



Legal Migration Fitness Check Final Evaluation Report

Supporting study

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Limited

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Legal Migration Fitness Check Final Evaluation Report

Supporting study

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1 Introduction

This report presents the draft REFIT evaluation findings of the Fitness Check on Legal migration. As per the study specifications, it presents Outcome E of Task IV: Final Report of the Fitness Check, which comprises of Outcome C: Analysis of the evaluation questions and Outcome D: Topic specific analysis.

1.1 Objectives of Task IV: Fitness Check/REFIT evaluation

The objective of Task IV is to carry out an in-depth analysis of the information gathered in all previous tasks and provide in-depth replies to the evaluation questions on the obligatory evaluation criteria of Relevance, Coherence, Effectiveness, Efficiency and EU Added Value. Task IV is organised around a set of evaluation questions listed in the draft Roadmap for the Fitness Check. The study specification for this assignment further broke down the evaluation questions into a preliminary set of sub-questions, or research questions, the answers to which provided a basis for the study team to formulate conclusions on the evaluation questions. These were all presented in the Evaluation Framework which was discussed in detail and agreed at a meeting with the European Commission on 21st November 2017, and a revised version, reflecting the agreed changes, was submitted to the European Commission on 12th December 2017).

1.2 Task IV: Fitness Check/REFIT evaluation report structure

The evaluation report contains the following sections:

- Section 2 briefly outlines the methodological approach
- Section 3 presents the background to the initiative
- Section 4 presents evaluation findings for Relevance
- Section 5 presents the evaluation findings for Coherence
- Section 6 presents the evaluation findings for Effectiveness
- Section 7 presents the evaluation findings for Efficiency
- Section 8 presents the evaluation findings for EU added value
- Section 9 presents the overall conclusions

2 Methodological approach: Task IV

The evidence base for the Task IV evaluation has been largely collected through the three previous Tasks, namely, through the comprehensive desk research undertaken as part of Task I, the questionnaires on the practical application of the Directives and consultations with migrant agents in the context of Task II, and the two types of consultations undertaken as part of Task III, namely the public consultation including the tailored sets of questions to different stakeholder groups; and the targeted consultation with key stakeholders, including in-depth interviews, focus groups and targeted meetings.

Task IV has been completed in six discrete Steps:

Step IV.1 Compiling, organising and reviewing all information collected as part of Tasks I-III

Step IV.2 Preparation of first analysis of evaluation questions

Step IV.3 Organisation of Expert workshop

Step IV.4 Full analysis of the evaluation questions

Step IV.5 Preparation of topic specific analysis

Step IV.6 Delivery of full Fitness check report

2.1 Step IV.1 Compiling, organising and reviewing all information collected as part of Tasks I-III

The first step of Task IV consisted of compiling, organising and reviewing all the information collected as part of Tasks I-III.

Task I: Contextual analysis

The objective of Task I was to provide the contextual background of the evaluation. Task I was primarily based on secondary literature review and analysis of qualitative and quantitative information. The Outcomes of Task I were used in Task IV evaluation as follows:

Task IA: Comprehensive collection of information: The literature reviewed, including EMN sources, OECD publications, other academic articles and other EU-harmonised and national level sources were used were relevant to support Task IV analysis throughout all evaluation criterion.

Task IB: Contextual analysis; Analysis from the Historical Overview, Statistical analysis and the Drivers paper were drawn to support the findings throughout the REFIT Fitness Check.

Task IC: Intervention logic, internal and external coherence: The evaluation criterion on coherence (covering both internal and external coherence) was based on the work undertaken in Task IC. The analysis of other criteria also drew on Task IC.

Task ID: Gap and key issues analysis: The evaluation criterion on relevance (including both personal and material gap analysis) coherence (covering both internal and external coherence) was based on the work undertaken in Task ID. The analysis of other criteria also drew on Task ID.

Task II: Legal and practical application

The objective of Task II was to assess the legal and practical application in each Member State which applies the EU legal migration acquis (25 Member States). The detailed Methodology of Task II is outlined in Outcome IIA: Methodology for Task II. Task II was based on 'a legal migration process' framework which includes 8 steps. The legal research was based on transposition studies provided by the European

Commission. The practical implementation was divided into descriptive and experiential questions and carried out by national researchers on the basis of desk research and also interviews and correspondence with organisations at national level to fill in any gaps in the research.

Detailed questionnaires for each step of the migration process as well as a national summary were completed for each Member State. In addition, a comparative report, Outcome IIE was produced by the study team.

As part of this task, a case-study focussed on migration from a selected set of representative countries of origin was envisaged, however despite specific out-reach attempts including diplomatic contacts via Commission delegations in the respective country, the number of respondents both in the targeted and open public consultation from these countries remained too low to enable the study team to continue with such a case study approach. In addition to the national research for task II, **interviews with migration agencies** in third countries and in the EU were carried out. The study team originally envisaged undertaking 3-4 interviews with migration agencies in each of 10 selected third countries after discussions with the European Commission. Having undertaken significant efforts to carry out statistically significant number of interviews for each of the ten selected countries and due to the issues experienced with collecting data on the migration process experiences in the 10 selected countries and the statistically insignificant numbers of responses received on the OPC, it was agreed with the Commission, during a meeting held on 20th October 2017, to examine the views of all third-country nationals on their experience with the migration process and to organise this by Member State instead. This alternative approach allowed to utilise fully all the data collected from the Open Public Consultation (OPC) and the interviews with migration agencies based in the EU. It also resolved the statistically insignificant numbers of responses to the OPC and the low share of interviews carried out with migrant agencies in these third countries.

Both the results of the practical application and the interviews with migration agencies were fully used throughout Task IV evaluation.

Task III: Consultation of the public and targeted stakeholders

Task III consisted of an Open Public Consultation (OPC) and targeted consultations.

The study team developed the questions for the OPC on the EU legislation on the legal migration of non-EU citizens, working closely with the Commission, who launched it in the context of the Legal Migration Fitness Check¹. The consultation was open to all stakeholders with the aim to collect evidence, experiences, data and opinions to support the evaluation of the existing EU legal framework for the legal entry and stay of third-country nationals to the EU.

The on-line consultation was accessible from 19 June to 18 September 2017 in 22 official languages on the EUROPA website 'Your voice in Europe'².

Following the consultation launch, related promotion and dissemination activities were carried out through different European Commission and external channels:

Web page: DG HOME's webpage and news article; Dedicated Fitness Check webpage; DG Public Consultations webpage; EC Representations in the Member states and EU Delegations in selected third countries;

Newsletters;

¹ https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check_en

² https://ec.europa.eu/home-affairs/content/consultation-european-unions-eu-legislation-legal-migration-non-eu-citizens-fitness-check-eu_en

Targeted announcement: announced during relevant events and meetings with Member States and stakeholders; by e-mail to Advisory committees and other in the areas of migration, employment, social affairs and education;

Social media: Twitter and Facebook (via targeted ads and a dedicated page³)

Key interested parties, e.g. the European Migration Network; contacts provided by national researchers in EU Member States; international organisations; associations representing third country nationals and business (via targeted emails)

The questions⁴ of the consultations covered a variety of issues structured as follows:

- an introductory part to collect background information about the respondents;
- a general part to explore the general views regarding the legal framework for the entry and residence of non-EU citizens in the EU; and
- five specific parts aimed at collecting data and views of specific groups of respondents, namely: (i) non-EU citizens considering to come to the EU; (ii) non-EU citizens residing or having resided in the EU; (iii) employers, business representatives, non-EU companies intending to provide services in the EU; (iv) public authorities; and (v) others (including NGOs, trade unions, interested citizens, and academia).

Additionally to the open public consultation which aimed to gain public opinion, data were also collected through targeted consultations in order to gather more focused information. Data were collected via the following main activities:

Interviews with representatives of Ministries of Education, Interior and migration agencies; besides, interviews were also conducted with representatives from some Member States ecosystems for entrepreneurs.

Analysis of Reports from meetings with EU Social Partners' Focus group, NGOs and Member States.

Analysis of Reports from various events and workshops (i.e. 3rd meeting of the European Migration Forum and Information Report on the State of Implementation of Legal Migration Legislation drafted by the European Economic and Social Committee).

Answers from relevant advisory committees assisting the European Commission in the examination of the application of the EU legal migration legislative framework, particularly the Advisory Committee on Free Movement and the Senior Labour Inspectors Committee (SLIC).

The results of the OPC and targeted consultations were used throughout the analysis of Task IV in all criteria.

2.2 Step IV.2 Preparation of first analysis of evaluation questions

Following the detailed review of all aspects completed under Task I, II and III, the study team prepared the hypothesis and judgment criteria, which was discussed at the expert workshop and also at a meeting with the European Commission in Brussels on 21st November 2017.

2.3 Step IV.3 Organisation of Expert workshop

An expert workshop was organised on 14th November 2017 to discuss the preliminary hypothesis and judgment criteria per evaluation criterion. The workshop was structured into 5 parts, covering each evaluation criterion. Following the workshop,

³ <https://www.facebook.com/Legal-migration-by-non-EU-citizens-Public-Consultation-1118387274927898/?fref=ts>

⁴ Respondents did not answer all questions and sections. The questions were tailored to the different respondent groups. Responses will be published except where confidentiality was requested.

the evaluation framework was revised and re-submitted to the European Commission accordingly.

2.4 Step IV.4 Full analysis of the evaluation questions

A number of methods were applied in preparation of the full analysis of the evaluation questions. These are presented in the table below.

Main forms of analysis to address the evaluation and research questions

Form of analysis Types of evaluation and research questions	
Trend analysis	<p>Relevance of the objectives of the Directives and their modalities of implementation;</p> <p>Effectiveness: extent to which objectives of the Directives have been achieved; effects of the Directives and of the different modalities of implementation; attribution v. contribution; role of external factors.</p>
Legal analysis	<p>Relevance of the objectives of the Directives and their modalities of implementation;</p> <p>Internal coherence: synergies, gaps, overlaps and inconsistencies between the Directives.</p> <p>External coherence: synergies, gaps, overlaps and inconsistencies with national legislation (parallel schemes) and other EU policies.</p>
Textual analysis	<p>Relevance of the objectives of the Directives and their modalities of implementation;</p> <p>External coherence: synergies, gaps, overlaps and inconsistencies with national policies and other EU policies;</p> <p>EU added value: issues still requiring EU interventions.</p>
Economic analysis	<p>Effectiveness: effects of the legal migration Directives, and the extent to which such effects can be attributed to the EU intervention</p> <p>Efficiency: types of costs and benefits are involved in the implementation of the legal migration Directives, and their distribution amongst stakeholders and Member States</p> <p>EU Added Value: positive effects and results brought in by the EU legislation compared to what could have been achieved at Member State or international level</p>
Analysis of the results of the practical application study	<p>Relevance of the objectives of the Directives and their modalities of implementation;</p> <p>Coherence : identification of internal coherence issues (gaps, inconsistencies, overlaps etc.) that may cause practical application problems and coherence issues related to the interaction with other EU policies</p> <p>Effectiveness: extent to which objectives of the Directives have been achieved; effects of the Directives and of the different modalities of implementation;</p> <p>Efficiency: main costs and benefits of the Directives, and their different modalities of implementation; distribution of costs and benefits; quantification (where possible) of the costs and benefits.</p> <p>EU added value: issues still requiring EU interventions</p>
Analysis of stakeholder views	<p>Relevance of the objectives of the Directives and their modalities of implementation;</p> <p>Coherence : identification of internal coherence issues (gaps, inconsistencies, overlaps etc) that may cause practical application</p>

problems and coherence issues related to the interaction with other EU policies

Effectiveness: extent to which objectives of the Directives have been achieved; effects of the Directives and of the different implementation modalities; attribution v. contribution analysis; role of external factors;

Efficiency: costs and benefits of the Directives (including estimated costs of the procedures); factors affecting the (distribution of) costs and benefits;

EU added value: attribution analysis; gaps which require EU intervention.

Trend analysis

Trend analysis involves examination of the development of migration policy results (e.g. higher numbers of highly-skilled third-country national workers arriving in a country) before and after the implementation of the migration policy measure. A change in the trend of any selected migration policy result observed shortly after the implementation of a specific policy measure may reflect the impact of that policy – provided that there is no other alternative explanation accounting for such a change.

A 'softer' form of trend analysis, which does not require the development of a regression model, can be used in the context of the Fitness Check to answer questions concerning the relevance of the objectives of the Directives and their modalities of implementation; as well as effectiveness questions, namely, the extent to which the objectives of the Directives have been achieved; the results (including unintended results) of the Directives (and of the different modalities of implementation); and attribution questions i.e. the extent to which the Directives, as opposed to other external factors, have influenced the observed results.

Much of the analysis that informs these questions has been conducted in Task I.B (the Contextual Analysis), namely:

Which countries are affected most by which flows over time?

How did migration flows evolve between 1999 and 2015, for the different categories of third-country nationals covered by the Directives (where possible distinguishing between the wider category and the flows linked to the Directives);

What have been the main changes in migration flows during the period 1999-2015?

What were the possible reasons for these changes, bearing in mind economic, political and legislative developments within the EU and outside the EU's borders?

Legal analysis

This method involves careful comparison of the provisions of the legal migration Directives and other relevant national, EU and international legislation. It has been used to address in particular questions concerning the relevance of the objectives of the Directives and their modalities of implementation; and questions concerning the Directives' internal and external coherence, i.e. synergies, gaps, overlaps and inconsistencies between the Directives, on the one hand, and (where relevant) between the Directives and relevant national legislation (i.e. national parallel schemes).

Textual analysis

Textual analysis is a technique used to analyse the content of communications, including historical documents and policy documents. The aim is not only to identify the main components or provisions of the documents, but also, through this analysis, to understand the way that the authors of the documents perceived the world. It is therefore a useful method for identifying the main policy needs as perceived by national authorities and other stakeholders.

This method complements the legal analysis described above to help address questions concerning the relevance of the objectives of the Directives, as well as their external coherence. The relevance of the Directives has been gleaned through analysis of the stories behind the drafting of the Directives and the compromises made when the Directives were being drafted. Textual analysis of other relevant EU policies helps to identify textual analysis of other EU policies to identify gaps, overlaps and synergies with the EU's legal migration acquis. Finally, textual analysis of the proposals to adopt (and amend) the Directives can also help the evaluation team to address some of the EU added value questions, by providing insights into current and future issues affecting legal migration which still require EU interventions.

Analysis of costs and benefit

The team explored a number different analytical approaches to assessing the costs and benefits: counterfactual analysis, trend analysis, cost benefit analysis, and cost effectiveness analysis. A number of limitations were identified with each of these approaches that did not allow us to use it. They included unavailability of statistical data on permits prior to 2008, difficulty in controlling for external factors that may influence migration flow; difficulty in drawing causal relations based on the analysis; lack of sufficiently robust stakeholder consultation data.

The social, economic, and fiscal impacts of migration were reported based on secondary academic and policy studies that employed a variety of economic and statistical methods. Any cost or benefit estimate regarding EU's legal migration acquis needs to recognise that national migration schemes existed prior to the adoption of each of the directives. In order to assess the value that has been added by the EU migration acquis over the pre-existing or co-existing national schemes, a "Difference in differences" (DID) method was applied specifically to estimating the value added of the Blue Card Directive, for which there was sufficient data. DID is a technique mainly applied in econometrics and quantitative research in social sciences that tries to imitate an experimental research design. Finally, a simplified Standard Cost Model approach was used to estimate the costs of the migration process to the different groups of stakeholders (migrants, businesses, and government administrations). Finally, a qualitative analysis was used to assess all the benefits that derive from the different provisions in the migration directives.

Analysis of stakeholder views

The results of the Open Public Consultation, and in particular of the targeted consultations, is used to help answer a number of evaluation questions concerning:

Relevance of the objectives of the Directives and their modalities of implementation;

Coherence: extent to which there are problematic incoherencies between Legal migration Directives and other EU policies.

Effectiveness: extent to which objectives of the Directives have been achieved; effects of the Directives and of the different implementation modalities; attribution v. contribution analysis; role of external factors;

Efficiency: the main costs and benefits of the Directives (including estimates of costs, where precise monetary values are not available); factors affecting the (distribution of) costs and benefits; and,

EU added value: attribution analysis; gaps which require EU intervention.

While the OPC ensures that views on the above questions are gathered from the widest possible range of stakeholders, the stakeholder types whose views are expected to inform the relevance, effectiveness and efficiency questions the most are: representatives of national authorities; migrant recruitment agencies, migrant associations and employers who actively engage with the application process as well as third-country nationals themselves. These stakeholders are expected to provide useful information relevant to current and future needs; attribution and contribution

analysis; and how the admission procedures for the different categories of migrants compare to each other, to the procedures associated with national parallel schemes as well as to the procedures that existed before the adoption of the Directives. They should also be able to provide actual or estimated information concerning the costs of the procedures.

The views of legal experts (including members of COM expert groups, as well as the views of ICF's panel of experts) have also been analysed, in particular to address questions concerning effectiveness and EU added value.

