointed out to a gap in the scope of the Commission's proposal which did not include unpaid researchers and university teachers. The Resolution laid down a definition for "unremunerated" researcher and suggested specific conditions for the issue of residence permits to such a category of migrants. This gap was due to the fact that at that time, the Commission had not published the proposal for a Researchers Directive. It also established that decisions to withdraw residence permits or visas must be in writing with reasons; decisions on applications for admission or renewal must be notified to applicants within 60 days rather than 90 days; and a provision should be inserted that trade union representatives must be informed by the employer of the presence of unremunerated trainees and the content of the training offered.⁶⁰

⁵⁸ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375 of 23 December 2004, p. 12.

⁵⁹ European Parliament, Report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs on the proposal from the Commission with a view to the adoption of a Council directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service, A5/2003/137, 28 April 2003.

⁶⁰ Decision by Parliament on the Students Directive, 1st reading/single reading of the 2002/0242(CNS) - 03/06/2003.

The final text allowed Member States to establish their own maximum number of hours a week that students can work, which cannot be less than 10 hours, and to restrict students' right to work according to the situation in the national labour market. The application procedure that was detailed in the proposal, such as provisions on the issuance of visas and submission of the application, was deleted from the final text of the Directive. It also specified that facilitated access to intra-EU mobility for students participating in a Community or bilateral exchange programme should be restricted to students who have been admitted as a student in a Member State for no less than two years.

- **Researchers Directive**⁶¹ (proposed March 2004, adopted October 2005):

The proposal on a Researchers Directive was part of a 'Researchers Package' that aimed at facilitating the admission process of researchers and their families. This package was composed of a proposal for a Directive establishing specific procedures for admitting third-country nationals for the purposes of scientific research and two Recommendations, one on visa applications for short stays and another one on visa applications for stays longer than three months and covering also the issue of family reunification of researchers. These Recommendations had the aim of creating a certain level of approximation of national legislations in advance of the implementation of the Directive.⁶²

Some of the more contentious aspects of the Commission's proposal for the Council were the possibility for the Directive to also cover persons applying for admission in order to teach at a higher education establishment defined by law (and not just to undertake a research project); the terms on which researchers under the Directive could move to another Member State; the provision that applications can be presented 'on the spot' provided the third-country national is in the country legally; and the obligation to issue the residence permit within 30 days of submission of the application.

The final version allowed authorities in the second Member States to impose visa or other residence permit requirements on researchers wishing to move from one Member State to another. It also dropped the possibility of presenting 'on the spot' applications as well as the obligation to issue residence permits within 30 days and limits to the level of application fees. The issue of family reunification, although addressed separately in a Recommendation, was also included in the final text of the Directive and, in order to increase the attractiveness of the EU to foreign researchers, had to include a derogation from the Family Reunification Directive on a minimum residence requirement of at least a year to apply for family reunification.⁶³

1.2.2 Phase 2: The Hague programme and the Lisbon Treaty, 2005-2009

The EU's economic situation remained positive in November 2004, when the European Union Heads of State and Government gathered at the European Council meeting in The Hague. Demand for foreign labour in certain sectors of the economy continued to grow, as reflected in the adoption by several Member States of legislation targeting highly skilled third-country national workers (see Section 2 of this historical overview, which identifies the baseline of national legislation). Nevertheless, the political climate within Member States had changed significantly since the Tampere Council, partly due to the "9/11" terrorist attacks but also reflecting national events such as the assassination of Dutch politician Pim Fortuyn in the Netherlands. The conclusions of the European Council held in The Hague were therefore less ambitious than their Tampere predecessor and focused more on security considerations.⁶⁴ The Hague

⁶¹ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289 of 3 November 2005, p. 15.

⁶² Council Recommendations 2005/761/EC and 2005/762/EC.

⁶³ Article 9 of the Researchers Directive and Article 3 of the Family Reunification Directive.

⁶⁴ Peers, S. EU Justice and Home Affairs Law, p. 387.

Programme did not outline a substantial programme of legislation for the European Community in the field of legal migration, but rather called on the Commission to “present a policy plan on legal migration including admission procedures”. The economic rationale expressed in the Tampere conclusions continued to inform this objective, in particular the need to “respond promptly to fluctuating demands for migrant labour in the labour market before the end of 2005”. However, the Hague Programme simultaneously emphasised the legal constraints on European common actions in this area, noting that “that the determination of volumes of admission of labour migrants is a competence of the Member States.”

Policy Plan on legal migration

Following the difficulties encountered with the proposal for a general instrument covering all forms of labour migration to the EU, the European Commission adopted a **sectoral approach to labour migration**, solely regulating the conditions for entry and residence of distinct categories of labour migrants. This approach was first presented in the Policy Plan on Legal Migration which the Commission adopted in December 2005. The Policy Plan justified the sectoral approach in terms of “the need to provide for sufficient flexibility to meet the different needs of national labour markets”.⁶⁵ The ‘horizontal’ approach to economic migration presented in the Commission’s 2001 proposal was therefore abandoned in favour of a set of complementary measures, including:

- A general framework Directive guaranteeing a common framework of rights to third-country nationals in legal employment and already admitted in a Member State,⁶⁶ and,
- Four specific Directives aiming at simplifying admission procedures for four categories of third country nationals, namely: highly qualified workers,⁶⁷ seasonal workers,⁶⁸ remunerated trainees and intra-corporate transferees (hereafter ICT).⁶⁹

A general framework Directive guaranteeing a common framework of rights to third-country nationals was considered necessary by the Commission in order to ensure “fairness” towards third-country nationals, who contribute with their work and tax payments to the European economy. The aim was also to create a level playing field for local workers, who are affected by the downward pressure on salaries and working conditions of unfair employment practices towards migrant workers. The adoption of specific Directives covering distinct categories of third-country national workers was considered preferable to addressing specific sectors of the economy, “given the differences between Member States in terms of demographic forecasts, social conditions and labour market structures, trends and needs”. The categories to be covered were selected with the intention of “striking a balance between the interests of certain Member States – more inclined to attract highly skilled workers – and of those needing mainly seasonal workers.” The four categories of workers to be covered – namely, the highly-skilled, seasonal workers, remunerated trainees, and intra-corporate transferees – were considered to be in demand in a significant number of Member States, and (at least in the case of seasonal workers) presented a low risk of

⁶⁵ Communication from the Commission – Policy Plan on Legal Migration, COM(2005) 669 final, Brussels, 21.12.2005.

⁶⁶ Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, COM/2007/0638 final - CNS 2007/0229, Brussels, 23.10.2007.

⁶⁷ Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, COM/2007/0637 final - CNS 2007/0228, Brussels, 23.10.2007.

⁶⁸ Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment, COM/2010/0379 final – COD 2010/0210, Brussels, 13.7.2010.

⁶⁹ Proposal for a Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, COM/2010/0378 final - COD 2010/0209, Brussels, 13.7.2010.

displacing the local workforce as “few EU citizens are willing to engage in seasonal work”.⁷⁰

Both an economic and development rationale were put forward in respect of the proposal for a Directive on remunerated trainees, as “allowing third-country nationals to acquire skills and knowledge through a period of training in Europe can be a way to encourage brain circulation, beneficial for both the sending and receiving country.” However, in the end, the Commission did not produce a proposal for a Directive on remunerated trainees.

- **Blue Card Directive** (*proposed in October 2007, adopted in May 2009*)

The Commission presented two of the anticipated proposals for Directives in 2007, one for the general Framework Directive (the so-called Single Permit Directive) and the other on highly qualified workers (the so-called Blue Card Directive). The negotiations which followed were difficult in both cases, and were particularly protracted in the case of the Single Permit Directive which was only adopted in 2011, after the decision-making procedure had changed following the entry into force of the Lisbon Treaty which extended qualified majority voting in the Council and co-decision with the Parliament. The first labour migration Directive to be adopted was therefore the Directive on the conditions for entry and residence of third-country nationals for the purposes of highly qualified employment - the so-called EU Blue Card Directive, on 25 May 2009.