However, in the light of possible low response rates among certain stakeholders, the analysis of stakeholder views has not been used in isolation to answer any of the evaluation and research questions. Stakeholder views were subject to a 'representativeness' test and were triangulated against the results of other research methods before drawing conclusions.

2.5 Step IV.5 Preparation of topic specific analysis

The topic-specific analysis included in-depth analysis taking into account outcomes of other tasks and the evaluation criteria and questions:

D.1 In-depth analysis of specific gaps and key issues, which were identified in the preliminary analysis in Task I, Outcome D. The analysis is presented under Coherence section of the present report.

D.2 An analysis of costs and benefits related to the implementation of the legal migration Directives, including the development of a typology of costs and benefits associated to the implementation of the Directives, and how these costs and benefits are distributed among stakeholders. This analysis includes proposals for a methodological approach for the evaluation of the Efficiency criteria and aims at quantifying and analysing the specific costs and benefits as far as possible.

2.6 Step IV.6 Delivery of full Fitness check report

The present document presents the final Fitness check report covering all evaluation criteria of the REFIT evaluation.

3 Background to the initiative

3.1 Description of the initiative

The Commission's 2016 Communication⁵ 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe', announced that the Commission was to launch a REFIT evaluation, with the overall objective of ensuring that legal migration policies are managed more effectively, by ensuring that the Union makes better use of all its existing instruments targeting different categories and skills of third-country nationals.

The Fitness Check Study's overall aim is to assess the current EU legal migration acquis and provide for future reflection on whether there is a need to rethink the EU model of managing legal migration and define a more coherent and effective model of legal migration management at EU level. The objective of the Study is to evaluate how the existing acquis on legal migration has contributed to the attainment of legal migration policy objectives and to identify overlaps, gaps, inconsistencies, synergies and the cumulative impacts of the legal instruments in this area. It serves to consider possible ways of simplifying and streamlining the current EU framework in this area.

Included within the scope of the evaluation are the following EU legal migration Directives:

- Directive 2003/86/EC – Family reunification
- Directive 2003/109/EC – Long Term Residents
- Directive 2009/50/EC – EU Blue Card – highly skilled workers
- Directive 2011/98/EU – Directive on a Single Application/Permit and third-country workers' equal treatment (aka the Single Permit)
- Directive 2014/36/EU on Seasonal workers
- Directive 2014/66/EU on Intra-corporate transfers
- Directive (EU) 2016/801 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 (recast of Directives 2004/114/EC on students and 2005/71/EC on researchers).

The objectives of each of the Directives are summarised in Annex 1.

The Fitness Check Study consists of four distinct but interrelated tasks:

- Task I: Contextual analysis
- Task II: Evidence gathering on practical implementation
- Task III: Consultation of the public and targeted stakeholders
- Task IV: Fitness Check/REFIT Evaluation

Task I covered all of the Directives, Task II did not cover Seasonal workers, Intra-corporate Transfers and the recast Directive on researchers, students, trainees, volunteers, pupils and au-pairs but covered the original Directives and the evaluation in Task IV related to all of the 5 criteria analysed mainly focuses on Family reunification, Long Term Residents, the Single Permit and the EU Blue Card Directives (although for the latter, the recent evaluation and impact assessment will be used), whilst the evaluation of the criteria on Relevance and Coherence also covers the Directives on ICTs, Seasonal workers and the recast Students & Researchers Directive.

⁵ Communication from the Commission to the European Parliament and the Council: Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe (COM (2016) 197 Final)

3.2 Rationale and objectives

This section aims to outline the overarching objectives of EU legal migration acquis as well as Directive-specific objectives. The section is based on a mapping of the objectives (see Table 1 below) as outlined in the Directives and their Recitals as well as builds on the work already undertaken on the Annex 1Bi Contextual analysis: overview of the evolution of the EU legal migration acquis and the Annex 1Ci contextual analysis: internal coherence of the EU legal migration Directives, 1Cii Contextual analysis: Intervention logics.

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. 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 residence 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.

The Lisbon Treaty also clarified that the EU legislature can establish rules on economic migration; however, 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.” While the Lisbon Treaty 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 admission – which remain a national competence – but not as regards the question of access to employment for persons who have already been admitted. However, the Directives can allow Member States to restrict access to the labour market for third-country nationals, for example apply labour market tests or similar requirements.

The underlying rationale for the legal migration Directives is the need to approximate the regulation of migration from third countries for the purpose of work, living and studying in the EU.

The Directives aim to further approximate the rules of third country migration amongst the EU Member States as prior to the Directives such rules varied between the Member States (and this remains the case as Directives contain several ‘may’ causes). Introducing more uniform migration rules through the implementation (the legal transposition and practical application) of the Directives is aimed to increase the EU’s attractiveness to the migrants as a destination, improve the efficiency of application and control procedures, ensure fair treatment of the TCNs, prevent their exploitation, facilitate their integration and raise the trust in appropriate and effective migration management amongst the different Member State authorities (as to facilitate the intra-EU migration of third country nationals).

Given such rationale, the **Overarching objectives of EU legal migration** acquis applicable to all EU legal migration Directives are articulated as follows:

- **Create a level playing field** in the EU through the approximation and harmonisation of Member States' national legislation and establishing common admission criteria and conditions of entry and residence for categories of TCNs subject to EU legal migration acquis; ensure transparency, simplification and legal certainty for categories of TCNs subject to EU legal migration acquis;

- **Ensure fair treatment** for categories of TCNs subject to EU legal migration acquis comparable to those of citizens of the European Union (subject to restrictions).

Each of the Directives also has a set of specific objectives, several of which are common to more than one directive, as also shown in Table 1 below (and in Annex 1 for a more detailed overview). These objectives contribute to one or more of the overall Directives.

- **Managing economic migration flows** through the possibility to apply volumes of admission; Union preference principle and labour market tests (relevant for the Directives regulating admission for the purposes of economic migration);
- **Attracting and retaining certain categories of TCNs** is an objective for four categories of TCNs: highly qualified workers (BCD); students and researchers (RD and S&RD) and intra-corporate transferees (ICT). As outlined in Recital 3, the Blue Card Directive is seen as a measure to “attract and retain highly qualified third-country workers”. Fostering admission and mobility, including introducing more favourable provisions for Blue Card holders is aimed “to make the Community more attractive to such workers from around the world and sustain its competitiveness and economic growth”. (Recital 7) Attracting is also mentioned as an aim in relation to ICT: “*in order to make the specific set of rules established by this Directive more attractive and to allow it to produce all the expected benefits for competitiveness of business in the Union, third-country national intra-corporate transferees should be granted favourable conditions for family reunification..*”(Recital 40) Finally, the RD and S&RD aim to “*make the Community more attractive to researchers from around the world and boost its position as an international centre for research*”.
- **Enhancing the knowledge economy in the European Union** – specific objective for BCD, ICT and RD/S&RD.
- **Boosting competitiveness and economic growth** – specific objective for BCD, ICT and RD/S&RD
- **Addressing labour shortages** - (relevant for the Directives regulating admission for the purposes of economic migration)
- **Ensure equal treatment** for categories of TCNs subject to EU legal migration acquis comparable to those of citizens of the European Union (subject to restrictions).
- **Preventing exploitation of workers** (including through sanctions against employers - SWD, ICT) **and ensuring decent living and working conditions of third-country nationals** (SWD, FRD, ICT) through **equal treatment provisions to serve as a safeguard to reduce unfair competition** between a Member State’s own nationals and third-country nationals resulting from the possible exploitation of the latter(all Directives ensuring equal treatment of workers LTR, BCD, SPD (covering SD, FRD, RD), SWD, ICT, S&RD)
- **Improving monitoring and control of overstaying and other irregularities** (SWD) by facilitating **controls of the legality of third-country nationals’ residence and employment** (through single permits) (SPD)
- **Ensuring mutual enrichment and promoting better familiarity among cultures** (SD and S&RD) – According to S&RD – “*This Directive should also aim at fostering people-to-people contacts and mobility, as important elements of the Union’s external policy, notably vis-à-vis the countries of the European Neighbourhood Policy or the Union’s strategic partners. It should allow for a better contribution to the Global Approach to Migration and Mobility and its Mobility Partnerships which offer a concrete framework for dialogue and*

cooperation between the Member States and third countries, including in facilitating and organising legal migration.”

- **Promoting integration and socio-economic cohesion** has been mentioned as an explicit objective in the FRD and LTR.
- **Protection of family life and unity** is an objective for FRD, LTR, BCD, RD, ICT and S&RD in relation to researchers. Due to the temporary nature of the stay of seasonal workers, no family reunification rights are provided for. As per Recital 46 of the SWD “This Directive does not provide for family reunification.”
- **Facilitating and promoting intra-EU mobility** – is an aim in the FRD, LTR, SD, BCD, RD, ICT and S&RD.

Table 1. Specific objectives of each of the Directives

Specific objectives	FRD	LTR	SD	RD	BCD	SPD	SWD	ICT	S&RD
Managing economic migration flows					X	X	X		
Attracting and retaining certain categories of TCN			X	X	X			X	X
Enhancing the knowledge economy in the EU				X	X			X	X
Boosting economic competitiveness, growth and investment				X	X			X	X
Addressing labour shortages (through admission conditions)					X		X	X	
Ensure equal treatment		X		X	X	X	X	X	X
Preventing exploitation and ensuring decent living and working conditions	X	X	X	X	X	X	X	X	X
Ensuring mutual enrichment and promoting better familiarity among cultures			X						X
Promoting integration and socio-economic cohesion	X	X							
Protecting of family life and unity	X	X		X	X			X	X
Enhancing intra-EU mobility		X	X	X	X			X	X
Improving monitoring and control of overstaying and other irregularities						X	X		X

Source: ICF

3.3 Baseline of EU legal migration Directives

This section establishes the legal and statistical baseline for each of the Directives under the scope of the REFIT evaluation.

3.3.1 FRD

The scope of the FRD is limited only to third country nationals joining other third country nationals. The admission of third-country nationals who join mobile EU citizens is regulated by more favourable rules of Directive 2004/38, and admission of third-country nationals who join non-mobile EU citizens is regulated at national level. In recent years, extended rights of third country nationals to join family members who are third country nationals have also been included in the Blue Card Directive, the ICT Directive, the recast Directive on Students and Researchers.

3.3.1.1 Legal baseline⁶

The Amsterdam Treaty which entered into force on 1st May 1999 provided for an area of an area of freedom, security and justice be established progressively. This granted powers to the (then) European Community to adopt measures concerning the entry and residence of third-country nationals in the Member States. Recognising that family reunification have been the chief form of legal immigration of third-country nationals, the Commission presented a Proposal for a Council Directive on the right to family reunification following a European Council's meeting at Tampere on 15 and 16 October 1999⁷. The proposed Directive aimed at ensuring respect for family life, irrespective of the reason for staying on the territory of the European Union as long as it is lawful residence. The Directive aims to achieve harmonisation across Member States for two reasons: *"Third-country nationals are to be eligible for broadly the same family reunification conditions, irrespective of the Member State in which they are admitted for residence purposes. And the possibility that the choice of the Member State in which a third-country national decides to reside will be based on the more generous terms offered there must be restricted."*⁸

The first proposal from the Commission on this topic was submitted in 1999 but negotiations took place for three years so as to conclude to the final, agreed by all text. The Directive was adopted in 2003 with a transposition deadline for Member States of 3rd October 2005. The Directive forms the first set of measures based on Article 63(3)(a) of the Treaty establishing the European Communities on third-country nationals' entry and residence conditions. At the time of the adoption of the Directive, the universal right to family reunification, as part of the right to respect for family life,, was stipulated by international legal instruments⁹ ratified by Member States by Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as reaffirmed by Art. 7 of the Charter of Fundamental Rights of the European Union ('the EU Charter of Fundamental Rights'), which later became binding with the entry into force of the Lisbon Treaty. Prior to the adoption of the FRD, Community law contained some provisions relating to family reunification of third-

⁶ No impact assessment of the FRD Directive was available.

⁷ COM(1999) 638 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51999PC0638&from=EN> Proposal for a Council Directive on the right to family reunification. 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.

⁸ Ibid p.9

⁹ The Universal Declaration of Human Rights and the International Covenants of 1966 on Civil and Political Rights and on Economic and Social Rights recognise that the family is the natural and fundamental unit of society and is entitled to the fullest possible protection by society and the State; International Convention on the protection of the rights of all migrant workers and members of their families, adopted by the General Assembly of the United Nations in December 1990 and Convention on the Rights of the Child of 20 November 1989

country nationals.¹⁰ However, these provisions concerned derived rights of family members flowing from those enjoyed by the Union citizen enjoying the right to free movement.

In 1999, prior to the adoption of the FRD¹¹, all (then) EU-15¹² 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 (DE, EL, PT and IT) recognised the principle of family reunification in their constitutions. Austria was the only Member State that applied a policy of quotas to applications for admission of family members¹³. In Austria, the quota for family reunion had been gradually reduced from 10,520 in 1996 to 5,210 in 1999, in recent years the quota is usually exhausted by or even before July. Hence, third country nationals who held a permanent establishment permit¹⁴, may have had to wait one or two years before their family members can join them, after they have met all the other conditions for family reunion.

With regard to **categories of the eligible family members**, all 12 Member States for which information is available allowed the family reunification of married spouses and children, while some Member States allowed for additional categories, such as dependent parents (EL, ES, IT), dependent relatives (PT –brothers and sisters, IT-until third grade), registered partners (NL) and family members for humanitarian reason (ES). In terms of the age requirement for children, commonly this was set at 18 years of age in the majority of the 12 Member States, with the exception of AT (14 years) and PT (21 years).

- **Eligible categories of family members:** The FRD did not bring a significant change to the conditions for eligible categories of family members. As stipulated in Art. 4 (1), Member States should recognise the right to family reunification of spouses and minor children, including adopted and dependent children of the sponsor or the spouse. These two categories were already covered in the national legislation in all the 12 Member States prior to the adoption of the Directive. The Directive also did not set an age limit for children but stipulated that 'minor children' should be below the age of majority as set in national law and must not be married. The Directive also allowed (may clause) for the family reunification of other categories of family members upon discretion of the Member State (Art.4(2) and Art.4(3)).
- **Proof of sufficient resources:** All of the 12 Member States required the sponsor to demonstrate minimum resources to cover cost of living; however, requirements varied significantly across Member States. 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 respectively and FR and NL required that resources be 'permanent and stable'. Art. 7 of the FRD stipulates that Member States 'may' require the sponsor to demonstrate significant resources. FRD did not bring a significant change to what was in place before as all 12 Member States required proof of sufficient resources already. The Directive provides that Member States shall evaluate these resources by reference to their nature and regularity and may

¹⁰ Regulation (EEC) No 1612/68, 15.10.1968 (OJ L 257, 19.10.1968 p. 2), Directive 73/148/EEC, 21.5.1973 (OJ L 172, 28.6.1973, p. 14)

¹¹ COM (1999) 638

¹² No data available for the situation of EU-13 Member States at the baseline point of 1999.

¹³ 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

¹⁴ unbefristete Niederlassungsbewilligungen

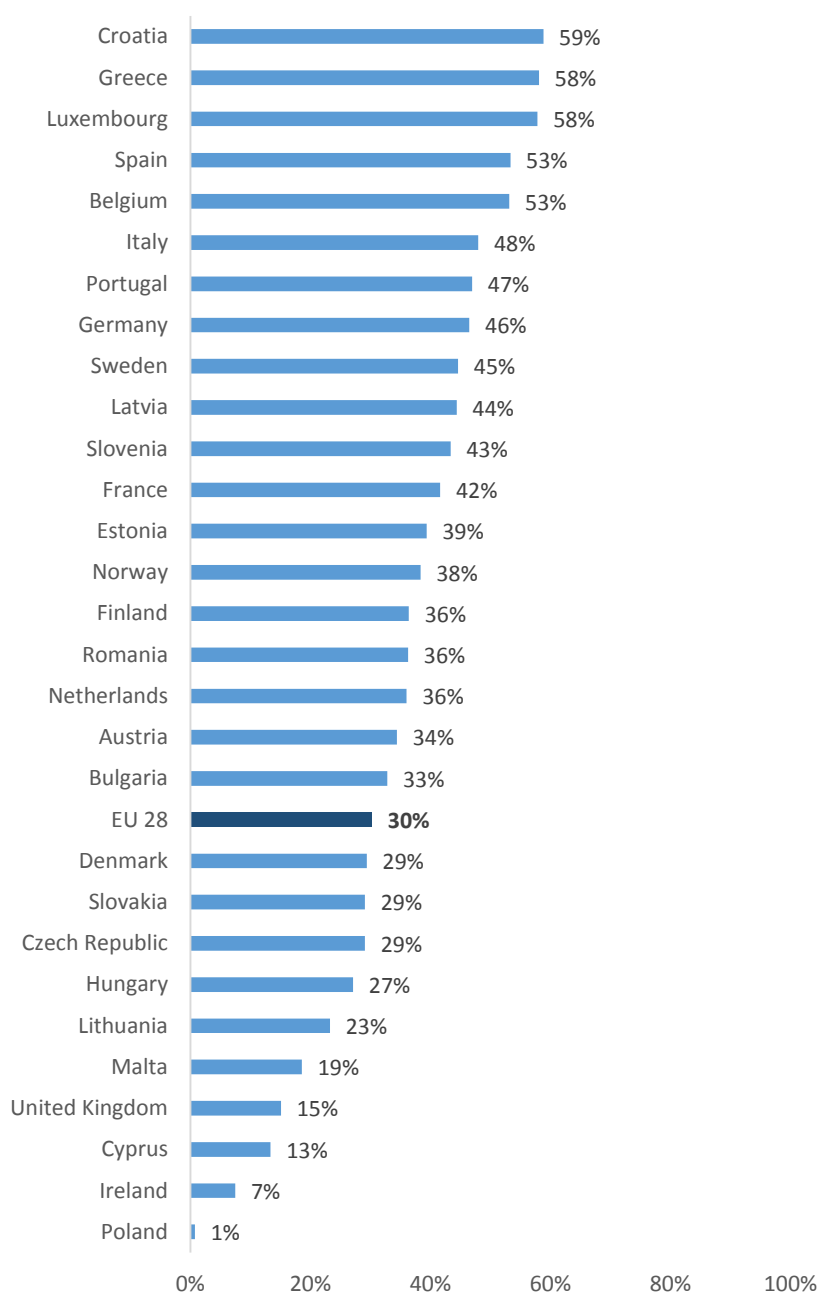
take into account the level of minimum national wages and pensions as well as the number of family members.

- **Adequate accommodation:** The requirement of adequate accommodation was in place in most EU-15 Member States – IT, PT, NL but it was assessed differently. For example, in Germany, the accommodation had to be equivalent to social housing. In France, Portugal and the Netherlands, it had to be equivalent to the standard accommodation occupied by nationals. Other criteria such as size, hygiene and safety were applied (Greece, Italy, Austria). Spain and Luxembourg did not apply predefined rules and consider situations case by case. The adequate accommodation condition was not imposed in Belgium, Finland or Sweden. Art. 7 (a) stipulated that Member States 'may' require proof of evidence of adequate accommodation.
- **Qualifying period:** Certain Member States imposed a qualifying period on newly admitted third-country nationals. The duration varied, from one year in France, Portugal and Spain to 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. The FRD stipulates that the Directive shall apply where the sponsor is holding a residence permit for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence. In that respect, the Directive did not bring a significant change.
- **Access to labour market:** Access to labour market for family members varied across Member States. For example, in Austria and Germany, family members of third country citizens were barred from the labour market for a period of four years after family reunification with a person holding a residence permit of temporarily limited validity, or a residence concession. In Finland, access to labour market for family members was allowed for a specific job. According to Art. 14 of FRD, family member should be allowed access to employment and self-employment activities and stipulates that a time limit for family members to access labour market should not exceed 12 months.
- **Equal treatment:** The FRD does not include any provisions on equal treatment and no legal baseline with regard to this aspect can be established, including due to very limited information available on the status of equal treatment pre-adoption of the Directive.

3.3.1.2 Migration flows

Family reunification is one of the most prevalent reasons for the immigration to the European Union. As illustrated in Figure 1 below, out of all Member States, Croatia has issued the largest proportion of first permits for family reasons out of total first permits in the past five years (59%), followed closely by Greece and Luxembourg (with 58% each). On the other end of the scale are Poland (1%) who has issued the lowest proportions of first permits for family reasons out of total first permits since 2011 onwards.

Figure 1. Percentage of first permits for family reason out of total first permits, 2011-2015 (*includes EU-28 for comparison)



Source: Eurostat - migr_resfirst (data extracted on 19.01.2017). This data does not distinguish between permits issued for family reasons whether the sponsor is a third-country national or an EU national.

There is very limited comparative data available on the number of residence permits issued to family members of TCNs for the period 1999-2008. Statistics are available for 8 Member States¹⁵ for different years in the period 2002-2006, although these are not comparable (methodologically and also longitudinally).¹⁶

¹⁵ EMN (2010), Study on Family Reunification

¹⁶ The data does not distinguish clearly between family members of *third-country nationals* and *family members of EU nationals*.

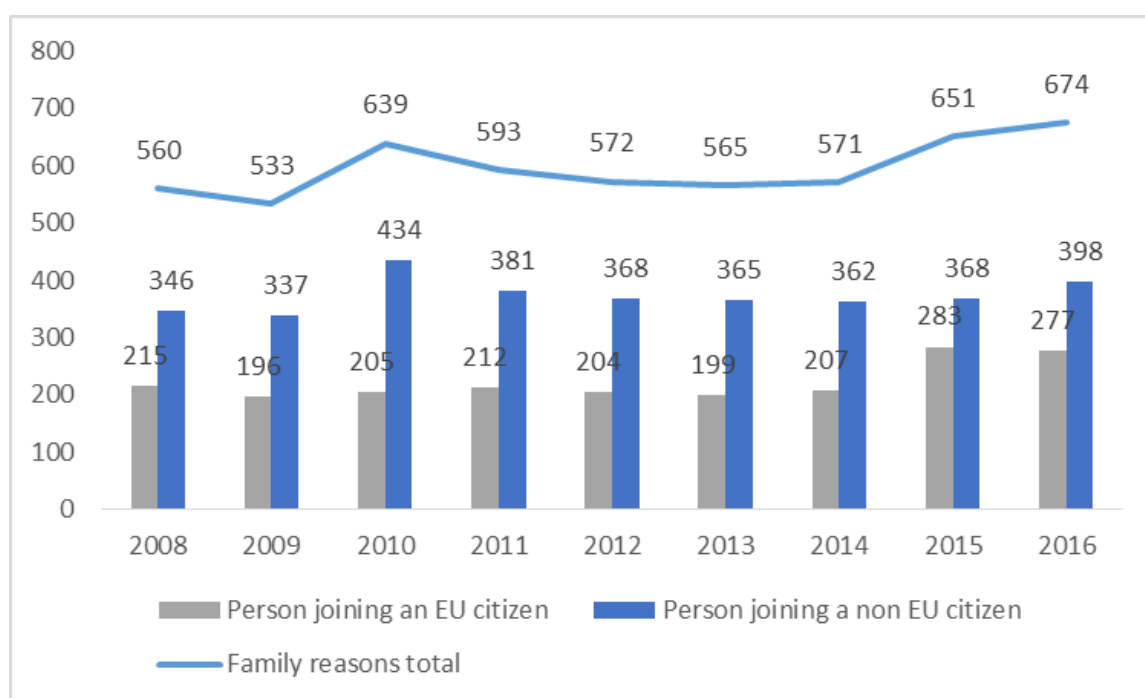
Table 2. Statistics on family reunification (2006)

Category	AT	EE	DE	EL	LV	NL	RO	SE
Applications	N/a	1,327	50,300	12,678	4,536	32,067	1,067	29,420
Refused	N/a	142	N/a	123	<10	3,869	182	7,370
Dependant								
Adult Men	568	N/a	12,334	161	N/a	4,381	88	6,747
Adult Women	1,843	N/a	27,251	5,162	N/a	10,958	482	10,585
Children	3,561	N/a	10,175	7,355	N/a	12,353	506	5,564
Top Nationalities of dependents	Serbia (1,745)	Russia (1,211)	Turkey (10,195)	Albania (10,092)	Russia (2,318)	Turkey (3,673)	Turkey (273)	Iraq (2,500)

EMN Study on Family Reunification (2010)

EU-harmonised figures are available as from 2008 onwards. Figure 2 below shows all first permits issued for family reasons. As it can be seen there has been a 17% increase in all first residence permits issued from 2008 to 2016.

Figure 2. All first permits issued for family reasons in EU-25, 2008-2016



Source: Eurostat (migr_resfam)

3.3.2 LTR

LTR sets out the conditions for granting long-term status to non-EU citizens living legally in the EU continuously for 5 years. Directive 2011/51/EU amended Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.

3.3.2.1 Legal baseline

The LTR Directive was proposed by the Commission in 2001 to approximate the social and free movement rights of third-country nationals with those of Member State nationals. The Directive was adopted in 2003 and determines how a TCN who has legally and continuously resided for a period of five years in the territory of a Member State may obtain long-term residence. 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 as the Racial Equality Directive 2000/43/EC¹⁷ and the Employment Equality Directive 2000/78/EC,¹⁸ 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.¹⁹

With the adoption of the LTR Directive, the need to establish a comprehensive framework and to harmonise national legislation concerning the rights of long-term third country national residents was pursued. The Directive's purpose is to grant third country nationals rights and obligations comparable to those of EU citizens. LTRs are granted a secure residence status, including a set of uniform rights which are as close as possible to those enjoyed by the citizens of the EU and, under certain conditions, the right to reside in other Member States. However, it 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. Regarding the requirements, the concerned person should meet some criteria; the most important are the evidence that s/he has stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State and sickness insurance. Additionally, Member States may also require the person concerned to comply with integration conditions.

According to a study on the legal status of third-country nationals commissioned by the European Commission in 2000²⁰, all the Member States at the time (EU-15)²¹ had 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. In Member States with a long experience of large-scale immigration the status was introduced already several decades ago: e.g. in Belgium in 1980, France in 1984, Germany in 1965 and the Netherlands in 1965, while in other Member States it was introduced in the 1990s.

- **Eligibility rules:** As regards to eligibility rules on acquisition of status, the study found that there are many similarities in the Member States (at the time of the study EU-15 Member States). The core requirements to obtain the national permits broadly included: the person should normally have been admitted to the State in a capacity, which leads to the status, should have completed a period of residence in the country, have sufficient income or stable employment (though a number of states appear to make the status available also to the economically inactive) and not have recently committed serious offences. These eligibility rules are reflected also in the Directive and thus, the

¹⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0043&from=en>

¹⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0078&from=en>

¹⁹ 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.

²⁰ Groenendijk, Guild & Barzilay / Legal status of third country nationals / 2000 (study commissioned by COM) <http://cmr.jur.ru.nl/cmr/docs/status.pdf>

The study included analysis of the then-EU Member States (15 MS) – AT, BE, DK, FI, FR, DE, EL, IE, IT, LU, NL, PT, ES, SE, UK

²¹ No information available for the remaining EU-13 Member States

material scope did not change much. With regard to the core condition of a period of continuous residence, in seven Member States (AT, BE, DE, IT, LU, NL and ES), the special status was granted after a residence of 5 years. Shorter periods of residence (2 to 4 years) was applicable in four Member States: FI and SE. Two Member States required considerable longer periods of residence: ten years in Portugal and fifteen years in Greece. In France, the period varied (3, 5 or 10 years) for different categories of third country nationals.

- **Discretionary dimension:** Two countries (LU, SE) retained discretion as to the granting of long-term residence status, even where the applicant fulfilled all the conditions provided by the law.
- **Equal treatment and rights afforded to long-term residents:** With regard to equal treatment and rights attached to the permit, almost all of the 12 Member States offered long-term residents the same or similar **social security** rights as their own nationals. In most cases, benefits were related to lawful employment or residence, the duration of the residence, contributions paid or nationality of the person. Some Member States made exceptions for certain special benefits.
- With regard to **social assistance**, three Member States (AT, EL and LU) had a more restrictive approach and reserved economic advantages only to nationals.
- **Passive and active political rights** (at the municipal level) were extended to long-term residents in 4 countries (FI, EL, 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.
- In Austria, all third country nationals were not eligible for election to workers councils at company level, nor to public chambers of labour. FRD introduced the equal treatment freedom of association and affiliation and membership of an organisation representing workers or employers. (Art. 11(g)).
- With regard to **access to education**, equal treatment was guaranteed in AT, FI, FR, DE, EL, NL, PT, ES and SE. However, in Austria, for access to a university, it was required that either the student or one of his/her parents had five years of residence in Austria. In Germany, children of permanent residents have equal access to education, but are not covered by the relevant constitutional guarantee. With regard to **access to study grants**, some Member States had additional requirements. In Austria, university scholarships were only granted if the student and one of the parents have lawful residence in Austria and have been subject to income tax over the preceding five years. In Finland, third country nationals were entitled to educational grants if they have lived in Finland for at least two years for purposes other than studies, and their residence in Finland is considered to be permanent. In Greece, children of third-country nationals lawfully residing in Greece may have been granted scholarships, but not on the same basis as Greek citizens. LTR guarantees the equal treatment with regards to access to 'education and vocational training, including study grants in accordance with national law' (Art. 11(b)). In this regard, the LTR has brought uniformity across Member States in ensuring the right to equal treatment in the area of education and study grants.

3.3.2.2 Migration flows

Member States had to transpose the Directive by 23.1.2006 and the year of 2006 was the first year for which permits had to be issued. The Directive is implemented by EU-

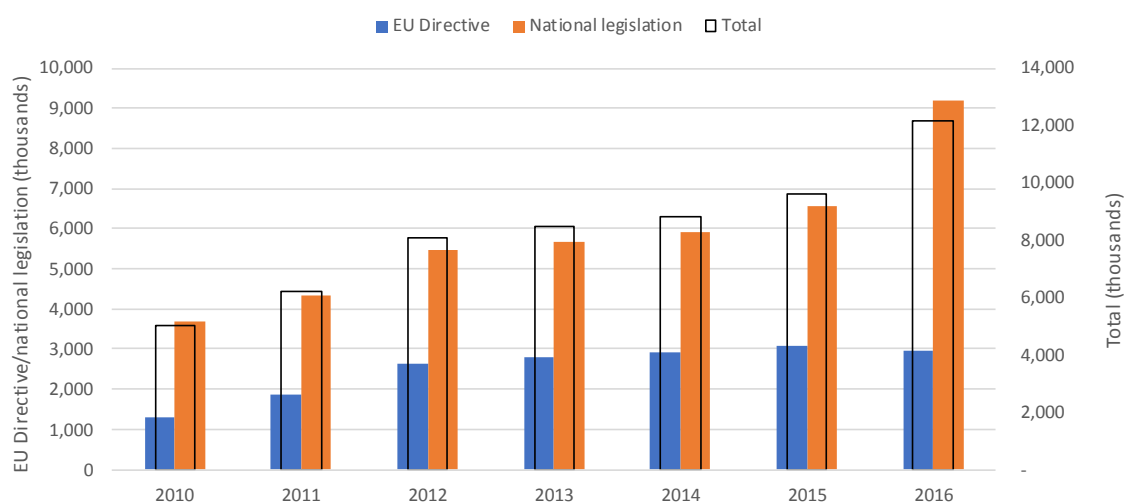
25. Harmonised Eurostat data is available from 2010 onwards. Harmonised pre-2010 data is not available.²²

Figure 3 illustrates the overall trends in the stock of long-term residents broken in the two categories, namely EU Directive and national legislation, in the period 2010–2016 at the EU-28. In 2016, the stock of long-term residents was approximately 12.1 million, compared to 5.0 million in 2010.

The growth in the stock of third-country nationals holding long-term resident status during that period was fuelled by both the stocks of long-term residents under the EU Directive and National legislation at the EU-28 level. Nonetheless, the stock of long-term residents under national legislation represented around three quarters of the total stock of long-term residents in 2016. This share was relatively stable between 2010 and 2016, despite a little decline in the middle of the period.

The stock of long-term residents under national legislation peaked at 9.2 million in 2016, nearly triple the stock of such residents in 2010 (3.6 million). Yet, it is important to note that some large countries started to report on long-term residence permits only at the end of the period, contributing to the sharp rise in the stock of long-term residents under National Legislation in 2016. Regarding the TCNs holding long-term status under the EU Directive, their stock rose from 1.3 million in 2010 to 3.0 million in 2016.

Figure 3. Long-term residents by citizenship on 31 December of each year in EU-28, 2010-2016



Source: Eurostat (migr_reslong);

Note: Data extracted on 05/04/2018. 'long-term residents': long-term resident status refers to permits issued under Council Directive 2003/109/EC. This is based on a total duration of legal residence of 5 years or longer, combined with a series of other conditions that must be met to qualify for this status. Moreover, Member States may also issue national long-term resident statuses with similar conditions being applied. This category of permits covers EU long-term resident status (EU Directive) and national long-term resident status (National legislation); Missing data on total long-term residents: Denmark from 2010 to 2016, Croatia from 2010 to 2014, United Kingdom from 2010 to 2011; Missing data on EU directive: Denmark from 2010 to 2016, Ireland in 2010, Croatia from 2010 to 2014, United Kingdom from 2010 to 2011 and from

²² The ICMPD study (2000) does not contain statistics on the number of permits issued to long-term residents.

2015 to 2016; Missing data on National legislation: Denmark from 2010 to 2016, Ireland in 2010, Croatia from 2010 to 2014, United Kingdom from 2010 to 2011 and from 2015 to 2016.

3.3.3 SD

The SD laid down the admission criteria and residence rights for international students to enter and study in the EU. The SD was replaced by the recast Students and Researchers Directive (SRD) 2016/801.