The main aspects which led to disagreements within the Council’s Working Party on Migration and Expulsion, which discussed the Commission’s proposal, as well as between the European Parliament and the European Economic and Social Committee⁷¹ included:

- **The sectoral nature of the Directive:** this was considered an asset by the European Parliament, who considered that a sectoral approach based on “granting privileges, e.g. particular derogations and easier access to relevant information” to highly qualified workers would help to attract them to the European Union. However, the European Economic and Social Committee considered that an overall, horizontal legislative framework on admission would be preferable. The focus on highly qualified migration only was considered by the Committee to not apply to much of migration and would also be discriminatory – it would therefore not respond to European needs.⁷²
- **The salary level requirement:** The discussion in the Council saw disagreement between various Member States who considered that the salary level requirement in the Commission’s proposal (three times the average gross annual salary) was either too high or too low. The European Parliament requested a lower threshold, and the European Economic and Social Committee did not consider a salary requirement appropriate in the first place, arguing that “salary is not an appropriate criterion for consideration as a highly qualified worker”. Instead, they considered it more appropriate to link admission to higher education certificates and qualifications or equivalent vocational skills. A salary threshold would also, in their view, prevent the achievement of a common EU policy given the major differences in national minimum wage levels.

⁷⁰ Communication from the Commission – Policy Plan on Legal Migration, COM(2005) 669 final, Brussels, 21.12.2005.

⁷¹ Fridriksdottir, B. ‘Negotiations on the Blue Card Directive in the Working Party on Migration and Expulsion’, in Grutters, C. and T. Strik (eds). *The Blue Card Directive: Central themes, problem issues and implementation in Selected Member States*. Wolf Legal Publishers, Netherlands, 2013.

⁷² European Economic and Social Committee. *Opinion of the EESC on the Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment*

- **The time limit for Blue Card holders to exercise mobility within the EU:** Several Member States in the Council discussions considered the 2 year period of legal residence in the first Member State too long, and proposed 1 year "in order to hinder as little as possible the internal mobility of Blue Card holders". However, other Member States disagreed, using the argument of "avoiding abuse". The European Economic and Social Committee raised concerns about the two year time limit, indicating that it did not comply with the provisions of the European Convention on the legal status of migrant workers (1977) "which establishes a maximum period of one year".
- **The rights of family members of Blue Card holders:** Several Member States expressed concerns about the Commission's proposal to set a short deadline from the lodging of the application to the residence permit being issued for family members of Blue Card holders. The arguments in favour of this short deadline focused on the need to provide highly skilled third-country nationals with an attractive proposition to choose the EU over other destinations. The European Economic and Social Committee expressed concerns that the proposal did not establish a right to work for family members of Blue Card holders who move to another Member State. They also expressed concern that the legal status of the Blue Card holder is more favourable than that of third-country nationals holding EU long term residence permits.
- **Adoption of more favourable rules by Member States:** In the Commission's proposal, Member States would have been free to adopt or retain more favourable provisions concerning the conditions of entry and residence of highly-skilled workers, except for entry into the first Member State. This implied that the Blue Card Directive would replace national schemes for highly skilled migrants as their co-existence would create competition between them and render use.
- **Possibility of proving 'highly qualified employment' on the basis of professional experience:** The Commission's proposal provided the option for third-country nationals to prove highly qualified employment on the basis of three years of professional experience.⁷³

Since the negotiations and adoption of the Blue Card Directive took place before the Lisbon Treaty entered into force, its adoption required unanimity in the Council, while the European Parliament was only consulted. The negotiations in the Council therefore resulted in a Directive which set minimum standards and provided Member States with wide discretion regarding its implementation in national law. Family members of Blue Card holders were granted a number of privileges in the final version of the Blue Card Directive (as compared to the family members who join a third-country national under the Family Reunification Directive), including the right to immediate access to the territory of the Member State and a residence permit with the same validity as that of the sponsor. The family members of Blue Card holders also are not subject to the possible waiting period of two years for family reunification, and the requirement of the sponsor to have reasonable prospects of obtaining the right of permanent residence.

However, in other respects the standards adopted were lower than those originally proposed by the Commission. The salary requirement was formulated as a minimum threshold of *at least* 1.5 times the average gross annual salary in the Member State concerned, allowing Member States discretion to set higher thresholds.⁷⁴ The adopted text of the Directive also abandoned the derogation foreseen in Article 6 of the

⁷³ Wiesbrok, A. Op Cit, p. 287.

⁷⁴ The Directive allows Member States to reduce the threshold to 1.2 times the average gross annual salary by way of derogation, for "professions which are in particular need of third-country national workers and which belong to the major groups 1 and 2 of ISCO" i.e. managers and professionals.

proposal, concerning “young professionals”, which foresaw a reduced salary threshold in the case of third-country nationals holding higher education qualifications, and the possibility for Member States to waive the salary threshold in the case of young applicants “who have completed higher education on site studies and obtained a Bachelor and a Master's degree in a higher education institution situated on the territory of the Community.”

The right of Blue Card holders to enjoy free access to the labour market after the first two years was rephrased into a possibility, at the discretion of Member States. The maximum time for processing an application was extended from 30 (or exceptionally 60) days as in the original proposal, to 90 days in the adopted Directive, which may be even longer in practice as the recitals explain that this should not include the time required to obtain recognition of professional qualifications or a valid visa. The adopted Directive includes an 18 month waiting period before the Blue Card holders can take advantage of the intra-EU mobility provisions. The equal treatment provisions in respect of social assistance and tax benefits, which were included in the Commission proposal, were removed from the final version of the Directive.

More importantly, the version of the Directive adopted by Member States allows for the co-existence of national rules for highly-skilled migrants and the Blue Card scheme and the possibility of proving highly qualified employment on the basis of five years of professional experience is left to the discretion of Member States.

The Common Basic Principles on Integration

The Hague Programme also included orientations concerning the integration of third-country nationals. The Council's conclusions identified a set of common basic principles on integration in order to foster greater coordination of national integration policies and EU initiatives in this field. The principles emphasised the need for Member States to invest in integration policies, underlining that integration is overall a two-way process, which engages both migrants and the host countries, and should be mainstreamed in other policy areas.⁷⁵ The Hague programme also invited the Commission to promote “structural exchange of experience and information on integration, supported by the development of a widely accessible website on the Internet.”⁷⁶

1.2.3 Phase 3: the entry into force of the Lisbon Treaty and the Stockholm programme, 2009-2014

The third phase in the evolution of the EU legal migration acquis is marked by the entry into force of the Lisbon Treaty. The new Treaty's introduction of qualified majority voting in the Council and co-decision-making with the European Parliament made it possible to adopt the three other Directives that had been foreseen by the Commission in its 2005 Policy Plan on legal migration: the Single Permit Directive, the Directive on Seasonal Workers and the Directive on Intra-Corporate Transfers. Another important factor influencing the direction of policy during this phase was the economic downturn that followed the 2008 global financial crisis. The sharp slow-down in economic growth and rapid increase in unemployment, especially among third-country national workers, may explain why the Heads of State and Government of the EU meeting at the Stockholm European Council emphasised equal rights between third-country nationals and EU nationals.⁷⁷ The **Stockholm programme** adopted in

⁷⁵ European Policy Centre, *Beyond the Common Basic Principles on integration: the next steps*, Issue Paper 27, 15 April 2005. Available at: http://www.epc.eu/documents/uploads/668099262_EPC%20Issue%20Paper%2027%20Basic%20Principles%20on%20Integration.pdf

⁷⁶ The Hague Programme. *Strengthening freedom, security and justice in the European Union* (2005/C 53/01), paragraph 1.5. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:053:0001:0014:EN:PDF>

⁷⁷ Council of the European Union, *The Stockholm Programme – An open and secure Europe serving and protecting the citizens*, 17024/09, 2 December 2009.

December 2009 put the emphasis on integration of third-country nationals. It also made the external dimension of migration policy based on partnership with third countries a major priority.⁷⁸

The Stockholm programme encouraged the further implementation of the Policy Plan on Legal Migration and called for a “concerted labour migration” policy. While recognising that labour immigration “can contribute to increased competitiveness and economic vitality”, the Stockholm programme underlined Member States’ competences in managing their labour markets, the principle of Union preference,⁷⁹ and called for “flexible admission systems” of migrants. The integration of legally residing third-country nationals is mentioned as the “key to maximising the benefits of immigration”. Consequently, the **European Agenda for the Integration of non-EU migrants**,⁸⁰ proposed by the Commission in 2011, focused on actions to increase the participation by migrants in the host society, and, in particular, put the emphasis on action at the local level. Among the concrete measures that the EU has developed are a European website for integration, a European Integration Handbook and the European Integration Forum.