3.3.3.1 Legal baseline

The Directive was adopted to support the Union's efforts to promote Europe as a whole as a world centre of excellence for studies and vocational training. The approximation of the Member States' national legislation on conditions of entry and residence third-country nationals for the purpose of studies aimed to facilitate this objective.

A proposal of the Directive was first presented in February 2003 and the European Parliament adopted its position by early June 2003. The Council gave its final agreement at the end of March 2004 and the Directive was formally adopted in December 2004 with transposition deadline for the Member States of 12th January 2007. The Directive was adopted under the consultation procedure, which meant the European Parliament was only consulted on the proposal.

In 2000, all (then) EU Member States (EU-15)²³ already had study permits for international students in place and most were broadly in line with the Directive.²⁴ Most of EU-15 Member States²⁵ had to make few adjustments and only modified certain provisions in their existing legislation without any substantial changes.

In some cases, implementation required more than aligning with an existing student permit. For example, in Poland, international students had to apply for general visas or fixed-term residence permits and there was no particular permit in place.²⁶ Transposition created a student category of migrant, although the conditions required of foreign students remained similar to those in place prior to the Directive.

Admission requirements

The admission conditions for third-country nationals for study purposes or vocational training were comparatively open with main requirements including having been accepted in a higher education institution; health insurance and proof of sufficient resources. Prior to the adoption of the Directive, the admission requirements were already quite consistent throughout the Member States. However, regulation and procedures as well as thresholds varied.²⁷ For example, 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. With regard to health insurance, Member States varied in terms of the health insurance requirements of third-country national students. In some countries (AT, DE, FR, EL, 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).

²³ EU-15 included AT, BE, DK, FI, FR, DE, EL, IE, IT, LU, NL, PT, ES, SE and UK. Of those Member States, DK, IE and UK are outside of the scope of the study as these Member States have not transposed the Directives.

²⁴ 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

²⁵ E.g. BE, ES, FI, FR, IT, LT, SE and RO

²⁶ OECD (2016), Recruiting Immigrant Workers: Europe 2016, OECD Publishing, Paris.

<http://dx.doi.org/10.1787/9789264257290-en>

²⁷ See more details in Task IB Historical overview

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.

Categories covered by the Directive - volunteers, trainees and pupils

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 harmonised at EU level.

At the time of transposition, 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 four Member States (FI, FR, IT, ES) 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. With regard to 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) 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, FR, IT, LU, NL, PT, ES and SE. Transposition studies show that nine Member States³ have transposed the provisions only relating to students. Bulgaria introduced legislation on unremunerated trainees and school pupils, Greece on volunteers, France on unremunerated trainees, Hungary on school pupils and volunteers, and Latvia on school pupils. The remaining ten transposed all three categories of migrant, but made no fundamental changes to the conditions governing these categories under prior legislation.

Right to work

The Directive allowed students allowed to work at least ten hours per week, although Member States are entitled to require labour market tests and restrict access to work during the first year of study. Prior to the Directive, most Member States allowed employment of students outside their studies. For example, in Italy and Belgium, students were allowed to work for maximum of 20 hours work per week. In a few countries, however, students were not allowed to work at all until the Directive was transposed. 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 and third-country national students were therefore not entitled to carry out employment activities One example was Lithuania, which now allows them to work 20 hours per week. Spain still requires international students to have a work permit if they want to work outside their studies, although it seized the opportunity during implementation of the Directive to eliminate the labour market test for students (even if this was allowed by the Directive). The Czech Republic requires students who work more than 30 days per annum to hold a work permit, as it did prior to transposition. Poland only allowed students to work during the summer months until 2014, when it moved to allow all-year-round employment, although the change was not linked to implementation of the Directive. Only a few countries keep the

working hours at the minimum stipulated by the Directive – Austria, Luxembourg, the Netherlands and the Slovak Republic. Few Member States restricted employment in the first year of study, even before they transposed the Directive. Lithuania did and does, however. It has maintained its ban on students working during the first year of the first-cycle, or integrated, studies.

Equal treatment

The SD did not include any provisions on equal treatment and no comprehensive baseline comparison can be made on this aspect.

3.3.3.2 Migration stock and flows

Education reasons were the third most frequent reason for residence permits being issued in EU-25. Overall, during the past years there has been a steady increase of the migration flows that concern international students coming to all OECD countries²⁸. As it can be seen in Table 3 the number of all valid permits (stock data) issued to third-country national students (excluding intra-EU mobility of EU nationals) in EU-25 increased by 22% from 474 thousand in 2008 to 609 thousand in 2016. In comparison to the US, the number of international students increased from 575 thousand in 2004 to 975 thousand in 2016.²⁹

EU-harmonised data on first residence permits issued (flow data) and all residence permits as of 31st December (stock data) is available from 2008 onwards as presented in Table 4. Statistics are available for some Member States for the years 1999 (and in some cases for the previous year 1998) as presented in the Table 3.³⁰

Table 3. Statistics on number of admitted students

MS	Statistics	Year	Description
AT	8,646	1999	(stock) students
BE	1,665	1999	Initial residence permits issued to students (flow data)
FR	31,500 (30% of all temporary residence permits issued)	1998	Admitted students (flow data)
FR	62,000	1998	Total number of the students (stock number)
DE	17,474	1999	Issued residence concessions
IT	22,097	1999	Numbers of residence concessions at 31 December of the year (stock)
LU	<100	1999	Stock data (students present in LU)
PT	1,459	1999	Study visas(stock)
ES	22,965	1998	Students admitted (flow)
SE	2,866	1999	Admitted students and post-graduate student (flow)

²⁸ OECD (2016)

²⁹ <https://www.migrationpolicy.org/article/international-students-united-states>

³⁰ 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

ICMPD study (2000)

Since 2008 the number of permits issued to students has increased markedly as has the number of permits issued to unremunerated trainees and volunteers. By 2016, FR (73 572), DE (46 083), ES (35 729), and PL (32 676) accounted for 64% of the total of 292 443 permits issued by MS covered by the Directive. Compared to 2008, all MS had experienced significant increase in first permits for education reasons. IT (11 762 less) and SE (2 892 less), were the MS, which experienced a reduction in the number of permits issued.

The following graph depicts the number of all valid permits held for education reasons (stock data). As it can be seen from the table below, the valid permits have been on the increase since 2008 reaching a total number of 609,000 in 2016. The vast majority of Member States have experienced progressive increase of the number of all valid residence permits. The Member States which have observed decline include CY, IT and SE, while in BE, LU and SI, with some fluctuations, a similar number has been observed. Taking into account the stock data available at year 1999 – see Table 4 above, most notably, a sharp increase can be observed in France – from 62 thousand in 1999 to 130 thousand in 2008 and 146 thousand in 2016. AT, IT, LU and PT also experienced significant increase when comparing 1999 stock data with 2006 stock data.

Table 4. Number of all valid permits held for education reasons in EU-25 and share of valid permits in total population (2008-2016) – stock data

	Valid permits on 31 december of each year (thousands)										% of total population									
	2008	2009	2010	2011	2012	2013	2014	2015	2016	Trend	2008	2009	2010	2011	2012	2013	2014	2015	2016	Trend
Covered	473.8	473.9	469.5	489.5	501.4	527.0	563.0	600.9	608.7		0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	
Belgium	0.0	0.0	10.9	10.7	11.0	11.5	12.1	12.8	12.9		0.0	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1	
Bulgaria	3.5	4.2	4.7	4.6	5.0	4.5	3.9	3.3	1.5		0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.0	
Czech Republic	7.0	7.3	8.3	9.8	11.0	13.6	15.6	17.5	22.6		0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.2	
Germany	117.2	116.5	118.4	104.8	115.7	126.6	141.1	156.0	158.5		0.1	0.1	0.1	0.1	0.1	0.2	0.2	0.2	0.2	
Estonia	0.4	0.5	0.5	0.6	0.8	0.6	1.4	1.9	2.3		0.0	0.0	0.0	0.0	0.1	0.0	0.1	0.1	0.2	
Greece	6.1	5.8	6.4	7.2	7.2	7.6	3.7	2.4	2.2		0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.0	0.0	
Spain	38.8	42.4	44.6	49.4	40.5	42.2	46.5	47.0	52.0		0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	
France	130.5	106.9	110.1	143.2	144.5	145.4	145.4	148.8	146.5		0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	
Croatia						0.3	0.6	0.7	0.8							0.0	0.0	0.0	0.0	
Italy	87.3	81.4	39.8	49.0	50.9	52.3	53.1	50.7	46.2		0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	
Cyprus	14.1	19.6	16.9	14.9	11.8	3.4	2.9	3.5	4.2		1.8	2.5	2.1	1.8	1.4	0.4	0.3	0.4	0.5	
Latvia	0.5	0.5	0.5	0.7	1.1	1.4	1.9	2.5	2.8		0.0	0.0	0.0	0.0	0.1	0.1	0.1	0.1	0.1	
Lithuania	1.0	1.0	1.1	1.0	1.0	1.3	1.5	1.7	2.0		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1	
Luxembourg		0.2	0.2	0.4	0.4	0.4	0.5	0.5	0.5		0.0	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1	
Hungary	8.7	7.7	8.3	8.4	8.5	4.0	10.5	11.1	14.7		0.1	0.1	0.1	0.1	0.1	0.0	0.1	0.1	0.1	
Malta	0.3	0.3	0.4	0.4	0.4	1.8	2.9	2.6	1.9		0.1	0.1	0.1	0.1	0.1	0.4	0.7	0.6	0.4	
Netherlands	13.9	16.6	17.8	18.0	18.3	21.2	20.3	22.1	23.7		0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	
Austria	0.0	11.7	13.8	15.3	17.0	18.0	19.5	22.5	22.5		0.0	0.1	0.2	0.2	0.2	0.2	0.2	0.3	0.3	
Poland	0.0		12.9	8.1	13.5	22.1	30.7	40.2	34.8		0.0		0.0	0.0	0.0	0.1	0.1	0.1	0.1	
Portugal	5.0	4.7	5.7	6.4	9.9	11.3	10.0	8.9	9.5		0.0	0.0	0.1	0	0.1	0.1	0.1	0.1	0.1	
Romania	12.2	12.5	11.8	12.4	11.1	11.8	11.6	14.6	15.5		0.1	0.1	0.1	0	0.1	0.1	0.1	0.1	0.1	
Slovenia	1.1	1.3	1.3	1.7	1.7	1.9	1.2	1.7	2.1		0.1	0.1	0.1	0	0.1	0.1	0.1	0.1	0.1	
Slovakia	0.8	0.7	0.7	0.9	1.0	1.6	2.3	3.0	3.9		0.0	0.0	0.0	0	0.0	0.0	0.0	0.1	0.1	
Finland	6.1	6.6	7.7	2.3	2.8	9.6	9.7	10.2	10.4		0.1	0.1	0.1	0	0.1	0.2	0.2	0.2	0.2	
Sweden	19.3	25.2	26.5	19.5	16.3	12.6	14.1	14.7	14.7		0.2	0.3	0.3	0	0.2	0.1	0.1	0.2	0.1	

Source: Eurostat (migr_resvalid, demo_pjangroup)

3.3.4 RD³¹

3.3.4.1 Legal baseline

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 aiming for creating a certain level of approximation of national legislations in advance of the implementation of the Directive.³²

The Researchers Directive was finalised in a very short period; it was proposed on March 2004 and formally adopted in October of the same year. Generally, there were no significant debates concerning the proposal.

At the time of transposition, only some EU Member States had already introduced permits to host researchers. Specifically, 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. Some Member States had not adopted particular legislation on this category of third-country nationals (e.g. EL, IT, IE, LT, NL, PL, PT, RO, SE).

EU Member States did not follow the exact same approach in order to transpose the Directive into their legislation. Member States such as Spain, France and Sweden just modified their researcher permits to align them with the EU's Directive. In some cases, the Directive was a completely new scheme (RO) and in some other cases (BE), the transposed Directive did not lead to a new permit but to some modifications to existing schemes.

Admission requirements

Prior to the adoption of the EU legal migration Directives, the admission conditions in most cases included approval by the hosting educational institution before entry, and proof of sufficient means.

With the adoption of the Directive, the approval should be through the means of a hosting agreement, signed between the researcher and hosting organisation, which is considered one of the essential components of the Researchers Directive. This approval policy is differentiated among EU Member States and some of them (for example BE, SE, FR, ES, IT, RO) are using a standard form but it is not always identical while other Member States have no standard forms at all (NL, PL, LT). Moreover, there are some wage requirements but there is no one standard rule that the Member States are following. For example, Latvia, Lithuania and the Slovak Republic apply the national minimum wage whereas the Netherlands apply a lower wage requirement.

With regard to the hosting agreement (as mentioned above) that is a proof of the high level of autonomy granted to the research organisation and second, the intra-EU mobility for researchers.

What is more, an important aspect of this Directive is the "register of approved organisations". The Member State should approve and register officially the research organisation that wishes to host a researcher. At the time of the adoption of the Directive there was no a specific uniformity but most of the countries created new registers (for example BE, IT, SE, PO, RO).

Requirement to apply for a work permit

³¹ It should be noted that Ireland does implement this Directive and is therefore included in this assessment.

³² Council Recommendations 2005/761/EC and 2005/762/EC.

Prior to the adoption of the Researchers' Directive five 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. After the transposition of the Directive, the majority of the countries did not require a work permit. Nonetheless, it should be noted that in Spain, researchers in institutions without approval from the Member State accept their positions under a different work permit.

Rights

Third-country researchers were granted the following privileges in different Member States before the transposition of the Researchers Directive: 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.

With the adoption of the Directive, researchers can enter and reside in EU Member States easier and they are granted with mobility rights. In Italy, with the transposition, researchers were categorized in a distinct legal category since before they were included in the same category with the academics.

3.3.4.2 Migration flows

Table 5 below provides an overview of the number of permits issued to researchers in the period 2008-2016. The *reported* number³³ of these permits has gradually grown from 4220 in 2008 to 9672 in 2016. The highest number of permits to researchers are issued in France followed by the Netherlands and Sweden.

³³ The available data shows that gradually more countries started reporting permits under this category. While in 2008, eight MS still didn't report any figures for the number of permits issued, by 2016, all 25 MS, with the exception of Malta were reporting data.

Table 5. Number of first permits issued to researchers and share in first permits issued for remunerated activities reasons in EU-25 and EU-3, 2008–2016

	First permits for researchers										% of all first permits for remunerated activities reasons									
	2008	2009	2010	2011	2012	2013	2014	2015	2016	Trend	2008	2009	2010	2011	2012	2013	2014	2015	2016	Trend
Covered	4,220	5,293	6,059	6,545	7,943	8,957	9,307	9,819	9,826		0.7	1.0	0.9	1.6	2.2	2.2	2.1	1.7	1.4	
Belgium	96	0	152	192	242	223	242	283	301		1.4	0.0	3.5	4.1	5.2	5.1	5.1	5.7	5.8	
Bulgaria	0	0	0	0	0	2	3	0	1		0.0	0.0	0.0	0.0	0.0	0.6	1.0	0.0	0.4	
Czech Rep.	45	61	0	0	162	241	184	365	434		0.1	0.5	0.0	0.0	0.9	1.3	1.7	1.8	1.9	
Germany	39	94	129	167	290	369	328	111	370		0.2	0.6	0.8	0.9	1.1	1.3	1.1	0.8	0.9	
Estonia	7	15	15	18	25	21	21	15	24		0.7	1.3	2.0	1.4	4.1	3.6	2.4	1.2	1.8	
Greece	16	31	23	28	22	27	46	18	14		0.1	0.2	0.2	0.5	2.1	2.2	2.1	1.6	0.7	
Spain	501	390	442	447	379	370	385	398	440		0.5	0.4	0.6	0.5	0.6	0.7	0.9	1.0	1.2	
France	1,925	2,243	2,271	2,073	2,689	3,046	3,271	3,765	3,316		8.8	10.9	12.1	11.3	17.0	16.7	16.8	17.9	14.2	
Croatia	:	:	:	:	:	3	9	8	17		:	:	:	:	:	0.5	1.5	1.0	0.6	
Italy	35	118	336	353	388	272	351	334	325		0.0	0.1	0.1	0.3	0.6	0.3	0.7	1.9	3.5	
Cyprus	0	0	0	0	0	0	9	4	4		0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.1	
Latvia	3	1	7	3	0	5	6	3	5		0.2	0.2	1.8	0.6	0.0	0.6	0.6	0.2	0.3	
Lithuania	1	2	5	0	2	3	8	17	14		0.0	0.1	0.8	0.0	0.1	0.1	0.2	0.6	0.3	
Luxembourg	:	14	15	26	38	46	40	46	44		:	4.0	5.4	4.9	6.0	3.6	4.1	3.7	3.3	
Hungary	33	35	34	22	29	33	24	35	38		0.2	0.7	0.8	0.6	0.8	0.9	0.6	0.8	0.6	
Malta	0	0	0	0	0	0	0	0	0		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Netherlands	864	1,305	1,485	1,616	1,689	2,363	2,310	2,418	2,519		7.4	12.5	14.2	14.7	15.5	18.6	19.6	18.2	17.2	
Austria	151	143	228	184	250	229	248	266	296		4.9	5.3	7.8	5.7	6.7	6.4	7.2	7.4	8.9	
Poland	11	11	69	55	66	96	111	119	250		0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.0	0.1	
Portugal	0	0	0	0	0	0	0	0	0		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
Romania	0	0	12	8	4	5	6	11	16		0.0	0.0	0.7	0.4	0.2	0.3	0.3	0.7	0.9	
Slovenia	5	8	8	17	12	7	22	11	11		0.0	0.1	0.2	0.4	0.3	0.2	0.5	0.2	0.2	
Slovakia	10	10	5	9	4	10	6	8	12		0.3	0.4	0.3	0.7	0.2	0.6	0.3	0.3	0.3	
Finland	0	0	0	510	526	559	586	639	588		0.0	0.0	0.0	10.2	11.3	11.8	12.2	12.7	10.9	
Sweden	478	812	823	817	1,126	1,027	1,091	945	787		3.4	4.3	5.4	5.0	6.1	6.0	7.3	6.0	5.0	
Not covered	169	949	949	848	4,737	1,463	889	1,074	1,095		0.1	0.7	0.7	0.7	4.0	1.2	0.7	0.8	0.8	
Denmark	0	783	860	737	644	567	652	575	555		0.0	7.0	7.1	7.2	7.1	5.3	6.0	5.9	5.4	
Ireland	169	166	89	111	164	88	146	141	183		2.9	3.4	2.8	3.2	4.4	2.2	2.8	2.3	2.3	
United King.	0	0	0	0	3,929	808	91	358	357		0.0	0.0	0.0	0.0	3.7	0.7	0.1	0.3	0.3	

Source: Eurostat (migr_resocc)

3.3.5 EU Blue Card 2009/50/EC

3.3.5.1 Legal baseline

The BCD, proposed in October 2007 and adopted in May 2009, aims at attracting highly-qualified workers that migrant to the EU. According to the impact assessment before the entry into force of the Directive³⁴, 10 Member States had specific regulations relating to the admission of highly skilled third-country nationals. For example, in Germany, Luxembourg, Portugal and Belgium there were similar national equivalents before the Blue Card Directive. The EU Blue Card was broadly modelled on the Dutch scheme for admission of qualified workers, which is based primarily on a salary thresholds and also has a facilitated system of pre-approved employers.