Another clear priority of the Stockholm programme lay in the consolidation, development and implementation of the EU Global Approach to Migration, including the development and the conclusions of Mobility Partnerships with third countries. This approach has been further consolidated in the Commission’s Communication on the **Global Approach to Migration and Mobility (GAMM)**.⁸¹ In this framework, legal migration is seen as an integral part of the EU’s cooperation and dialogue with third countries in the area of migration and mobility, and a key area of the EU’s external migration policy. One of the GAMM’s policy priorities is to “better organise legal migration and foster well-managed mobility”, focusing, amongst other things, on (highly) qualified third-country nationals. According to the GAMM, European policy on the organisation and facilitation of legal migration and mobility is based on the premise of offering employers wider opportunities to find the most suitably qualified individuals for EU vacancies from the global labour market.

The new decision-making procedures ushered in by the Lisbon Treaty may also help explain some of the key features of the three Directives adopted after 2009. As the sections below illustrate, the three Directives went further than any of the earlier Directives in establishing harmonised common rules rather than only minimum standards.⁸²

- **The Single Permit Directive**⁸³ (*proposed in October 2007, adopted in December 2011*).

⁷⁸ IOM, Migration and the economic crisis: implications for policy, 2010, p. 29.

⁷⁹ The principle of Union (or Community) preference can be defined as a priority for workers of Member States over third-country nationals on the labour market of a Member State. For more information and development of this concept in EU law, see Robin-Olivier, S. (2016), “The Community Preference Principle in Labour Migration Policy in the European Union”, OECD Social, Employment and Migration Working Papers, No. 182, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5jlwxbzcfqsq6-en>.

⁸⁰ Commission, 2011. European Agenda for the Integration of Third-Country Nationals. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0455&from=EN>

⁸¹ European Commission’s Communication “The Global Approach to Migration and Mobility”, COM/2011/0743 final, Brussels, 18.11.2011. Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011DC0743>

⁸² The information on the negotiations which followed the Commission’s proposal for the Single Permit Directives is taken from Potisepp, A. The Negotiations, in Minderhoud, P. and T. Strik, The single Permit: Central Themes and Problem Issues, Legal Publishers, NL, 2015 and, to a lesser extent, from Wiesbrok, A. Op cit.

⁸³ 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.

While the Single Permit Directive does not lay down any rules regarding the conditions for admission of third-country national workers, it establishes a single procedure for third-country nationals to obtain work and residence permits, with the aim of simplifying the administrative burden associated with the admission process. The Directive also extends equal treatment rights in a number of areas to the third-country national workers covered by the Directive. The Commission's proposal for the Single Permit Directive, introduced at the same time as the proposal for a Blue Card Directive, was initially deadlocked by the Council. The main points of disagreement during the negotiations and the compromises reached were the following:

- **Specific exclusion of posted workers:** The Commission's 2007 proposal excluded third-country nationals who are posted, "irrespective of whether their undertaking is established in a Member State or in a non-Member State, as long as they are posted." The European Parliament would only agree to exclude those workers covered by Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, which considered the working conditions of workers posted from undertakings established in a Member State; for the European Parliament, workers posted from undertakings established in a third-country should therefore be covered. The Council refused to accept this and the final wording of the Directive excludes all posted workers.⁸⁴
- **Equal treatment with regard to access to family benefits:** In the Commission's proposal, third-country nationals were provided equal treatment with respect to the provisions in national legislations regarding branches of social security, as defined in Council Regulation (EEC) No 1408/71. Some Member States insisted on derogations from equal treatment regarding family benefits similar to those which they had proposed in the social security coordination regulation.⁸⁵ The European Parliament refused to allow this and the final text was adopted with a compromise where benefits may be restricted to family members who have their registered or usual place of residence in the Member State concerned.⁸⁶
- **Equal treatment rights of third-country nationals who are unemployed:** A similar compromise was reached in relation to the Council's position that third-country nationals should lose the equal treatment right to social security benefits if they are unemployed. In the final version of the Directive, social security rights may be restricted to those who are in employment, although unemployed persons cannot be excluded from equal treatment if they have worked over six months in the country concerned.⁸⁷
- **Access to the labour market:** Neither the proposal, nor the final version of the Directive contained a provision regarding expanded access to employment for Single Permit holders after a period of lawful employment. During the negotiations, trade unions such as ETUC were particularly concerned by the absence of a provision on expanded access to employment after a certain period of lawful employment. In their view, tying the employment of a Single Permit holder to a particular employer would create an "unhealthy dependence" and was inconsistent with the objective of the Directive to lower the risk of exploitation of third-country workers by unscrupulous employers.⁸⁸

⁸⁴ Potisepp, A. The Negotiations, in Minderhoud, P. and T. Strik, *The single Permit: Central Themes and Problem Issues*, Legal Publishers, NL, 2015.

⁸⁵ However, later these derogations were not kept in the revised Regulation 883/2004.

⁸⁶ Potisepp, *ibid.*

⁸⁷ Potisepp, *ibid.* a

⁸⁸ Peers, S. *EU Immigration and Asylum Law*, second edition, 2012, p. 228

- **The Seasonal Workers Directive:**⁸⁹ (proposed in July 2010, adopted in February 2014)

The Seasonal Workers Directive lays down the rules for entry and stay of third-country nationals for the purpose of taking up seasonal work and a set of rights to prevent their economic and social exploitation. The Directive sets minimum standards as regards procedural safeguards, accommodation, workers' rights and the facilitation of complaints, in the sense that Member States are permitted to establish more favourable rules in these areas. Moreover, it sets common harmonized rules as regards the substantive grounds for admission of seasonal workers as well as on the duration of their stay and re-entry. The discussions between the Commission, Council and European Parliament focused on:

- **The personal scope of the Directive.** In particular, the exclusion of third-country nationals already legally resident on the territory of the Member States and the exclusion of posted workers. The European Parliament also suggested that irregular migrants should have the possibility of applying for seasonal worker status.
- **Procedural safeguards**, including the maximum time permitted for Member States to process the application with the Council suggesting 60 days as opposed to the Commission's proposal of 30 days.
- **Substantive safeguards**, with the European Parliament requiring more expansive provisions than those included in the original Commission proposal regarding monitoring and punishment of exploitative employers, accommodation standards, employees' costs, remedies against employers and equal treatment. In particular, the European Parliament opposed the exclusion from the Commission's proposal of equal treatment with respect to working conditions, employment placement, housing, education and the recognition of qualifications.

The finally adopted text reflected a compromise between the various positions, but it is notable that in several areas the Directive ended up with more expansive provisions than in the Commission's original proposal. This was the case, for example, in regard to the Directive's equal treatment provisions. In the final text, equal treatment is extended to seasonal workers in respect to working conditions, education, recognition of qualifications and tax benefits, although the Directive permits Member States to introduce certain restrictions to equal treatment in the areas of education and vocational training and family benefits. In other areas, the Council succeeded in maintaining Member State discretion, including in relation to the provisions related to employers who do not comply with the terms of the Directive, as well as the ban on passing costs along to the workers, both of which are optional, not mandatory.⁹⁰

- **Directive on Intra-Corporate Transferees**⁹¹ (proposed in July 2010, adopted in May 2014)

The ICT Directive regulates the entry conditions and mobility of third-country nationals (and their family) sent by their company to work in one or more of its centres inside the EU for more than 90 days. The ICT Directive sets minimum standards as regards procedural safeguards, workers' rights and the rules relating to family members of ICTs, in the sense that Member States are permitted to establish more favourable rules in these areas. Moreover, it sets common harmonized rules on the substantive grounds for admission of ICTs and on the duration of their stay and re-entry. The most

⁸⁹ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

⁹⁰ Steve Peers, Ending the exploitation of seasonal workers: EU law picks the low-hanging fruit, EU Law Analysis, 3 February 2015.

⁹¹ 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.

contentious aspects of the negotiations between the Commission, Council and European Parliament were in respect of:

- **Procedural safeguards**, including the time needed to process an application, which the Council suggested should be 60 days, in contrast to the Commission's original proposal of 30 days; and
- **The right of equal treatment of ICTs.** The European Parliament's employment committee objected to the exclusion of working conditions and the right to take industrial action from the equal treatment provisions included in the Commission's proposal.
- **The rights of the family members of ICTs.** The Commission's proposal gave family members residence permits with the same period of validity as the residence permits of their sponsor. The Council disagreed with this, preferring to make the provision on the duration of family members' residence permits optional, rather than mandatory. Moreover, the European Parliament considered it necessary to facilitate access to the labour market for family members, and to bring the timeframe for processing residence permit applications of family members into line with that for processing intra-corporate transfer permits.⁹²
- **Provisions on intra-EU mobility.** In the Commission's proposal, an ICT was allowed to work in a second Member State in an entity which is part of the same group of undertakings, without having to get another residence permit, if the transfer lasts less than twelve months. If the transfer to a second Member State lasts longer than twelve months, the second Member State may require a fresh application for a residence permit. In its counter-proposal, the Council drew a distinction between short-term and long-term mobility, and provided for very complex additional rules on each.

The final text is a compromise, where the European Parliament in particular agreed to the positions of the Council as regards the equal treatment provisions. Intra-corporate transferees therefore enjoy equality of treatment rights with nationals of Member States as regards remuneration; however, they are to be treated on equal footing with posted workers as regards the terms and conditions of employment other than remuneration (such as maximum work periods or safety at work).

1.2.4 European Agenda on Migration 2015-ongoing

Whilst the achievements of the Hague and Stockholm Programmes have been substantial, the Commission, in its 2014 Communication '**An Open and Secure Europe**',⁹³ highlighted that efforts were still needed to ensure the full implementation and enforcement of the existing instruments as well as to strengthen practical cooperation. Furthermore, the increase in spontaneous inflows of migrants and in the number of persons seeking international protection in 2014 and 2015 introduced new priorities onto the EU agenda on migration and security.

In May 2015, the Commission published the Communication '**A European Agenda on Migration**', which incorporated and further elaborated the initiatives included in the Roadmap that the Commission presented as a follow up to the Statement of the European Council following its special meeting to discuss the migration crisis in the Mediterranean on 23 April 2015.⁹⁴ The urgency in providing a response to the so-

⁹² Report of the European Parliament on the proposal for a directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (COM (2010)0378 – C7-0179/2010 – 2010/0209(COD), 12 March 2014.

⁹³ European Commission, Open and Secure Europe: making it happen, COM(2014) 154 final, 11.3.2014. Available at http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/an_open_and_secure_europe_-_making_it_happen_en.pdf

⁹⁴ European Commission, A European Agenda on Migration. COM(2015) 240 final. Brussels, 13.5.2015. Available at 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

called 'migration crisis' was reflected in the first part of the Agenda (relocation schemes, hotspots, cooperation with third countries, etc). On the long-term objectives, the Agenda set up a four-pillar structure to better manage migration, consisting in: i) reducing the incentives for irregular migration; ii) saving lives and securing the external borders; iii) strengthening the common asylum policy (CEAS); and iv) developing a new policy on legal migration. The progress made since then is closely monitored by the Commission.⁹⁵ The European Agenda on Migration stated that a **common system on legal migration** should aim at making the EU an attractive destination for third-country nationals. Labour immigration continues to be seen as playing a key role in driving economic development in the long-term and in addressing current and future demographic challenges in the EU. Moreover, a well-functioning legal migration system was seen as a potential alternative to the spontaneous arrival of persons at the EU borders, and, as a consequence, Member States were urged to make full use of the **legal venues** available, including, for instance, family reunification. In June 2016, the Commission released an **Action Plan on the Integration of third-country nationals**.⁹⁶ The Action Plan stressed the importance of timely pre-departure and post-departure measures, access to education, labour market integration and access to vocational training, as well as access to basic services and the active participation and social inclusion of third-country nationals.

- **Recast Directive on research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing** ⁹⁷ (*proposed in April 2013, adopted in May 2016*)

After three years of negotiations, the Council and the European Parliament adopted in 2016 the **Students and Researchers Directive** which is the result of the recast of the 2004 Directive on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service and the 2005 Directive on researchers, based on the 2011 evaluations of these Directives by the Commission.⁹⁸ The scope of application of the Directive 2016/801/EU is broader than the previous Directives, as it will apply to third-country national students, researchers, trainees and volunteers engaged in the European Voluntary Service. Member States may opt to extend the Directive's provisions on pupil exchange, volunteers outside the EVS and au-pairing.

The Students and Researchers Directive clarifies the admission and residence requirements by setting out general conditions for admission, and specific conditions for researchers, students, school pupils, trainees and volunteers. The uniform and binding rules on conditions for admission concern mainly students and researchers. Regarding the other categories, the new Directive still follows a sectoral approach. While it sets binding rules on paid and unpaid trainees and volunteers participating in the EU's voluntary scheme, provisions on other volunteers, school pupils and au-pairs are optional.

The Directive aims to make the EU a more attractive destination for students and researchers, in particular by improving their mobility conditions, extending to at least nine months their stay after the completion of the study or research period, allowing

⁹⁵ The DG HOME website contains a specific section on the EU Agenda on Migration: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/index_en.htm

⁹⁶ Commission, 2016. Action Plan on the integration of third country nationals, COM(2016) 377 final. Available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_action_plan_integration_third-country_nationals_en.pdf.

⁹⁷ Directive 2016/801/EU on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (Students and Researchers Directive), OJ L 132, 21.5.2016.

⁹⁸ COM(2011) 587 final and COM(2011) 901 final.

students to work (for maximum 15 h/week) and establishes the right of family reunification for researchers and labour market access of researchers' family members. Furthermore, procedural guarantees have been reinforced for all categories (decision on an application within 90 days, possibility to lodge an appeal against a negative decision).

- **Proposal to review the EU Blue card Directive**⁹⁹ (*proposed in June 2016 – negotiations ongoing*)

The **review of the EU Blue Card Directive** – with the objectives of not only making the instrument more attractive for highly skilled workers and encouraging more applications, was discussed in the European Agenda on Migration. A proposal for a reform of the EU Blue card Directive was adopted in June 2016, together with the Action Plan on Integration. Two key features of the proposal are the enhancement of intra-EU mobility rights for third-country nationals and the abolition of the national parallel schemes to attract highly qualified workers. The proposal is discussed in the Parliament and the Council.

⁹⁹ European Commission, Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment, COM(2016) 378 final, Strasbourg, 7.6.2016, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/directive_conditions_entry_residence_third-country_nationals_highly_skilled_employment_en.pdf.

1.3 Baseline of national legislation on the admission and stay conditions of specific categories of third-country nationals covered by the EU legal migration acquis

This section identifies key features of national legislation on the *admission and stay conditions of the relevant categories of third-countries prior to the adoption of the EU legal migration Directives*. It identifies where possible the countries that had specific schemes targeting the specific category, and those which did not. For each category of third-country national, it identifies some of the main approaches taken by Member States to key issues, including the *admission rules / eligibility requirements, the application procedures and the rights afforded to the third-country nationals in question*. This section is intended to support the assessment, to be undertaken in Task IV of the study, of the effects which the Directives had on the direction of policy in the Member States. However, the information presented below is only a summary (synthesis) of what is available. References are provided to the sources that contain more details, including (in some cases) country-specific overviews.

1.3.1 Employed and self-employed workers

While the Commission's 2001 proposal for a Directive on economic migration was rejected by the Council, it is interesting to consider the baseline of relevant national legislation in 1999-2000. The following insights are taken from a study prepared for the European Commission as regards the *entry and stay conditions of third-country nationals for the purposes of paid employment and self-employment in 1999-2000*.¹⁰⁰

- **Admission conditions:** The eligibility criteria of the Member States did not vary significantly at the start of the reference criteria. All Member States required a proof of accommodation and a health certificate. Some Member States, such as BE, DE, IT, NL, SE required a clean criminal record, a 'certificate of good life and behaviour', or that there were no grounds for expulsion. In EL and DE a basic knowledge of the national language is necessary for obtaining a permanent residence and work permit.
- **Types of residence permits:** The types of residence permits did vary significantly across Member States. Most Member States issued different types of residence permits for third-country nationals to work in different sectors of the labour market (such as seasonal workers or specialists), usually of a temporary and often non-renewable nature. Four Member States (AT, EL, ES, IT) applied quota systems in their labour migration policies.
- **Work permits:** Most Member States required separate applications for residence permits and work permits (in these cases, applying for a work permit required the prior possession of a residence permit). The granting of work permits was a discretionary decision by the competent authorities in all Member States.
- **Union preference principle:** Nine Member States (AT, BE, DK, DE, FR, IE, LU, NL, PT) permitted third-country nationals to fill vacancies only insofar as no national or EU citizen was available for the position. However, most Member States permitted facilitated access to be given to certain categories of third-country workers (e.g. seasonal workers and highly qualified specialists) in order to address temporary shortcomings in the labour market.¹⁰¹

¹⁰⁰ Admission of third-country nationals for paid employment or self-employed activity, Study commissioned by DG Justice and Home Affairs and undertaken by Ecotec Research and Consulting Limited, 2001.