There were many aspects that led to disagreements in regards to this proposal and the negotiations were difficult. Nonetheless, the proposal was fully accepted on 25

³⁴ COMMISSION STAFF WORKING DOCUMENT 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

May 2009 and the Member States had three options for transposing the Directive. One approach was to simply substitute an existing permit, as it happened for instance in Germany and Luxembourg. Member States could also choose between two other approaches: on the one hand create a new permit category alongside similar existing ones (e.g. Belgium, France) or on the other hand create a new permit for which no functional equivalent previously existed (Italy, Bulgaria, Romania).

Before the transposition of the BCD, 9 out of the 10 Member States with specific schemes for highly-qualified third-country nationals (all, except Belgium) granted the third-country nationals concerned more favourable arrangements in terms of social rights. Only a small number of Member States recognised more favourable treatment for high-skilled third-country national workers in acquiring permanent residence. Moreover, 6 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 and still does across the Member States concerned.

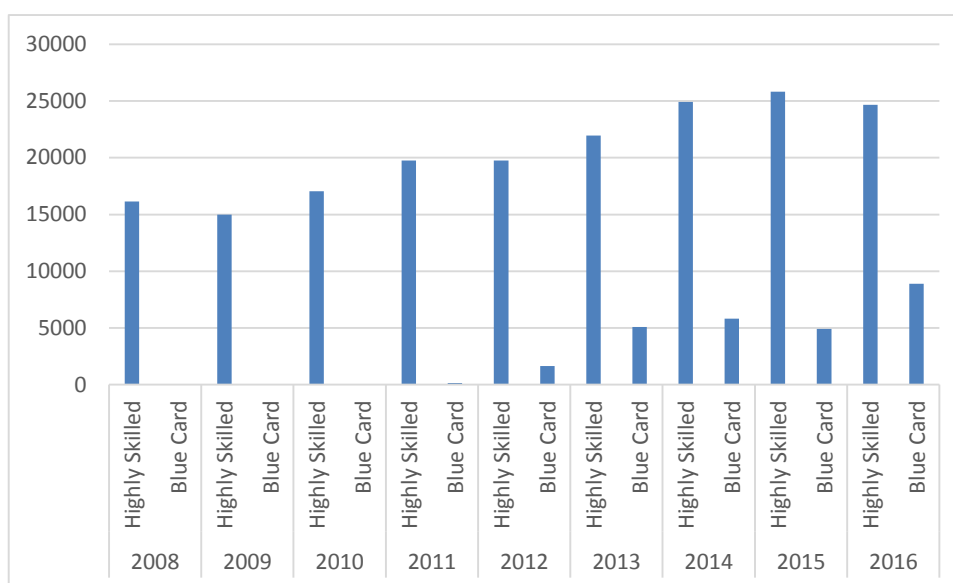
3.3.5.2 Migration flows

In quantitative terms, the EU Blue Card has not performed well. Blue card permits are available only from 2011 onwards. Statistics on first permits for Blue Card are available only from 2011 onwards in the Member States of the EU-25. They grew from 156 in 2011, to nearly 6 thousand in 2014, to 9 thousand in 2016, with 22 out of 25 Member States of the EU-25 reporting the issuance of such first permits (Table 6). In 2016, the share of these first permits in all first permits for remunerated activities in the EU-25 was 1.2%, a rebound compared to the 2015 level.

In 2016, around three quarters of all Blue Card first permits issued in the EU-25 were reported by Germany. The number of these permits issued was much smaller in the other countries which reported on them. Despite these small numbers, they accounted for 36% and 25% of all first permits delivered for remunerated activities in Bulgaria and Luxembourg during that year.

The majority of EU-25 Member States that had a national 'highly skilled workers' schemes and, were already reporting on the number of these first permits issued under these schemes in 2008, continued to issue them, and none of them seemed to increase substantially the number of first Blue Card permits issued. With the exception of Germany, all other national Member States continued to report higher numbers of permits granted to highly skilled workers under their national schemes, not under the Blue Card Directive. In 2016, these 12 MS (CZ, EL, ES, FR, IT, CY, LV, NL, AT, PL, FI, SE) issued over 24 thousand high skilled workers permits compared to only 2011 Blue Card permits. However, the number of Blue Cards issued rose from 8% in 2012 of all highly skilled workers permits, to 27% in 2016.

Figure 4. Comparison of number of Highly Skilled Workers and EU Blue Card holders, EU-25, 2008-2016



Note: The aggregate covered by the Fitness Check (EU-25) includes all EU-28 countries but Denmark, Ireland, and United Kingdom. The residence permit statistics should be compiled based on same methodology and the outputs should be comparable between countries and years. However, due to the recent implementation of the Residence Permits Data Collection, some methodological and administrative differences still exist between the Member States. Some countries are in the process of harmonisation with the definitions, reducing conceptual disparities and changing data availability and completeness status for some categories of data. Due to the ongoing methodological improvements which may occur at different reference periods, for some categories of permits Member States may apply different rules for the same years.

Source: Eurostat (migr_resocc)

Table 6. Number of first permits issued for Blue Card and share in first permits issued for remunerated activities reasons in EU-25 and EU-3, 2008–2016

	First permits for Blue Card							% of all first permits for remunerated activities reasons						
	2011	2012	2013	2014	2015	2016	Trend	2011	2012	2013	2014	2015	2016	Trend
Covered	156	1,646	5,096	5,825	4,908	8,988		0.0	0.5	1.2	1.3	0.9	1.2	
Belgium	0	0	0	0	0	0		0.0	0.0	0.0	0.0	0.0	0.0	
Bulgaria	2	7	2	10	52	99		0.7	2.1	0.6	3.3	2.3	35.9	
Czech Rep.	0	68	67	101	160	214		0.0	0.4	0.4	0.9	0.8	0.9	
Germany	0	700	3,776	4,197	2,642	6,189		0.0	2.6	13.6	14.3	19.6	15.6	
Estonia	0	12	12	12	16	12		0.0	2.0	2.1	1.4	1.3	0.9	
Greece	0	0	0	0	0	0		0.0	0.0	0.0	0.0	0.0	0.0	
Spain	107	443	303	37	2	10		0.1	0.7	0.6	0.1	0.0	0.0	
France	0	126	371	604	657	498		0.0	0.8	2.0	3.1	3.1	2.1	
Croatia	:	:	4	8	27	22		:	:	0.7	1.3	3.4	0.8	
Italy	0	6	84	164	237	254		0.0	0.0	0.1	0.3	1.4	2.7	
Cyprus	0	0	0	0	0	0		0.0	0.0	0.0	0.0	0.0	0.0	
Latvia	3	5	11	32	71	113		0.6	0.7	1.4	3.3	4.3	6.5	
Lithuania	0	0	17	71	128	127		0.0	0.0	0.6	1.5	4.6	3.1	
Luxembourg	0	96	236	262	336	333		0.0	15.3	18.6	27.2	26.7	24.9	
Hungary	1	1	4	5	15	5		0.0	0.0	0.1	0.1	0.4	0.1	
Malta	0	0	0	0	0	2		0.0	0.0	0.0	0.0	0.0	0.1	
Netherlands	0	1	3	8	20	42		0.0	0.0	0.0	0.1	0.2	0.3	
Austria	42	120	102	121	132	150		1.3	3.2	2.9	3.5	3.7	4.5	
Poland	0	0	17	26	322	673		0.0	0.0	0.0	0.0	0.1	0.1	
Portugal	0	2	4	3	57	89		0.0	0.0	0.1	0.0	0.8	1.5	
Romania	0	46	71	148	0	92		0.0	2.8	4.6	8.2	0.0	5.2	
Slovenia	1	7	2	7	11	17		0.0	0.2	0.1	0.2	0.2	0.2	
Slovakia	0	4	5	3	4	4		0.0	0.2	0.3	0.2	0.1	0.1	
Finland	0	2	5	5	17	33		0.0	0.0	0.1	0.1	0.3	0.6	
Sweden	0	0	0	1	2	10		0.0	0.0	0.0	0.0	0.0	0.1	

Note: Data extracted on 08/04/2018; 'residence permits': any authorisation valid for at least 3 months issued by the authorities of a Member State allowing a third country national to stay legally on its territory; 'first permit': Residence permit issued to a person for the first time. A residence permit is considered as a first permit also if the time gap between expiry of the old permit and the start of validity of the new permit issued for the same reason is at least 6 months, irrespective of the year of issuance of the permit. Some countries are in the process of harmonisation with the definitions, reducing conceptual disparities and changing data availability and completeness status for some categories of data; The residence permit statistics should be compiled based on same methodology and the outputs should be comparable between years. Due to the ongoing methodological improvements which may occur at different reference periods, for some categories of permits Member States may apply different rules for the same years; ":" not available.

Source: Eurostat (migr_resocc)

3.3.6 SPD

The Single Permit Directive (SPD) establishes a single application procedure for third country nationals to acquire work and residence permits, with the purpose of simplifying the administrative burdens associated with such admission procedures. Additionally, the SPD extends equal treatment rights across a number of areas to third-country nationals covered by the Directive. The single permit is a residence permit issued by the authorities of a Member State within a simplified procedure that allows a third-country national to "reside legally in its territory for the purpose of work" (Art 2 (c) Directive 2011/98/EU). A 'Single Permit' should be understood as a residence permit that includes all three characteristics: results from single application procedure (as defined under article 2(d) Directive 2011/98/EU); includes the right to

reside; and includes the right to work legally. The following categories of TCNs are eligible to obtain a single permit:

- Third-country nationals who apply to reside in a Member State to work
- Third-country national who have already been admitted to a Member State for the purpose of work,
- Third-country national who have already been admitted to a Member State for purposes other than work and who are allowed to work (for e.g. family members of migrant workers, students and researchers).
- Excluded from its scope are, among others, applicants for and beneficiaries of international protection as well as national protection, family members of mobile EU citizens, long-term residents, posted workers and intra-corporate transferees, seasonal workers, and self-employed workers, au-pairs, those whose removal has been suspended on the basis of fact or law.

3.3.6.1 Legal baseline

The proposal for the SPD by the Commission in 2007³⁵, was initially contended by the Council over a number of issues. These included the question of the exclusion of posted workers, which the European parliament thought should be covered by the SPD, but the Council insisted should be excluded. Other points of contention arose around: the provision of equal treatment with regard to social security benefit access for family members and the provision of equal treatment with regard to the social security rights of unemployed third-party nationals³⁶.

The Impact Assessment delivered in 2007³⁷ recognised that although certain categories of third-country workers in legal employment in the EU territory were covered by a number of legal provisions, there was no single EU legislative instrument that covered the rights of all third-country nationals that had not yet been granted long-term residency status. This document recognised the particular relevance of two Directives concerning equal treatment: Council Directive 2000/43/EC on equal treatment irrespective of race or ethnic origin and Council Directive 2000/78/ED on equal treatment in employment and occupation. Council Directive 2000/43/EC provided a framework for combatting discrimination on racial or ethnic grounds, affective across Member States, and covering all persons in the context of public and private sectors. Council Directive 2000/78/EC provided a framework for combatting discrimination on the grounds of religion or belief, disability, age or sexual orientation in the context of employment and occupation, affective across Member States.

Other pieces of legislation in existence that were understood to be foundational to ensuring the rights of third-country workers were: the EU Charter of Fundamental Rights (which includes a chapter on the prohibition of discrimination on the basis of nationality), Council Regulation 859/2003³⁸ (that ensures the fair treatment and enjoyment of rights and obligations of third-country nationals residing legally on Member State Territory, as EU citizens are able to) and Directive 2003/109/EC (which concerns the legal position of long-term third-country workers in the EU and which states that a person that has legally resided in a Member State for five years and

³⁵ **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', Brussels, 23.10.2007.**

³⁶ Potisepp, A. The Negotiations, in Minderhoud, P. and T. Strik, *The single Permit: Central Themes and Problem Issues*, Legal Publishers, NL, 2015.

³⁷ **Accompanying document to the Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State: Impact Assessment: Volume II – Annexes', Brussels, 23.10.2007.**

³⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003R0859>

holds a long-term residence permit should be granted as full rights as possible as any other EU citizen).

With regard to the **categorical definitional recognition of third-country workers**, only three Member States of those interviewed for the purpose of the Impact Assessment provided an explicit legal definition of 'third country workers': CY, ES and FI. However, the definitions provided by CY and FI were non-specific and did not recognise directly those immigrants entering the country for paid employment³⁹.

Regardless, for the Member States concerned, a number already had a range of diverse and relevant legal instruments and domestic procedures applicable to the admission of third-country nationals for the purpose of paid employment. Of 21 Member States for which information is available⁴⁰, 10 countries already had in place a form of single application procedure for a joint resident and work permit⁴¹. 11 other Member States had in place two separate titles and procedures for both work and residence permits⁴².

The **types of work permit** that existed amongst Member States were diverse and addressed a variety of worker categories. All Member States provided at least one form of general work permit, while six provided for the intra-corporate/ transnational transferal of workers for service provision (BG, ES, EL, IE, RO and SK), five provided a work permit for migrants with specific skills and/ or qualifications (DE, EL, FR, LV and UK), two provided work permits specifically for students (EL and LT) and five provided a work permit specifically for seasonal workers (EL, IT, LT, NL and RO). All Member States issued work permits that were renewable, while the validity in time of the work permit was generally equal to one year, while some granted work permits that were valid up to five years (LV and UK). With regard to **types of residence permit** issued across Member States, seven Member States offered the possibility of both temporary and permanent/ long term residence permits (AT, BG, CZ, DE, ES, LT, RO), while several Member States did not offer the possibility of applying for a permanent residence permit⁴³.

Entry and mobility rights/ free movement: There was a range in the variety of specific provisions across Member States that concerned the entry and mobility rights granted to third-country nationals. Of the 21 Member States interviewed, 13 Member States had in place specific provisions concerning the free access of the third-country worker within the entire territory of the Member State⁴⁴. Seven Member States (AT, DE, EL, ES, FI, PT and SK) had a specific provision in place concerning the passage of the third-country worker into another Member State, such passage being usually permitted for third-country workers under the application of the Schengen acquis. 12 Member States had a provision concerning their re-entry after temporary absence.

Access to employment: Whether third-country nationals enjoyed the same rights as nationals in terms of access to employment opportunities tended to be similar across Member States. For example, with regard to the equal treatment between nationals and third-country workers in the context of full access of management functions, only FI specified that both groups did not enjoy equal rights in this regard. With regard to the freedom to choose an occupation or employer, most Member States did not have in place specific provisions that concerned who was able to enjoy this right (BG, FI, FR, IT, LV, RO, SK), while in certain Member States the work permit issued to third-country workers could only be done so for a specific role or job vacancy and from specific invitation from the employer. In some Member States, nationals and third-

³⁹ Ibid.