¹⁰¹ *ibid* pp.14-6; 41.

- **Right to family reunion:** The internationally respected right to family reunion for third-country national workers was enshrined in the laws of the Member States. However, the scope of the right varied significantly. In most countries the right to family reunion was confined to the 'nuclear family', consisting of spouses and dependent minor children. The age of the children varied from 21 years in Portugal to 16 years in Germany. Austria applied a quota to family reunion. Spain applied an expansive conception of the right to family reunion, which included the parents/grandparents of the third-country national if they depend economically on him/her.
- **Social rights:** The social rights afforded to third-country national workers varied significantly across Member States. In general, access to social rights¹⁰² depended on the length of time that a third-country national had been residing and contributing to the social security system. In several countries (e.g. NL, DE and AT) third-country nationals on temporary residence permits had very limited social rights.¹⁰³ For example, in NL, third-country nationals who worked on a temporary contract would lose their residence permit and have to leave the country if the unemployment was caused by his/her fault.
- **Self-employed workers:** In general, the rules for admitting third-country nationals to engage in self-employed activities were more diverse among Member States than the rules for admitted third-country nationals for the purposes of employment. In BE, DE, EL, IE, IT, PT and ES, third-country nationals wishing to set up self-employed activities were required to apply for a work permit. This in turn required the presentation of a business plan and bank guarantees. In the other Member States, only a residence permit was necessary. But this in turn required the discretionary assessment by the competent authority of the likely success of the self-employed activity. In IT and AT, migration for the purpose of self-employed activities was subject to a yearly quota.

1.3.2 Long-term residents

According to a study on the legal status of third-country nationals commissioned by the European Commission in 2000¹⁰⁴, only one Member State (IE)¹⁰⁵ did not have in their immigration law a special status providing some kind of permanent or durable residence status to third-country nationals with long legal residence in the country.

- **Eligibility rules:** The grounds for obtaining long-term residence status did not vary significantly across Member States. Generally, the third-country national needed to prove his/her self-sufficiency, to have a stable job, and to not represent a threat to public security. In addition, the person was required to have spent in the country a certain amount of time, which could be less (DK, FI, SE, UK), equal to (AT, BE, DE, IT, LU, NL, ES) or more (PT, EL) than 5 years. In France the length of previous residence varied for different categories of third-country nationals.
- **Discretionary dimension:** Three countries (LU, SE, UK) retained discretion as to the granting of long-term residence status, even where the applicant fulfilled all the conditions provided by the law.
- **Rights afforded to long-term residents:** Most Member States offered long-term residents the same or similar social security rights as their own nationals. Three Member States (AT, EL and LU) had a more conservative

¹⁰² As defined in the European Social Charter

¹⁰³ *ibid* p. 22.

¹⁰⁴ Groenendijk, Guild & Barzilay / Legal status of third country nationals / 2000 (study commissioned by COM) <http://cmr.jur.ru.nl/cmr/docs/status.pdf>

¹⁰⁵ Long-term resident status was enshrined only in administrative law.

approach and reserved economic advantages only to nationals. Passive and active political rights (at the municipal level) were extended to long-term residents in 5 countries (DK, FI, EI, NL, SE). Some Member States granted these on a reciprocity basis (ES, PT), whereas others provided them to long-term residents from countries with which that Member States had historic ties.¹⁰⁶

1.3.3 Family reunification

This section draws primarily from the explanatory memorandum prepared by the European Commission as part of its proposal for a Council Directive on the right to family reunification.¹⁰⁷ Prior to the adoption of the Family Reunification Directive, all Member States recognised either a right to family reunification in their national law, or the discretionary possibility of allowing family reunification, depending on the category and the legal status of third-country nationals. Four Member States (EL, CY, MT, RO) did not have a specific legal instrument on family reunification. Students, trainees and au pairs¹⁰⁸ Austria was the only Member State that applied a policy of quotas to applications for admission of family members.

The conditions for granting family reunification varied significantly across Member States:

- **Requirement to have minimum resources:** In FR, PT and ES, these had to be equivalent to the minimum wage; in DE and NL, they had to be no less than the minimum social-security pension in Germany and the Netherlands; and FR and NL required that resources be 'permanent and stable'. The adequate resources condition did not exist in BE, FI, LU or SE.
- **Qualifying period:** Certain Member States imposed a qualifying period on newly admitted third-country nationals. The duration varied, from one year in France and Spain to three years in Denmark and five years in Greece. The other Member States imposed no formal qualifying period, but the waiting time before family reunification could be long due to the length of time involved in examining the application.
- **Family reunification of refugees:** Third-country nationals recognised as refugees enjoyed better family reunification terms in certain Member States: they are exempt from the resources and accommodation conditions, there is no qualifying period and the right to family reunification sometimes extends beyond the nuclear family.

1.3.4 Students, trainees, volunteers and au pairs

This section builds on the ICMPD study of 2000 on the admission of third country nationals to an EU Member State for the purposes of study or vocational training.¹⁰⁹

Students

¹⁰⁶ UK toward Commonwealth countries,

¹⁰⁷ Proposal for a Council Directive on the right to family reunification, COM(1999) 638 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51999PC0638&from=EN> The information also builds on insights contained in the Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification COM/2008/0610 final.

¹⁰⁸ ICMPD's study commissioned by COM (2000) Study: Admission of third country nationals to an EU member state for the purposes of study or vocational training and admission of persons not gainfully employed https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/pdf/general/icmpd_report_2000.pdf

¹⁰⁹ ICMPD's study commissioned by COM (2000) Study: Admission of third country nationals to an EU member state for the purposes of study or vocational training and admission of persons not gainfully employed https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/pdf/general/icmpd_report_2000.pdf

In contrast to the generally restrictive migration policies of EU Member States at the start of the reference period, the admission policies for third-country nationals for study purposes or vocational training was comparatively open. Admission requirements were quite consistent throughout the Member States. However, regulation and procedures as well as thresholds varied.

- **Admission requirements:** Generally speaking all Member States required that that third-country national students were admitted by an educational institution, but in Greece also the Ministry of Education had to approve the application. They also all required that the student should have sufficient personal resources, although Member States established different ways to prove this.
- **Health insurance:** Member States varied in terms of the health insurance requirements of third-country national students. In some (AT, DK, DE, FR, EI, IT, LU) a valid insurance was required, while in other Member States national healthcare systems were open to third-country national students (BE, FI, NL, SE, UK). Whereas Portugal and Spain gave students the option between their own insurance and the social security system, Greece obliged the University to provide health insurance to third-country national students.
- **Right to work:** Third-country national students were generally seen as temporary migrants, who would need to leave the territory of the Member State following the completion of their studies. Formally third-country national students were therefore not entitled to carry out employment activities in any Member State. However, in practice, exceptions were permitted. Change of status (e.g. from student to labour migrant) was in most countries not possible or only granted under special circumstances (labour market considerations).

Unpaid trainees/Volunteers

Some Member States (e.g. AT, NL) distinguished between paid and unpaid traineeships for the purpose of their immigration laws, while others did not. Member States also varied in terms of whether unpaid trainees were required to obtain a work permit in addition to the residence permit:

- In five Member States (FI, FR, IT, ES, UK) work permit were not needed for unpaid trainees, only for paid trainees;
- In four Member States (BE, DE, LU, NL) work permits were needed in both cases;
- In two Member States (AT, PT) both paid and unpaid trainees were exempted.
- In Greece, "trainee" did not have a separate residence status, they were treated as students.

Au pairs

Three Member States (e.g. AT, IE and EL) had not defined this category in their statutory law prior to the adoption of the Students Directive. In five Member States (IT, NL, ES, LU, UK) au pairs were not required to have a work permit. In most Member States they needed to prove they had a contract with the hosting family, specifying rights and obligations including compensation. Language knowledge and age limits were sometimes introduced. These permits were time-limited in BE, DK, FR, IT, LU, NL, PT, ES, SE, and UK.

1.3.5 Researchers

This section draws on the European Commission's First Implementation Report on 'A Mobility Strategy for the European research area'.¹¹⁰ Prior to the adoption of the Researchers' Directive, nine Member States had adopted measures to facilitate the admission of third-country researchers. However, only two out of the nine countries that had measures in this area (France and the UK) had introduced specific residence permits for third-country national researchers. Five Member States had not adopted particular legislation on this category of third-country nationals (EL, IT, IE, PT, SE).

- **Admission conditions:** The admission conditions in most cases included approval by the hosting educational institution before entry, and proof of sufficient means.
- **Requirement to apply for a work permit:** Five of out of the nine Member States with specific rules in this area did not require the issue of a work permit in addition to the residence permit, while the other four did require both types of permits, but the work permit was made available according to a simplified procedure.
- **Rights:** Third-country researchers were granted the following privileges in different Member States: shortening of the procedure for granting a residence permit in Germany; multi-annual validity of the residence permit in Austria (2 years) and Denmark; exemption from the quota system in Austria; priority granted in practice to the treatment of requests for residence permits in Belgium; and faster procedure for the delivery of permits in the Netherlands and, under certain circumstances, in Belgium. In general, third country researchers benefited from the right to family reunification and the members of their family enjoy the right to work.

1.3.6 Highly qualified third-country nationals

This section draws on the impact assessment prepared by the Commission in advance of its proposal for the Blue Card Directive.¹¹¹ According to this study, ten Member States had specific regulations relating to the admission of highly skilled third-country nationals. However, all Member States had special schemes in place that covered specific categories of third-country nationals admitted to exercise an economic activity for which high qualifications are currently required.

- **Definition of highly skilled workers:** Four Member States did not define the category at all (AT, BE, NL and PT), while two (DK and IE) restricted it to specific sectors/occupations for which there were recognised gaps in the labour market. Four Member States (DE, FR, GR and IE) had more than one category of highly skilled worker, for which different entry (and/or residence) conditions existed.
- **Demand-driven systems:** In 26 Member States, the highly skilled third-country nationals had to produce a job contract / offer. Only two Member States did not require this: UK, which operated a points based system, and France which required information on a concrete project or investment.
- **Salary threshold:** Six out of the ten Member States with specific schemes included as an admission condition for the highly skilled third-country nationals a minimum salary level. However, the salary thresholds varied significantly across the Member States concerned.
- **Rights afforded:** Nine out of the ten Member States with specific schemes for highly-qualified third-country nationals (all except Belgium) granted the

¹¹⁰ Commission, First Implementation Report on 'A Mobility Strategy for the European research area' SEC(2003) 146, and fn 108.

¹¹¹ Accompanying document to the Proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purpose of highly qualified employment - Impact assessment COM(2007) 637 final

third-country nationals concerned more favourable arrangements in terms of social rights.

- **Access to the labour market:** In almost one third of Member States internal mobility within the labour market was granted to the highly qualified third-country nationals (even if with limitations in many cases).
- **Right to acquire permanent residence:** Only a small number of Member States recognised more favourable treatment for high-skilled third-country national workers in acquiring permanent residence.

1.3.7 Seasonal workers

This section draws on the impact assessment prepared by the Commission in advance of its proposal for a Directive on Seasonal Workers.¹¹² Twenty out of 26 Member States had specific, yet divergent, regulations in place for seasonal in advance of the adoption of the Directive on Seasonal Workers. Several Member States relied on bilateral agreements with certain Third countries. These Member States also had national annual quotas in place for the seasonal workers.

Member State legislation on seasonal workers varied in terms of:

- **Definition of seasonal workers:** some Member States explicitly defined this as temporary work, others included stricter definitions linked to specific sectors of the economy in a fixed period of the calendar year;
- **Duration of the permit:** this varied significantly from a maximum of 4 months per calendar year in some Member States to a maximum of 12 months in a 14-months period in other Member States. Not every Member State provides for a possibility for renewal of the permit;
- **Admission procedures:** Member States varied on the question whether residence and work permits were issued separately or together;
- **Rights of seasonal workers:** The provisions on equal treatment for seasonal workers varied significantly across Member States.
- **Accommodation:** most Member States required the seasonal workers to reside in specially designated accommodation, or foresaw explicit standards of accommodation for this category of third-country national worker.

1.3.8 Intra-corporate transferees

This section draws from the impact assessment prepared by the Commission in advance of the proposal for a Directive on intra-corporate transfers.¹¹³

- **Admission rules:** Despite a generalised recognition of the category of ICTs in the immigration laws of the Member States, the requirements for admission of ICTs varied significantly. For example four Member States (CZ, DE, NL, AT) required certificates attesting previous academic and professional skills; three Member States (ES, NL and IE) required previous experience in the same activity; three Member States (IE, NL, FR) set annual minimum salary thresholds; one Member State (RO) set annual quotas for ICTs.
- **Application procedures:** Procedures varied greatly from one Member State to another. The application process was associated with lengthy waiting periods and administrative complexity (e.g. in SK and RO). Most Member States (all except DE and DK) issued residence and work permits

¹¹² Impact Assessment accompanying 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 purpose of seasonal employment SEC(2010) 887

¹¹³ Impact Assessment Accompanying the Proposal for a Directive Of The European Parliament And The Council on conditions of entry and residence of third country nationals in the framework of an intra-corporate transfer SEC(2010) 884

separately, and the period of validity of the work permit varied significantly from Member State to Member State.

- **Rights afforded to ICTs:** Some Member State recognised equal treatment to ICTs with EU nationals but applied various conditions and limitations to the equal treatment rights.

1.3.9 Single Permit Directive

This section draws from the impact assessment prepared by the Commission in advance of the proposal for a Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

- **Admission Procedures:** Analysis showed that even in the absence of community legislation more than half of the Member States (CY, DE, EE, EL, ES, FI, FR, IT, NL, PT, LV, RO, UK, PL) already had (*or was planning to have*) a single application procedure, while a minority (AT, BG, BE, CZ, HU, IE, LT, SI, SK) used separate procedures for obtaining work and residence permits respectively. Most Member States had different forms of work permits generally addressed to particular categories of workers.
- **Admission Conditions:** In all the Member States concerned, the provision of *work permit* is related to domestic labour market situation: Member States provide for an assessment of the internal labour market situation as condition for a positive decision upon the issue of the work permits. The eligibility criteria of Member States do not vary significantly. The majority of the Member States requires qualified/professional experience, a minimum salary level (not less than the average salary in the country) or sufficient means of subsistence (LV, SI, SK), clean criminal records, health certifications. Some Member States also require a basic knowledge of the national language (for example, RO). Differently from the provisions relating work permits, the number of *residence permits* provided for by each Member States appears to be definitively more limited: it ranges from a maximum of 6 types of residence permits (EL) to a single type of permit issued (SI and SK). The eligibility criteria are quite similar among Member States: clean criminal record, subsistence means, health assurance, proof of accommodation.
- **Duration of the Permit:** The validity in time of *work permit* is generally equal to 1 year; however, some Member States grant work permits valid up to 5 years (the latter is the case of LV and UK). The length of *residence permits* varies between 1 year and 5 years (LT, LV, RO), while in several Member States the length of residence permit is subordinated to the length of work contract (CZ, DE, FR, SI).
- **Entry and mobility rights** granted to third-country workers significantly vary among Member States. The majority of Member States had specific provisions for third-country workers especially with regard to the right for third-country workers to free access to the entire territory of the Member State and eligibility for a long-term residence status. The passage through other Member States is generally allowed to third-country workers, without the necessity of any special provision for third-country workers on this matter (Schengen *acquis* was commonly applied). As regards the existence of specific provisions on the right to re-entry after temporary absence, the Member States position is quite variable.
- **Access to employment:** As regards the access to employment, the rights granted to third-country workers frequently differ from that recognized to nationals. For example, in many Member States (such as BG, FI, FR, IT, LV, RO, SK) third-country workers enjoy the freedom to choose job or employer

at the same conditions of country nationals. However, in a similar number of countries, the work permit can be issued to third-country workers only for specific position or job vacancies (such as in CZ and UK).

- **Social benefits:** In most of the Member States (EE, EL, ES, RO, SI, SK) access to social rights and benefits is fully recognized to third-country workers or there are exceptions related to a single criterion (BE, FI, FR, PT, UK), such as with regards to unemployment benefits, social assistance or invalidity benefits.