⁴⁰ The Impact Assessment looked at 21 Member States for the context of the document, though there were at the time 27 EU Member States.

⁴¹ CY, DE, EE, EL, ES, FI, FR, IT, NL, PT.

⁴² AT, BG, BE, CZ, IE, LT, LV, RO, SI, SK, UK.

⁴³ CY, EE, EL, FI, IE, IT, LV, NL, PT, SI, SK.

⁴⁴ AT, BG, CY, DE, EE, EL, ES, FI, FR, IE, LT, PT SI.

country workers enjoyed the same right to seek a new job in the case of job loss (BE, CZ, FI, IT, RO, SI, UK) while in some Member States, the work permit could be revoked in the case of unemployment (BG, IE, LT, LV, SK). In a small number of Member states, third-country workers had the same rights as nationals to change their job or employer (FI, FR, IT, SI and UK).

Working conditions: It was found that third-country workers and nationals tended to enjoy the same working conditions as each other. In all Member States both nationals and third-country workers enjoyed equivocal access to a right to dignity at work, a right to safe and healthy working conditions and specific rights for workers with disabilities⁴⁵, and for the vast majority of Member States in the context of such rights as: the right of employed women to protection of maternity; freedom in treatment in payments/ wages and treatment in terms of taxation.

Access to education: With regard to access to education, in general, third-country workers and nationals enjoyed equal treatment in the area of education. In the majority of Member States full access to vocational and academic training was enjoyed by the both groups, with the exception of CY, DE and LV. In all Member States access to linguistic training was granted to third-country workers under the same conditions as it as to nationals. In BG linguistic training was offered at several opportunities, while in FR, French language learning was a requisite under the terms of the specific agreement for permanent workers entering France. In CZ, FR and SI the recognition of foreign diplomas was subject to different procedures as was to nationals.

Social security: Third-country workers could be excluded from a range of social security rights for different eligibility criteria. In the context of unemployment benefits in CZ and the UK, third-country workers were eligible for unemployment benefits if they had acquired long term residence status or if a bilateral agreement with the country of origin was in place. In the context of maternity leave, some third-country workers could be excluded from maternity leave as employees eligible for maternity benefit needed to have accrued 6 months of work. Family benefit was limited to particular categories of third-country workers in a number of Member States, such as for long term residents or those with refugee or humanitarian status or right to asylum (BG, DE, CZ, LT, LV, UK).

Access to public services⁴⁶: Several limitations were noted in the access of third-country workers to public services as enjoyed by nationals. The right to access services of general economic interest was observed in five Member States (CZ, EL, FR, IT, LT), while the right to access other public services, including public housing, was granted only in FR and EL, while IT requested that the residence permit be held for at least one year in order to avail of such services.

3.3.6.2 Migration flows

Directive 2011/98/EU, introducing the permit, set a deadline 2013 for the implementation and data on permits issued by Member States commences after 2013. Between 2013 and 2016, a growing number of EU-25 Member States reported on the issuance of single permits. In 2013, only 11 EU-25 Member States issued single permits. In 2016, most of them reported on single permits. Data on the total number of single permits are now available for all the EU-25 Member States but Belgium and Greece. The latter do not report in data on single permits during the period.

Data on single permits for all the types of decision (i.e., first permit, renewal, and status change) during the whole period are not available for Belgium, Greece and Austria. In addition, 16 other countries do not provide details of the issuance of single permits by decision type in 2013. Finally, several countries do not report for certain

⁴⁵ With the exception of FI, which did not respond.

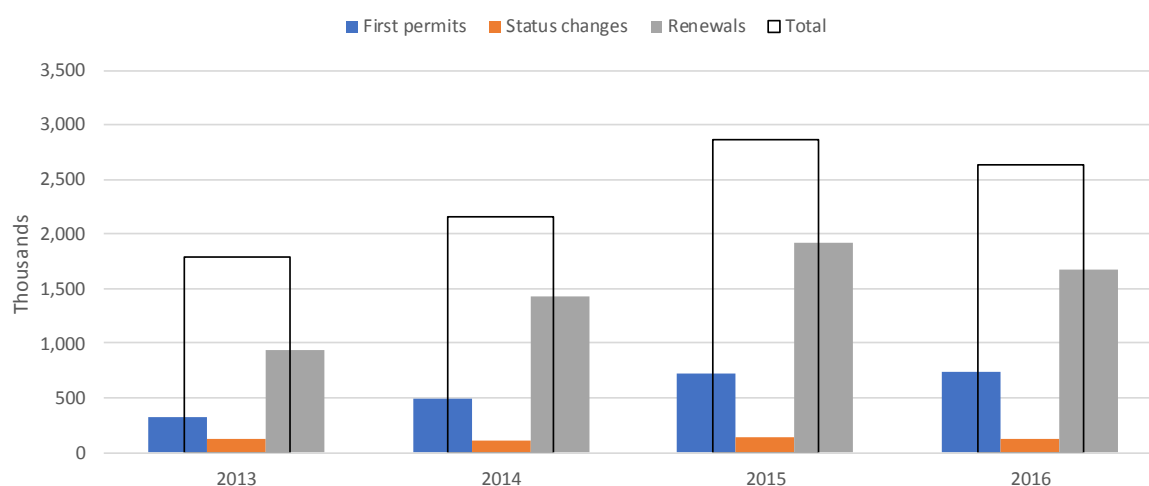
⁴⁶ For the Impact Assessment, a low number of Member States participated in providing feedback on the rights to access certain public services by third-country workers.

types of decision during the whole period or specific years. 16 countries provide statistics for the three types of decision for 2016.

Keeping in mind these important limitations, it can be observed that the total number of single permits issued in 2016 was 2.6 million at the EU-25 level, a gentle decline compared to its level in 2015 where it peaked at 2.8 million. Yet, the total number of single permits increased by 840 thousand from 2013 to 2016 and 482 thousand from 2014 to 2016 (Table 7).

The rise of recorded single permits was mainly fuelled by renewal decisions during the period 2013–2016, and to lesser extent by first single permits decisions Figure 5. Status changes accounted for only a minor share of single permits during that period. In 2016, renewals amounted to 1674 thousand, against 744 thousand for first permits and 131 thousand for status changes.

Figure 5. Single permits issued by type of decision in selected Member States of the EU-25, 2013–2016



Note: Data extracted on 09/04/2018. 'single permits': a single permit means a residence permit issued by the authorities of a Member State within a simplified procedure that allows a third-country national to 'reside legally in its territory for the purpose of work' (Article 2(c) Directive 2011/98/EU); If the time gap between the expiry of the previous permit and the start of the validity of the new permit is shorter than 6 months, the new permit should be regarded as a renewal or as a change of status permit; 'renewal': renewal is considered when the residence permit is issued in maximum 6 months from the time when the previous permit expires and the main reason for immigration status is the same as in the previous residence permit (a new permit was issued with the same immigration reason); if the immigration reason changes during that period, it is considered as a status change; The EU-25 aggregate excludes Belgium and Greece due to the lack of available data over the period and it is based on the simple sum of all available statistics at the level of EU-25 Member States for the total number of single permits and the different decision types; Due to their recent implementation, statistics on single permits have been undergoing developments in most of the reporting countries. In particular, early years of reporting should be interpreted with caution.

Source: Eurostat (migr_ressing)

At the country level, 70% of the single permits in 2016 were recorded by three EU Member States, namely France (988 thousand), Italy (574 thousand), and Spain (276 thousand). Other important issuers of single permits in 2016 included Germany (180 thousand), Sweden (149 thousand) and to a lesser extent Portugal (107 thousand). These six countries accounted for more than 85% of the single permits issued during that year.

Among these countries, Germany considerably reduced the number of single permits issued in 2016 compared to 2013 (Table 7). The number of single permits also

noticeably diminished in Spain and Portugal over the period. Conversely, the number of single permits issued in France and Sweden followed an upward trend between 2013 and 2016. The evolution of the number of single permits in Italy was more contrasted. Italy started to report on single permits in 2014. The number of single permits increased a lot between 2014 and 2015. It fell afterwards without nevertheless reaching a level below that of 2014.

Table 7. Single permits issued in the EU-25 Member States, 2013–2016

	2013	2014	2015	2016
Covered	1,794,762	2,153,231	2,860,902	2,635,381
Belgium	:	:	:	:
Bulgaria	0	96	189	267
Czech Republic	:	2,293	13,574	10,923
Germany	392,610	97,954	162,627	179,726
Estonia	4,123	8,148	11,155	11,009
Greece	:	:	0	0
Spain	365,481	317,183	316,671	276,477
France	810,029	844,277	962,360	987,995
Croatia	11,975	8,033	5,323	6,842
Italy	:	423,749	842,992	574,355
Cyprus	:	27,492	26,774	30,009
Latvia	:	29,685	32,931	27,397
Lithuania	:	:	2,753	6,017
Luxembourg	1,219	2,168	1,638	1,968
Hungary	:	5,214	8,234	10,395
Malta	:	653	6,310	8,452
Netherlands	:	1,290	2,353	2,362
Austria	:	78,590	87,332	86,365
Poland	9,821	41,436	41,472	76,674
Portugal	135,796	124,443	112,633	107,149
Romania	1,312	1,948	8,164	13,967
Slovenia	:	:	5,442	12,805
Slovakia	7,126	8,498	12,936	12,794
Finland	:	70,468	42,108	42,110
Sweden	55,270	59,613	154,931	149,323

Note: Data extracted on 09/04/2018. 'single permits': a single permit means a residence permit issued by the authorities of a Member State within a simplified procedure that allows a third-country national to reside legally in its territory for the purpose of work (Article 2(c) Directive 2011/98/EU); If the time gap between the expiry of the previous permit and the start of the validity of the new permit is shorter than 6 months, the new permit should be regarded as a renewal or as a change of status permit; 'renewal': renewal is considered when the residence permit is issued in maximum 6 months from the time when the previous permit expires and the main reason for immigration status is the same as in the previous residence permit (a new permit was issued with the same immigration reason); if the immigration reason changes during that period, it is considered as a status change. The EU-25 aggregate is based on the simple sum of all available statistics at the level of EU-25 Member States for the total number of single permits; Due to their recent implementation, statistics on single permits have been undergoing developments in most of the reporting countries. In particular, early years of reporting should be interpreted with caution.

Source: Eurostat (migr_ressing)

In the EU-25 Member States as a whole, the number of first permits issued more than doubled over the period, jumping from 319 thousand in 2013 to 744 thousand in 2016. This growth should nonetheless be nuanced since several countries, including Germany, did not report a breakdown of the records of single permits in 2013. Still, there was a sharp rise in the number of first permits issued at the EU-25 level from 2014 to 2016.

In 2016, four EU-25 Member States issued first single permits at levels much higher than the other countries, namely France (201 thousand), Germany (150 thousand), Sweden (119 thousand), and Spain (98 thousand). These four countries made up around three quarters of the first permits issued in 2016. Among these countries, France, Germany, and Sweden substantially increased the number of first permits issued over the period while such number fluctuated around 100 thousand in Spain.

In the EU-25 Member States as a whole, the number of recorded renewals also followed an upward trend over the period. In 2016, it reached 1.7 million against 1.4 million in 2014 and 930 thousand in 2013, although the latter figure is probably underestimated due to the data limitations underlined above and the absence of reporting from Germany for this type of decision.

Two Member States made up almost 80% of the renewals at the EU-25 level in 2016: France (787 thousand) and Italy (528 thousand). Only one other country records more than 100 thousand renewals in 2016, namely Spain (108 thousand). The share of renewals in all the single permits issued during that year in these countries was markedly high in Italy (92%) and France (80%) but it amounted to only 39% in Spain.

3.3.7 SWD

3.3.7.1 Legal baseline

The Seasonal Workers Directive was proposed in July 2010 and was adopted in February 2014. However, even before the official adoption by the Member States 8 countries in the EU in 2008 (EL, ES, FR, IT, CY, HU, SI, SE) had already undertaken actions regarding short-term or season work permits and programmes, mainly by means of bilateral agreements.

Prior to the Seasonal Workers Directive 20 out of 26 Member States had specific, yet divergent, regulations in place for this workers' category. The admission procedures, the duration of the permit, the rights of the seasonal worker even the definition of "season workers" itself were varying significantly across Member States. Therefore, this specific Directive seeks to harmonise these aspects of seasonal work, simplify the admission procedures and establish basic rights for the TNC workers.

Specifically, 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.

3.3.7.2 Migration flows

First permits for seasonal workers is a category of permits that existed only in a minority of EU-25 Member States during the period under consideration. However, new statistics on seasonal workers with 2017 as the first reference period are in the preparation phase to be released through the Seasonal Workers data collection under Article 26 of Directive 2014/36/EU. Until now, the reporting on this category of first permits is voluntary.

In 2016, the number of first permits issued for seasonal workers amounted to 458 thousand, representing nearly 64% of the first permits delivered for remunerated activities reasons during that year (Table 8).

Table 8. *These high levels are mainly explained by Poland since it issued 447 thousand of these permits in 2016. These permits accounted for 90% of the first permits issued for remunerated activities in Poland. The other EU-25 Member States reporting on these permits only showed marginal numbers in 2016 compared to those of Poland. Yet, first permits for seasonal workers made up 37% of all first permits delivered for remunerated activities in Italy and around 7% in Spain and France in 2016. Number of first permits issued for seasonal workers and share in first permits issued for remunerated activities reasons in EU-25 and EU-3, 2008–2016*

	First permits for seasonal workers										% of all first permits for remunerated activities reasons									
	2008	2009	2010	2011	2012	2013	2014	2015	2016	Trend	2008	2009	2010	2011	2012	2013	2014	2015	2016	Trend
Covered	56,042	54,972	119,664	27,951	20,323	17,092	188,152	333,362	458,191		8.8	10.7	18.3	7.0	5.6	4.2	42.7	58.1	63.7	
Greece	13,345	13,835	7,937	4,126	16	0	0	0	0		85.5	84.4	81.9	74.1	1.5	0.0	0.0	0.0	0.0	
Spain	18,254	5,314	8,741	4,507	3,780	3,127	3,075	2,900	2,841		19.0	5.2	11.0	5.2	5.9	6.3	7.2	7.0	7.4	
France	3,860	2,236	1,061	1,059	1,115	1,000	1,205	1,539	1,651		17.7	10.8	5.6	5.8	7.0	5.5	6.2	7.3	7.1	
Croatia	:	:	:	:	:	27	9	11	13		:	:	:	:	:	4.5	1.5	1.4	0.5	
Italy	8,423	23,034	22,345	15,204	9,715	7,560	4,805	3,570	3,520		3.1	9.8	6.2	12.7	14.6	9.4	9.0	20.6	37.5	
Cyprus	1,412	1,256	1,241	0	0	0	6	3	4		10.2	9.1	10.4	0.0	0.0	0.0	0.1	0.0	0.1	
Hungary	884	791	439	244	0	31	15	9	11		5.0	14.9	10.4	6.4	0.0	0.9	0.4	0.2	0.2	
Poland	0	0	73,156	0	0	0	176,122	321,014	446,779		0.0	0.0	84.2	0.0	0.0	0.0	85.4	85.5	90.4	
Slovenia	6,125	1,627	360	366	348	367	253	307	63		24.5	13.7	9.8	7.9	7.7	10.0	6.0	5.7	0.9	
Slovakia	0	0	11	3	0	0	0	1	0		0.0	0.0	0.6	0.2	0.0	0.0	0.0	0.0	0.0	
Sweden	3,739	6,879	4,373	2,442	5,349	4,980	2,662	4,008	3,309		26.2	36.2	28.6	14.8	28.9	29.0	17.9	25.5	21.2	

Source: Eurostat (migr_resocc)

3.3.8 ICT

3.3.8.1 Legal baseline

The ICT is one of the relatively recently accepted directives (proposed in 2010, adopted in May 2014) and concerns the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

Specifically, 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 harmonised rules on the substantive grounds for admission of ICTs and on the duration of their stay and re-entry.

Before the adoption of the Directive, application 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 separately, and the period of validity of the work permit varied significantly from Member State to Member State. Moreover, 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. With regards to the 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.

With the transposition of the ICT Directive, three categories of the transferee are created: manager, specialist and trainee employee. Obligations for the Member states stemming from this Directive are the following:

- create provisions so that ICTs can work for short periods in other Member States
- decide how to treat longer-term requests for intra-EU mobility
- extend labour market access to family members of the highly-qualified TNC.

The Directive is more probable to change the existing practices of European countries and help formalise ICTs in Member States where the category is still undeveloped. However, in some countries practices such as local hiring it is expected to be a prominent practice since it is more favourable regarding some particular aspects.

3.3.8.2 Migration flows

Due to the recent adoption of the Directive, statistical data is not available on flows of ICTs. Data collection on ICT and SWD by Eurostat will start in 2018.