1.4 Intended EU added value and impact of the acquis

In this section, the intended impact and EU added value of the EU's legal migration acquis is considered in respect of each of the Directives, based on, among other things, subsidiarity and proportionality considerations:

- The Subsidiarity principle requires that the Union does not take action in areas of shared competence unless 'the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level' (Article 5(3) of the Treaty on European Union).
- The Proportionality principle stipulates that 'the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties' (Article 5(4) of the Treaty on European Union).

The analysis is based on the actual objectives and intended impacts reflected in the final text of the Directives, including the recitals. This information was compared to the arguments presented in the proposals for the Directives. This exercise revealed that the actual objectives, intended impacts and expected EU-added value did not substantially change between the proposals and finally adopted texts. Since the provisions of the Directives did change in a number of important respects, as described in Section 1.2 above, the continuity of the objectives suggests there is likely to be an 'expectations gap', where the means made available by the Directives may not be sufficient to achieve the Directives' intended impacts.

Family Reunification Directive

- **Objective:** determine the conditions for the exercise of the right to family reunification by third country nationals, residing lawfully in the territory of the Member States.
- **Intended impacts:** To promote the integration of third-country nationals, and safeguard their right to family life.¹¹⁴
- **Intended EU added value:** The Directive harmonises admission conditions and improves legal certainty for third-country nationals; and it would help to ensure that third-country nationals are less likely to select their Member State destination purely on the basis of the more generous conditions available to them there.¹¹⁵

Long-term residents Directive

- **Objective:** To permit fair treatment of third country nationals and their families and promote their full integration, by establishing a common status of long-term residents, which they can acquire and enjoy in all Member States.¹¹⁶

¹¹⁴ Recitals 4 and 6 of the Family Reunification Directive.

¹¹⁵ Proposal for a Family Reunification Directive, p.11.

¹¹⁶ Recitals 3 and 4 of the LTR Directive.

- Intended impacts: To promote the integration of third-country nationals, and safeguard their rights. To contribute to the effective attainment of an internal market as an area in which the free movement of persons is ensured. To constitute a major factor of mobility, notably on the Union's employment market.¹¹⁷
- Intended EU added value: Harmonisation of the terms for acquisition of long-term resident status promotes mutual confidence between Member States, as it sets a minimum set of conditions.

Students Directive

- Objective: To establish a harmonised Community legal framework for the conditions for entry and residence of third-country nationals in the territory of the Member States for the purpose of studies, unremunerated training, vocational training or voluntary service, and for the procedures for issuing residence permits and visas.
- Intended impacts: By promoting the internationalization of Member States' education systems and enabling student mobility, the Directive should contribute to enhancing the quality and dynamism of Europe's own training systems.¹¹⁸
- Intended EU added value: The Directive's EU added value is identified as two-fold: its ability to establish a harmonised Community legal framework for the conditions for entry and residence of third-country nationals in these categories; and its promotion of the European Union as a whole as a world centre of excellence for education and vocational training – both aspects which cannot be sufficiently achieved by Member States on their own.

EU Blue Card Directive

- Main objectives: To simplify and harmonise the admission conditions and procedures of third-country nationals for the purposes of highly qualified employment and their family members, to strengthen their residence rights and to facilitate their mobility across EU borders.
- Intended impacts: By attracting increased numbers of highly qualified third-country nationals, to boost EU competitiveness and the knowledge-based economy in the face of the global competition for talent as well as to decrease labour shortages in high-skilled occupations across the EU.¹¹⁹
- Intended EU added value: The EU's main attractiveness for highly qualified third-country workers compared to its competitors is the possibility of accessing 25 labour markets; this can only be achieved through a European instrument creating a common procedure for admitting such workers and facilitating intra-EU mobility.

Single Permit Directive

- Main objectives: To guarantee a common set of rights to third-country workers lawfully residing in a Member State and not yet entitled to long-term residence status, and to introduce a single application procedure, along with a single residence/work permit.
- Intended impacts: By addressing the "rights gap" regarding third-country workers as opposed to nationals of a Member State, it should help reduce unfair competition, thus serving as a safeguard for EU citizens by protecting them from cheap labour and migrants from exploitation. Due to its

¹¹⁷ Recitals 4 and 18 of the LTR Directive.

¹¹⁸ Recitals 6, 9 and 16 of the Students Directive.

¹¹⁹ Recital 7 of the Blue Card Directive.

reinforced control function, it should help Member States to monitor the legality of employment of third-country national workers.¹²⁰

- Intended EU added value: Member States acting alone would not be able to address differences in treatment of third-country nationals in different Member States, nor therefore the distortion of competition within the single market which this creates. It would also facilitate the application procedure for third-country nationals thanks to common deadlines and procedural safeguards throughout EU.

Seasonal Workers Directive

- Main objectives: To regulate the procedure for admission of third-country seasonal workers, based on a common definition and common criteria; to provide facilitated re-entry of seasonal workers on subsequent seasons; to provide clearly defined legal provisions on working conditions; and to prevent over-staying by specifying the maximum period of time in a given year.
- Intended impacts: By facilitating the supply of seasonal workers for European employers, to enhance the EU's economic competitiveness, optimizing the link between migration and development, while guaranteeing decent working and living conditions for the workers, alongside incentives and safeguards to prevent overstaying or permanent stay.¹²¹
- Intended EU added value: Action at EU level is necessary because a Member State's decision on the rights of third-country nationals could affect other Member States, and possibly cause distortions of migratory flows; it is considered that an EU instrument will be more effective as it will make it possible to enforce Member State actions to reduce the risk of exploitation. EU level action to enhance legal routes for admission for seasonal workers (mostly low skilled) may prove instrumental in strengthening the commitment of third countries to tackling irregular immigration.

ICT Directive

- Objective: To facilitate intra-corporate transfers of skills both to the EU and within the EU in order by creating more attractive conditions of temporary stay for intra-corporate transferees and their family.¹²²
- Intended impacts: By responding effectively and promptly to demand for managerial and qualified employees for branches and subsidiaries of multinational companies, to boost the competitiveness of the EU economy, and help achieve the goals of the EU 2020 Strategy.¹²³
- Intended EU added value: The extent to which multinational companies decide to do business or invest in the EU is influenced by the treatment granted to intra-corporate transferees at EU level and the avoidance of rigidities in transferring foreign intra-corporate transferees from one European corporate headquarters to another. EU level action is necessary to remove these rigidities. EU level action is also necessary to create a common conditions of admission for intra-corporate transferees, which is in turn necessary to prevent the risk of unfair competition; and to create common entry procedure and residency rights, which is in turn necessary to ensure uniform application of EU's WTO commitments.

Students and Researchers Directive

¹²⁰ Recital 3 of the Single Permit Directive.

¹²¹ Recital 7 of the Seasonal Workers Directive.

¹²² Recital 40 of the ICT Directive.

¹²³ Recital 3 and 6 of the ICT Directive.

- Main objectives: To make it easier and more attractive for students, researchers and other groups of third-country nationals (trainees, au-pairs, third-country nationals engaging into voluntary service, pupil exchange schemes or educational projects) to enter and stay in the EU including by facilitating their intra-EU mobility, while at the same time providing for safeguards ensuring their fair treatment.
- Intended impacts: By attracting students and researchers from third-countries, the Directive should contribute to a pool of well-qualified potential workers and human capital that the EU needs to address its economic and demographic challenges;¹²⁴ encourage “brain circulation” and support cooperation with third countries.¹²⁵ By covering more groups – namely remunerated trainees and au pairs – it will open new legal routes, thus helping to combat irregular migration.¹²⁶ By establishing a minimum uniform level of protection and rights of third-country students, researchers and other groups, the Directive should offer stronger safeguards against the exploitation of certain vulnerable categories, including remunerated trainees and au-pairs.¹²⁷
- Intended EU added value: EU level instrument will be more effective at attracting students and researchers from third-countries than the separate actions of Member States. Having one set of common admission and residence requirements rather than a fragmented situation with diverging national rules is more efficient and simpler for potential applicants as well as for organizations involved. An EU wide instrument is needed to promote intra-EU mobility.

¹²⁴ Recital 8 of the Students and Researchers Directive.

¹²⁵ Recitals 6, 7 and 13 of the Students and Researchers Directive.