3.3.9 SR&D

3.3.9.1 Legal baseline

In 2011 the Commission presented implementation reports of SD and RD which in combination with other evidence in the form of reports, queries or complaints showed certain shortcomings of the Directives and their implementation. On this basis, the Commission announced its plan to amend both Directives to facilitate the admission of the groups of migrants concerned and to increase the EU's attractiveness as a place of destination for study and research as well as other cultural and social exchanges. Shortcomings identified in SD and RD include admission procedures including visas, rights (such as equal treatment with own nationals) and procedural safeguards as well as rules are insufficiently clear or binding, not always fully coherent with existing EU funding programmes, and sometimes fail to address the practical difficulties that applicants face.

The Directive was adopted in 2016 with a transposition deadline for Member States of 2018.

3.3.9.2 Migration flows

Statistics on migration flows for education and research purposes are presented above under sections on SD and RD. Due to the recent adoption of the Directive, statistical analysis of the effects on migration flows of the Directive is not possible.

3.4 Implementation state of play

This section provides the state of play of the legal and practical implementation of EU legal migration acquis as presented in Task 2: Evidence base for practical implementation of the legal migration directives. The implementation state of play is assessed using the framework of the legal migration process divided into 8 phases.

3.4.1 Phase 1: Pre-application (information) phase

The “Pre-application: Information phase” is the first ‘preparatory’ phase during which the third-country nationals and their family members seek information on the application procedure before subsequently launching their application. It examines the availability and usefulness of information about migration procedures and conditions.

The bulk of information on the legal migration acquis throughout Member States is provided online, via the websites of relevant institutions (ministries, migration offices, employment agencies, etc.) but also by relevant NGOs and business associations. Hotlines and information desks are also available, but seem to be affected by understaffing and administrative capacity of authorities. In their countries of origin, third-country nationals mainly have access to online information, as well as information provided by embassies and consulates, but the quality and availability of these services vary substantially, depending on the number of representations, their capacity and their powers by law. National languages and English prevail as languages in which information is given; information upon request is also available, again depending on the capacity of institutions.

Member States generally provide information on all aspects of the application procedure and the assessment as to whether information is available and easily accessible is relatively positive, meaning that information is comprehensive and can be accessed without much trouble, although not always ‘within four clicks’.

Despite the different modalities Member States have put in place to provide tailored information upon request, this was nevertheless easily obtained in the majority of Member States and provided in a format with a relative degree of comprehensiveness and user-friendliness. However, several significant delays occurred before a response was received and some Member State authorities only sent very generic answers to specific requests.

3.4.2 Phase 2: Pre-application (documentation) phase

Phase 2 concerns the format, content, supporting documents and user-friendliness of the application forms third-country nationals have to submit in order to obtain statuses under EU directives, as well as national equivalent statuses.

Throughout the EU, Member States offer single and/or standardised applications, often depending on wider Member State administrative procedures and practice.

The time required to complete applications seems reasonable and the information requested overall relevant. However, application forms are considered difficult to fill in and insufficiently user-friendly. National equivalent statuses receive more negative average scores, probably due to the fact that EU directive statuses are already more standardised due to Member States’ transposition of EU law.

Application forms are available on paper, as well as in digital format, but a full online application can only be made in small number of Member States. Guidance on how to fill in the forms is available mainly in person and online.

The documentation requirements under the different Directives and national statuses primarily serve to prove that the key requirements of the status have been met (hosting agreements, work contracts/job offers, proof of family relations, etc.), as well as provide evidence that the applicant and/or his/her family members will not become a burden to Member States’ social and health systems (proof of sufficient resources,

health insurance, proof of accommodation, etc.). Proof of not being a threat to national security is also a common requirement, attested mostly by criminal records. A number of national BCD and LTR equivalent statuses seem to offer more favourable conditions and thus wider access to potential applicants.

Recognition of diplomas is a widely posed requirement, especially for work-related permits, but its existence and the related guidance are relatively difficult to find. This, together with the complex process of recognition itself and the multitude of requirements especially concerning regulated professions make recognition one of the more burdensome requirements for foreigners. Work-related permits are mainly given on the basis of a work contract with job offers being accepted less as proof. Pre-integration measures are found rarely and mainly concern language knowledge and social integration.

3.4.3 Phase 3 – Application phase: lodging the application

In all Member States reviewed, applications can be lodged in person in country or, in a lower number of Member States, in their diplomatic representations. Some application issues have been identified with regard to the accessibility to the application procedure, for example when the applicant has to appear more than once in person as part of the application process in third countries where this can only be done centrally, or where consulates are far away. Problems arise also when short deadlines for personal appearance are involved.

Member States in which multiple authorities⁴⁷ are involved in processing the applications slightly outnumber those where just one authority⁴⁸ is involved. When multiple authorities and/or multiple steps are involved in the application process, around half of the national researchers consider that the necessary steps and authorities which need to be contacted are not very well explained and not easy to follow by third-country nationals in terms of what concrete steps to take.

In terms of fees charged, these vary greatly between the Member States, also proportionally, when considering the fees as a share of the mean monthly gross earnings each Member State. In some Member States⁴⁹, the excessive fees could constitute an application issue. Eight Member States⁵⁰ charge other obligatory fees, but these are overall minor.

Most Member States⁵¹ have put in place legally applicable deadlines within which to process applications. In several countries, these deadlines may exceed those set in the Directives, constituting a possible application issue. The actual number of days required to process applications usually complies with the Directives' deadlines, with some exceptions. None of the Member States except one impose financial sanctions if an applicant does not meet a given deadline, and most inform the applicants that their application is incomplete, giving them a new deadline. Failure to meet the latter usually does lead to a rejection or cancellation of the application.

Only in three Member States⁵² it is possible to lodge any application and receive a permit in the third country, while in eight others⁵³ this is only allowed for some statuses. When permits are received on the territory of the Member State, varying entry visa regimes apply.

Applicants are usually notified of the authorities' decision in writing via post, in the Member States' national languages, mostly via a single administrative act with

⁴⁷ AT, BE, CZ, DE, ES, FI, FR, HR, HU, IT, LT, LU, MT, SE, SI

⁴⁸ BG, CY, EE, EL, LV, NL, PL, PT, RO, SK

⁴⁹ Please see Annex 2 Task II for the exact amounts of fees charged per MS

⁵⁰ AT, BE, CY, FI, IT, LT, MT, PL

⁵¹ AT, BG, CZ, EE, EL, FI, FR, HR, IT, LT, LU, LV, NL, PL, PT, RO, SI, SK

⁵² CY, HR, SI

⁵³ EE, LT, PL, RO, MT, FI, SE, SK

reasoning. Even when the employer is the main applicant, the third-country national is usually also informed. Various judicial review mechanisms are in place, either in the Member State or in the third country, mostly through a legal representative or by sending the appeal to the respective embassy/consulate which forwards it to relevant authorities.

Administrative silence exists as concept in a little over half of the reviewed Member States and, in half of those cases, it is construed as tacit rejection, which can be appealed.

Various degrees of difference are observed between EU directive statuses and national equivalents, mainly in terms of conditions for their award. With regard to the application procedure, in nine of the reviewed Member States (Austria, Bulgaria, the Czech Republic, Finland, Greece, Italy, Latvia, Lithuania, Malta, Romania, Slovenia and Slovakia) with parallel national schemes⁵⁴, no major discrepancies were found between the EU Directives and their national equivalent statuses. In the remaining 13 Member States some differences have been noted. While in Hungary, the national statuses appear to offer less favourable conditions and rights with regard to the admission procedure (clean criminal record for national LTR status as opposed to the LTR), another group of Member States seems to be offering more favourable conditions, as noted in Croatia, Estonia, Germany, the Netherlands, Portugal, Spain and Sweden. The national equivalents to the LTR status in Croatia, Germany and Spain, for example, are generally wider in terms of personal scope, since they include an additional list of categories of third-country nationals, not covered by the LTR, who can lodge an application and acquire status. In Croatia, the uninterrupted legal residence for five years is not a requirement to obtain the national long-term residence status. Portugal also has a more favourable national equivalent of the LTR, including a much shorter deadline to decide on a permit request.

3.4.4 Phase 4: Entry and travel phase: including acquisition of the necessary entry and transit visas

The entry and travel phase addresses the requirements that third-country nationals need to fulfil in order to enter and re-enter the country of destination, as well as to travel to other Member States, including when a permit is issued in a Schengen state. It examines the steps and procedures to obtain entry visas (where necessary), the procedures and conditions to enter and travel across the EU Member States, as well as the procedures that apply upon arrival in the country of destination.

Most Member States have some timeframes for granting entry visas to applicants who do not yet hold a valid permit to enter the Member State. Application problems may arise where there are no such timeframes, or where they are regulated by general administrative law. If timeframes are too long or missing, Member States it could be contrary to their obligation to facilitate the issuing of visas to legal migration applicants⁵⁵. In Member States with different timeframes for the different statuses, SD/RD applicants benefit from shorter deadlines. Visas are usually to be requested by third-country nationals themselves and, where other persons can request them, these are mainly the employers also applying for the work-related permit. All reviewed Member States allow TCNs in possession of a valid permit and valid travel document to enter and re-enter the country on the basis of the permit. Each Schengen state also does that in relation to the others. Few Member States impose entry requirements on TCNs from visa free countries, and those that do mainly refer to general requirements such as valid travel documents, a justifications for the reasons of entry and stay and proof of sufficient resources. In particular the latter may overlap with the requirements of the Directives and thus mean an unnecessary burden for the applicant.

⁵⁴ Luxembourg and Poland do not have parallel national schemes

⁵⁵ Specified in the preambles of the SD and SPD preambles and stipulated in the BCD and RD

After entering the Member States, third-country nationals are often required to register with other authorities, including for example with local authorities, police, social security bodies, etc.

3.4.5 Phase 5 – Post-Application phase during which competent national authorities deliver the permit

The majority of Member States do not have a set timeframe to deliver the permit following the notification of the positive decision on the application. Where there is a set timeframe, the deadlines are generally respected, and, in some cases, the real average number of days to deliver the permit is even lower than the timeframe allowed.

Around half of the Member States apply additional charges in addition to the application fee for the issuing of the permit, but these are minor, most often concerning charges for administrative acts and/or specific features of the permit.

Usually, different authorities are involved in the application and permit issuing procedure, however, in many cases the number of authorities depends on the type of status applied for. In several cases, the number and type of authorities involved in the issuing of permit are different from those involved in the application procedures. The main authorities involved in the permit issuing procedure are often either the migration authority or the diplomatic mission in the country of the third-country national, or the local police office.

In the majority of the Member States, there is a difference between non-EU family members of EU citizens and non-EU family members of third-country nationals, the former group receiving more favourable treatment.

Regarding the duration of the first permit, some application problems have been identified as a result of conformity issues of the BCD, the FRD, the SD and LTR as indicated in more details in the sections below.

When the main applicant is the employer, only one Member State requires in the case of the Single Permit Directive his/her involvement in the delivery of the permit, as the decision will be submitted to the employer directly.

3.4.6 Phase 6 – Residency phase

3.4.6.1 Residence permits

Residence permits can be used by permit holders in all Member States as a proof of identity and legal residence in a number of situations, including to access public and private services as well as for short-term stay in other EU Member States. The periods of renewal and the renewal fees differ significantly across Member States and across statuses.

Third-country nationals are required to renew their residence documents within a specified timeframe prior to expiry of the permit, ranging from 3-6 months prior to expiry to 60 days after the expiration of permit. In some Member States, failure to renew and/or provide information and documents on time or after a request by the authorities will result in refusal for the permit to be renewed and the applicant will be obliged to leave the Member State. A possible application issue has been identified in Malta in particular with SPD holders who are not allowed to apply for a new permit in case they change employer. Other Member States, such as Estonia, the Netherlands and Spain, allow for a 'tolerance' period also after the period has expired.

Most Member States require the renewal to be submitted in person only, while in a few Member States, there are options to submit via post, e-mail and online. In 14 Member States⁵⁶, there are no administrative or financial sanctions if the applicant fails to

⁵⁶ BE, BG, CY, CZ, EE, EL, ES, HR, IT, LV, LU, RO, SK, SE

comply with a renewal deadline. However, most commonly, failure to comply with this deadline results in illegal stay. In six Member States⁵⁷, there is an administrative sanction and in five others States⁵⁸, failure to renew the permit leads, in addition to the situation of irregularity which may lead to a return decision, also to financial sanctions.

3.4.6.2 Changes of status

In the vast majority of Member States, third-country nationals are allowed to change status, provided that the conditions for the new status are satisfied. In most Member States⁵⁹, in order to change status, third-country nationals must meet the same eligibility conditions and submit the same application along with required documents as in the case of those applying for the first time and there is no facilitated procedure. The main difference in terms of procedure is that the applicant does not need a visa and the application can be submitted on the territory of the Member States, whereas for some statuses, the first time applicants are subject to submission at the diplomatic mission/representation in the country of origin.

A practical obstacle reported by the majority of Member States is that it is difficult to find publically available information and understand the conditions and requirements for status change. **Belgium** reported that while status change is possible in most cases as long as the admission conditions are met, in practice status change does not occur very often as third-country nationals face practical and administrative obstacles. **Cyprus** reported that a change of status from one permit to another is discretionary and in most cases not permitted, except where permit holders meet the criteria for the LTR permit. In **Germany**, changes to certain statuses are not allowed. Changes of status are not allowed from a residence permit for study purposes to the LTR. Also a status change to a residence permit for the purpose of employment is not possible from the status of family reunification and LTR.

3.4.6.3 Access to employment and employment related rights

The right to access to employment is indicated on the residence card in 19 Member States⁶⁰, in line with the SPD, which requires residence permits issued in accordance with Regulation (EC) No 1030/2002 to indicate the information relating to the permission to work irrespective of the type of the permit. In those Member States where this is not in place, there could be compliance issues in relation to the SPD provision.

3.4.6.4 Equal treatment

Four of the examined Directives (LTR, RD, BCD, SPD) include provisions on equal treatment of TCNs with respect to nationals of the Member States, covering a number of aspects, including, *inter alia*, working conditions, freedom of association, social security benefits, education, recognition of academic and professional qualifications, tax benefits, access to goods and services and advice services. The FRD and SD do not include provisions on equal treatment. However, equality is ensured by the SPD in certain circumstances, for example if third-country nationals, falling within the scope of the FRD and SD, are authorised to work.

Only in 10 Member States⁶¹, no issues have been identified with relation to the legal transposition and the practical application of equal treatment as stipulated in EU acquis. Indeed, the main problem with regard to equal treatment stems from **no or incomplete transposition** of some legal provisions of the respective Directives, as

⁵⁷ AT, DE, HU, FR, NL, MT

⁵⁸ FI, LT, PL, PT, SI

⁵⁹ AT, BE, BG, CY, DE, EE, EL, ES, FI, HR, LV, LT, MT, NL, PL, PT, RO, SI, SE

⁶⁰ AT, BG, CY, CZ, DE, EE, ES, FI, HU, LU, LV, NL, PL, PT, SE, SI, SK.

⁶¹ AT, CZ, EE, HR, FI, LT, EE, PT, SE, SK

found in 14 Member States⁶². This results in certain equal treatment rights not being (explicitly) guaranteed which may lead not only to uncertainty for TCNs but also to exclusion of TCNs from certain equal treatment rights that are guaranteed by the EU acquis. This is most often the case with regard to social security benefits and access to public goods and services. In several Member States⁶³, the issues concern **access to social protection**, whereby third-country nationals do not have access to certain social benefits (see details in section below). In some Member States, access to public services is not explicitly granted (see details in section below). For example, in **Slovenia**, only those with LTR status can apply for non-profit rental housing, rental subsidies and housing loans under public scheme

3.4.6.5 Integration requirements

Two Directives (FRD and LTR) stipulate that Member States may require compliance with integration 'measures' (FRD) and 'conditions' (LTR). The Directives do not define integration 'measures' and 'conditions'. According to the Commission's guidelines on the FRD⁶⁴, Member States may impose a requirement on family members to comply with integration measures under Article 7(2), but this may not amount to an absolute condition upon which the right to family reunification is dependent. The Directives do not define integration 'measures' and 'conditions'. Integration 'measures' (or pre-integration measures) could refer to measures conducted in the immigrant's country of origin, including language courses, 'adaptation' and civic orientation courses, including courses on history and culture of the country of origin⁶⁵. In contrast, integration 'conditions' as laid down in the LTR refer to evidence of integration in the host society.

Integration requirements and measures differ significantly across Member States. In 12 Member States⁶⁶, there are mandatory integration requirements, while in the remaining Member States, integration measures (such as language and integration courses) are voluntary. In five of these⁶⁷, the mandatory integration requirements only concern applicants for **long-term residence**, who need to demonstrate integration through knowledge of national language(s) and knowledge about society and culture of the country. For example, in **Greece**, in order to obtain a long-term residence permit, the applicant needs to demonstrate sufficient knowledge of the Greek language, history and civilization. This can be demonstrated through the following means: document of graduation from Greek school or university; certificate of attainment in Greek of at least B1 level and special certificate of sufficient knowledge of the Greek language and elements of Greek history and civilization. In **Belgium, Germany and the Netherlands**, not attending the integration and language courses may also result in a financial fine. Refusing to participate in the planning (30 days) or not attending the scheduled planning session (15 days) or refusal or failure to participate in the planned activities (60 days) may result in the withdrawal of social benefits for a certain period.