¹²⁶ Proposal for a Students and Researchers Directive, COM(2013) 151 final, p. 8.

¹²⁷ Recital 23 of the Students and Researchers Directive.

Table 1. Key provisions of the Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities and aspects later addressed in other EU legal migration Directives

Contents of the 2001 proposal	Aspects later addressed in other Directives
<p><i>General rules on admission and residence conditions for persons in paid employment</i></p> <p>Valid work contract or binding offer, valid travel document, documents proving the skills which are needed to perform the envisaged activities, evidence of having sufficient resources to support the applicant and his/her family members, sickness insurance, payment of application fees,</p> <p>Evidence that a post cannot be filled from within the domestic labour market ("economic needs test")</p> <p>Member States have the option to adopt horizontal measures (e.g. national ceilings; temporary suspension of issuing residence permits) in order to limit the admission of third-country workers</p> <p>Member States may restrict the entry and residence for considerations of public policy, public security and public health, based on the personal conduct of the applicant</p>	<p>There are no general rules. Specific rules apply to the various categories of workers (see below).</p> <p>Four Directives (i.e. those related to employment, the BCD, SWD, ICT, S&RD) require a valid work contract or binding offer, or in the case of Students – letter confirming enrolment and for researchers a hosting agreement.</p> <p>Five Directives (i.e. those related to employment, the BCD, SPD, SWD, ICT, S&RD) stipulate that Member States may determine the volumes of admission for the particular categories of third-country nationals. On that basis, an application may be considered inadmissible and can be rejected.</p> <p>-All Directives that include initial admission conditions (so not SPD) include a clause on the possibility to restrict the entry and residence for considerations of public policy, public security and public health.</p>
<p><i>Admission and residence conditions for persons in self-employment</i></p> <p>Procedures and conditions are designed in parallel to the rules for persons in paid employment</p> <p>Particular emphasis is given to the need that applicants demonstrate that their financial means include own resources, in accordance with a business plan</p> <p>Permit is issued if the self-employed activities will have a beneficial effect on employment or economic development of the Member State, according to national provisions</p>	<p>- Admission and residence conditions for self-employed are not covered by any Directive, however</p> <p>- the recast SRD allows researchers to be self-employed</p> <p>-the LTR Directive, which does not include initial admission conditions, but it also allows self-employed persons to accumulate residency time to be allowed to be granted LTR status.</p>

Contents of the 2001 proposal	Aspects later addressed in other Directives
<p>Rules for <i>specific categories of third-country nationals</i></p> <p>“Seasonal workers”: general rules on admission and residence apply <i>mutatis mutandis</i>; residence permit can be issued for a period up to 6 months in any calendar year, renewable up to five times</p> <p>“Trans-frontier worker”: general rules on admission and residence apply <i>mutatis mutandis</i>; provision – exceptionally - allows Member States to grant work permits without granting a right of residence</p> <p>“Intra-corporate transferee”: applicants are not required to pass a labour market test; residence permit validity is equal to the duration applied for, subject to a maximum period of validity of 5 years.</p> <p>“Trainees”: applicants are not required to pass a labour market test; residence permit validity should not exceed 1 year; can be extended under certain circumstances.</p> <p>“youth exchange / au pair”: applicants are not required to pass a labour market test; residence permit validity should not exceed 1 year; can be extended exceptionally.</p>	<p>Specific rules apply to seasonal workers, intra-corporate transferees, au pair and trainees under the respective Directives.</p> <p>Trans-frontier workers are not covered by the Legal migration Directives</p> <p>Seasonal workers: Requirements for admission include: a valid work contract or binding offer, health insurance, evidence of adequate accommodation, sufficient resources not to recur to social assistance based on the contract, evidence that there is no risk of illegal employment after the end of the contract. MS are allowed to perform a labour market test to verify the presence of a suitable candidate. Seasonal worker are allowed to work in the hosting state for 5 to 9 months within one calendar year. The permit may be extended once for maximum 3 months.</p> <p>ICTs: Requirements for admission include a work contract. Permit validity maximum 3 years in the case of managers and specialists, one year in case of trainee employees. It is possible to renew it. Managers and specialists must have worked for the multinational company for at least 3 up to 12 uninterrupted months immediately prior to their transfer, trainee employees from at least 3 to 6 uninterrupted months.</p> <p>The S&R Directive notably cover inter alia trainees, pupil exchange schemes and au paring. There are general conditions for admission alongside more specific conditions which vary according to the category. These include a valid travel document, sickness insurance, payment of fees, sufficient resources. MS are allowed to perform a labour market test to verify the presence of a suitable candidate. The length of validity of the permit</p>

Contents of the 2001 proposal	Aspects later addressed in other Directives
<p><i>Application procedure for persons in self-employment and persons in paid employment</i></p> <p>Competence to regulate the level of fees payable by applicants remains with Member States; the level of fees may be linked to the real costs incurred by the national administration</p> <p>The length of validity of the permit is determined by Member States in accordance with the time frame set out in the Directive, namely up to 3 years for the initial permit and up to 3 years for a renewed permit</p> <p>Decision is communicated at the latest within 180 days after receipt of the application and negative decisions should contain a statements of reasons</p>	<p>depends on the planned length of stay.</p> <p>There are different rules across the Directives with regard to the application procedures. No Directive includes application procedures for</p> <p>SPD: Introduces a single application procedure, with procedural safeguards, for those seeking to be admitted for the purpose of employment, or third country workers already present; MS have a margin of interpretation and implementation in the conduct of the application procedures, as long as there is a single procedure for issuing work and residence permits. The time limit for examining the application is set at maximum 4 months and if no decision is taken, the consequences are determined by the MS.</p> <p>Similarities exist in the SWD, S&RD and ICTs Directives: MS must make easily accessible the information on all documentary evidence needed for an application, entry and stay.</p> <p>MS can also require the payment of fees which shall not be disproportionate or excessive.</p> <p>MS have to communicate their decision at the latest 90 days after receipt of the application (or 60 days if the procedure is related to an approved host entity in the S&R) and negative decisions should contain a statement of reasons.</p>
<p><i>Equal treatment with citizens of the Union for persons in paid employment with respect to:</i></p> <p>Working conditions, including regarding dismissals and pay;</p>	<p>All Directives (with the exception of the 2004 Students Directive), include the provision that third-country nationals shall enjoy equal treatment with respect to nationals of the Member States in a number of aspects,</p>

Contents of the 2001 proposal	Aspects later addressed in other Directives
<p>Access to vocational training (which may be restricted when the TCN has been staying or has the right to stay for at least 1 year in the MS);</p> <p>Recognition of professional qualifications,</p> <p>Social security including healthcare,</p> <p>Access to goods and services which are available to the public, including housing (which may be restricted when the TCN has been staying or has the right to stay for at least 3 year in the MS);</p> <p>Freedom of association and trade union rights.</p>	<p>including branches of social security (SWD; ICT Directive, where the rights are equated to those of posted workers), SP, S&R, LTD, BC), education and vocational training (SW, SP, S&R, LTD, BC), freedom of association (ICTs, SP, LTD), recognition of qualifications (ICTs, SP, S&R, LTD), working conditions (SP). SP extends equal treatment to those admitted for other purposes than work provided they are considered third country workers, such as FRD.</p> <p>The SP, BC, SW and ICTs Directives allow MS to limit the right to equal treatment in certain situations (in particular, MS may deny grants and loans for education and family benefits)</p>
<p><i>Family reunification rules for persons in self-employment and persons in paid employment</i></p> <p>The applicant has to provide evidence of having sufficient resources to support his/her family so as to avoid becoming a burden on the social assistance system of the host MS</p>	<p>Provisions on family reunification can be found in the Family Reunification Directive, the 2005 Researchers Directive, the EU Blue Card Directive, the Intra Corporate Transfers Directive and in the 2016 Students and Researchers Directive for the category of researchers</p>
<p><i>Rules on intra-EU mobility</i></p> <p>There are no rules on intra-EU mobility, in the meaning of (simplified) rules for moving to reside in a second Member State.</p> <p>The proposal only specified that permit holders are “entitled to passage through other Member States” in order to exercise the right to re-enter the territory of the Member State after temporary absence.</p>	<p>All the Directives (except SD, SWD and FRD) include rules and conditions on intra EU-mobility, stipulating needs for notifications, possible limitations on accessing labour markets; rules of family reunification;</p>

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