3.4.7 Phase 7 – Intra-EU mobility phase

Mobile third-country nationals and their families overall are facilitated if they wish to exercise their right to intra-EU mobility, without needing to acquire entry visa and with the possibility to submit their residence or work (Blue card) applications without having to leave the European Union (either inside the first or second Member State).

⁶² BE, DE, CY, EL, ES, FI, HU, IT, LV, LU, NL, PL, RO, SI.

⁶³ BE, CY, HU, LV, PL, SI

⁶⁴ COM(2014) 210 final

⁶⁵ IOM (2009), Stocktaking of international pre-integration measures and recommendations for action aimed at their implementation in Germany

⁶⁶ AT, BE, BG, CY, DE, EL, FI, HR, IT, LU, MT, NL

⁶⁷ CY, EL, HR, LU, MT

In comparison, applications by first time applicant under EU directives or equivalent national schemes in most cases need to be lodged outside the EU at the time of the application.

Few Member States have provided for additional facilitations to the procedures and documentation requirements for mobile third country nationals – these include, for example, shorter application processing times, an exemption from need to provide proof of sickness insurance, as well as exemptions from integration measures, proof of accommodation and labour market tests. Compared to EU citizens, who may be subject only to a “registration regime”, procedures and application supporting documents required by mobile third country nationals are part of a “permit regime”, i.e. the Member State has the discretion to decline an application. In terms of rights for family members of mobile third country nationals: these are subject to national legislation, and very few Member States make any connection with rights in first Member States.

Short-term mobility, as far as regulated by the current directives is facilitated by the fact that only five member states apply any regime for notification and only two for authorisation; only two Member States require additional documents in addition to residence permit and valid travel documents for short term mobility.

3.4.8 Phase 8 – End of legal stay, leaving the EU

A main challenge for third-country nationals in this phase is having access to and obtaining clear information on the exportability of social security benefits earned during their stay in a Member State. While most Member States do have arrangements in place and concluded bilateral agreements with third countries on this topic, finding information on the scope and modalities of transferring certain social security benefits is a challenge.

Compliance issues were flagged in the transposition and implementation of Article 9(7) of the LTR in certain Member States. This Article provides that a third-country national who loses the long-term status, or the status is withdrawn but does not lead to a removal, should be able to remain in the territory of the Member State concerned if s/he fulfils the conditions provided for in national legislation and/or if s/he does not constitute a threat to public policy or public security. Five Member States did not transpose this Article and three other Member States partially transposed it which may lead to legal uncertainty for third-country nationals concerned and potentially to removals which are not allowed by EU law.

The situation of third-country nationals who cannot be removed following a return decision is not addressed in a harmonised manner across Member States. Whilst certain Member States provide for a specific residence permit in such situations, in other Member States, this category of third-country nationals is tolerated with unclear rights as to access to basic healthcare, education or access to the labour market.

4 Relevance

One evaluation question is asked concerning relevance:

EQ1. To what extent are the objectives of the legal migration Directives and the way they are implemented relevant for addressing the current needs and potential future needs of the EU in relation with legal migration?

This evaluation criterion relates to a series of questions examining the relevance of the legal migration Directives, specifically looking at: the relevance of the objectives and the way they are implemented for addressing the current needs and potential future needs of the EU in relation with legal migration.

The main sub-questions in the relevance section as listed in the evaluation framework include:

- EQ1A. To what extent were the original objectives of the legal migration Directives relevant at the time they were set and to what extent are they still relevant today?
- EQ1B. Scope of the Directives in terms of categories covered and impact of the exclusion of some categories
- EQ1C. To what extent does the scope of the Directives, and the way it is implemented, meet the current needs in all the different steps of the migration process, and in all aspects of migration?
- EQ1D. Are there certain obsolete measures (legislative/non-legislative) associated with the EU's legal migration Directives? *(NB this sub-question is examined under the criterion EU Added Value)*
- EQ1E. To what extent is the way that Member States implement the Directives relevant to the initial objectives, and to current needs?
- EQ1F. To what extent are the provisions of the Directives, and the way these are implemented, relevant in view of future challenges?

The following sections are structured according to these sub-questions. In each section, an overview table provides the key conclusions, highlighting in green the main answers to the questions and in yellow potential issues with regard to relevance. Key points precede each sub-section including the most important results, before detailed results per question are shown.

4.1 EQ1A. To what extent were the original objectives of the legal migration Directives relevant at the time they were set and to what extent are they still relevant today?

This section addresses the extent to which the original objectives of the legal migration Directives were relevant at the time they were set and the extent to which they are still relevant today.

To answer this question, the evaluation team focussed on the rationale and objectives of the Directives, and drivers impacting their relevance.

The table below gives an overview of the main sources of information utilised and the key conclusions of EQ1A.

Research question	Sources of information	Key conclusions
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Research question	Sources of information	Key conclusions
<p>To what extent were the original objectives of the legal migration Directives relevant at the time they were set and to what extent are they still relevant today? (EQ1A)</p>	<p>1Bi Contextual analysis: overview of the evolution of the EU legal migration acquis</p> <p>1Bii Contextual analysis: overview and analysis of legal migration statistics.</p> <p>1Biii Contextual analysis: drivers for legal migration: past developments and future outlook,</p> <p>1Ci Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives</p> <p>1Cii Contextual analysis: Intervention logics: External Coherence of the EU legal migration Directives</p> <p>Contextual analysis : Intervention logic: Directive specific paper</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC Summary Report</p> <p>Additional desk research</p>	<p>At the time they were set, the objectives of the legal migration Directives were relevant. Following the developments in the EU integration process (notably the free movement of EU citizens, non-discrimination legislation and Schengen), the Directives responded to the need 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. The Directives were also relevant to address the 'needs', in relation to the management of legal migration i.e. to tackle demographic changes, and labour market shortages.</p> <p>The Directives remain relevant today to the extent that they respond to current needs of Member States. The Directives acknowledge the continuing need for migration to tackle labour market and demographic challenges. They further address integration through family reunification, which remains a key issue to be tackled.</p> <p>The relevance of the Directives is impacted by drivers influencing migration patterns towards the EU. There are different drivers depending on the type of TCN: family migrants, labour migrants, students/researchers. These are a combination of socio-economic (primarily), demographic, environmental and political (security) factors in the origin and destination country or region.</p>

The sections below first give a description of the policy developments of the acquis, followed by an overview of current push and pull factors impacting the relevance of the Directives' objectives.

4.1.1 Policy developments and relevance of the Directives' objectives⁶⁸

4.1.2 Key points

The summary of the policy developments below shows that the overarching objectives of the legal migration acquis were relevant at the time they were set and that they remain relevant today.

The policy development is reflected in the objectives of the Directives. Following the developments in the EU integration process, the adopted Directives responded to the need across the EU to establish a series of minimum guarantees ('equal level playing field') in a number of areas, ranging 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.

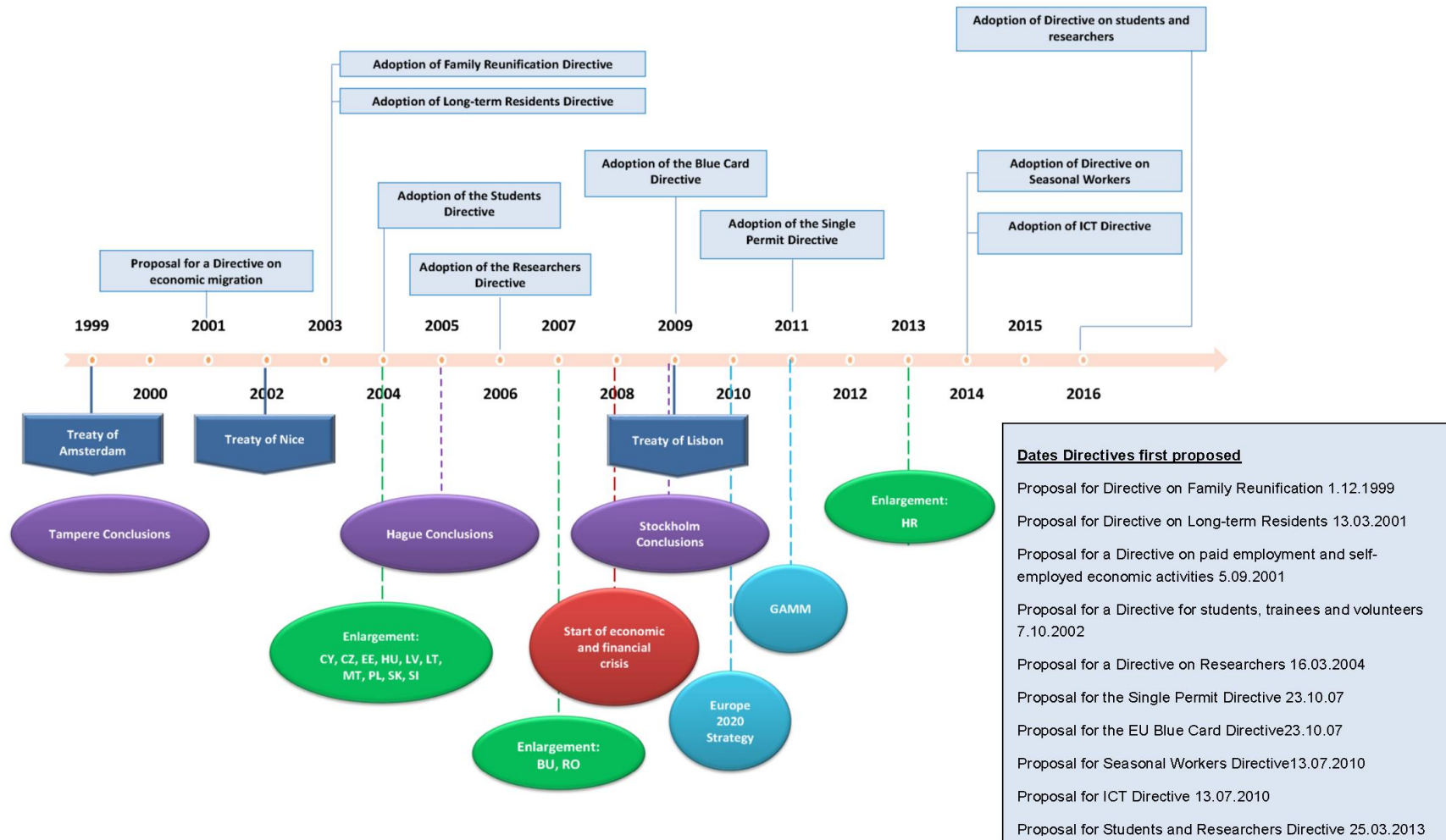
As the sections below outline, the evolution of the EU's legal migration acquis reveals a gradual increase in the level of ambition of the Directives, with more emphasis on harmonised common rules in the later Directives compared to the earlier ones, which focused more on setting common minimum standards. It also reflects an increasing acknowledgement over time of the role of migration in tackling labour market and demographic challenges. At the same time, the development shows a focus on a 'sectoral approach' to managing migration, rather than an overarching approach (without distinguishing specifically between high or low-skilled migrants), in spite of the Commission's earlier attempts to put forward the latter.

With regard to the specific objectives, the development shows that the earlier Directives focussed on the **integration** of third-country nationals as well as enhancing **intra-EU mobility**. Gradually there was more attention to **managing economic flows**, but also towards the realisation to **attract and retain certain third-country nationals**, as well as enhancing the **knowledge economy** in the EU and focussing on boosting **economic competitiveness and growth** in the EU through legal migration. In light of the most recent policy developments, most notably the agenda on migration aiming to make the EU an attractive destination of third-country nationals and a focus on fostering legal migration channels to for third-country nationals to enter the EU, the specific objectives of the Directives continue to be relevant today.

The evolution of the legal migration acquis is summarised in Section 4.1.1 below which contains a timeline showing the key milestones in the context of the EU's changing legal, economic and political landscape. The **Treaty of Maastricht**, which entered into force in 1993 introduced for the first time rules concerning EU decision-making and competence as regards immigration law. The subsequent development of the legal migration acquis, can be summarised through 4 phases presented below.

⁶⁸ This section is based on the Historical overview (Task 1B) and the Intervention logics (Task 1C).

Figure 6. Timeline showing the evolution of the EU legal migration acquis



4.1.2.1 Phase 1 (1999-2005) – consolidating EU migration policy and adopting the first set of Directives

The **Treaty of Amsterdam**, entering into force in 1999, established a more robust Treaty base for migration policy with supranational elements. As a rationale for the establishment of a legal migration policy, the Treaty highlighted the need for Member States to cooperate in order to safeguard the rights of Third-country nationals.

Shortly after the Amsterdam Treaty came into force, the Heads of States decided during **Tampere European Council** upon a five year programme in the fields of justice and home affairs. The conclusions foresaw the creation of an “area of freedom, security and justice” and the development of a “common EU asylum and migration policy”. The Tampere Council decisions responded to the development in migration patterns to the EU at the time: the late 1990s saw an influx of economic migration into the EU, especially in the highly skilled sector. There was also a growing political consensus about the benefits of labour migration for addressing population ageing and skills shortages in key sectors of the economy. Hence, the Council 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 successfully put forward four proposals in other areas of legal migration, namely:

- a proposal for a Directive on family reunification (proposed December 1999, adopted September 2003),
- a proposal for a Directive on long-term TCN residents (*proposed March 2001, adopted November 2003*),
- a proposal for a Directive on students (*proposed October 2002, adopted December 2004*) and
- a proposal for a Directive on researchers (*proposed March 2004, adopted October 2005*).

In 2001 the Commission had also put forward a proposal Economic Migration Directive, which it later withdrew because it failed to reach unanimous agreement in the first reading in the JHA council (which was a requirement in the governance framework for adopting measures in the field of migration at the time). 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.

4.1.2.2 Phase 2 (2005-2009) – further moderate policy developments and introducing the second set of Directives

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 TCN workers⁶⁹. 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 political assassination of right-wing 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. The **Hague 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

⁶⁹ See Section 2 of the historical overview (Task 1B), which identifies the baseline of national legislation.

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."

In response, 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". 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:

Four specific Directives aiming at simplifying admission procedures for four categories of third country nationals, namely: highly qualified workers, seasonal workers, remunerated trainees and intra-corporate transferees (hereafter ICT). Of these, only the Blue Card Directive was finalised within Phase 2 (*proposed in October 2007, adopted in May 2009*); and,

A general framework Directive (the so-called Single Permit Directive) guaranteeing a common framework of rights to third-country nationals in legal employment and already admitted in a Member State. The latter 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. It was not adopted either within Phase 2.

The aim of the four Directives 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 displacing the local workforce as "few EU citizens are willing to engage in seasonal work".

4.1.2.3 Phase 3 (2009-2014) – increased EU competencies and adoption of the second set of Directives

In 2009 the **Treaty of Lisbon** was adopted and introduced substantial changes to the scope of EU competencies in the field of legal migration. 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.

An 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 TCN 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. The **Stockholm programme** adopted in 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.

The Lisbon 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 (proposed in October 2007, adopted in December 2011),
- the Directive on Seasonal Workers (proposed in July 2010, adopted in February 2014), and
- the Directive on Intra-Corporate Transfers (proposed in July 2010, adopted in May 2014)

The Commission also planned to put forward a proposal for a Directive on remunerated trainees. This proposal was however not produced, and the remunerated (as well as unremunerated) trainees are covered under the recast 2016/801/EU Directive (see in more detail below).

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. While the earlier Directives focussed on setting minimum standards in legal migration, the three Directives went further than any of the earlier Directives in establishing harmonised common rules rather than only minimum standards.

4.1.2.4 Phase 4 (2014-today) – the European Agenda on Migration and adoption of the first Recast

In its 2014 Communication **An Open and Secure Europe**, the Commission highlighted that further efforts were 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 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 Agenda stated that a common system on legal migration should aim at making the EU an attractive destination for third-country nationals. Labour migration 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 is 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.

Further recent developments of the legal migration framework include the adoption of the 2016/801/EU **Students and Researchers Directive**, which is the result of the recast of the 2004 SD and the 2005 RD. The Directive aims to make the EU a more attractive destination for students and researchers, but has also a broader scope including trainees and volunteers engaged in the European Voluntary Service.

In June 2016, the Commission released an **Action Plan on the Integration of third-country nationals**. 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. At the same time, the Commission proposed a **review of the BCD** (proposed in June 2016 – negotiations ongoing) to enhance its attractiveness for highly skilled TCN. 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.

4.1.3 Needs with regard to legal migration

4.1.3.1 Key points

The relevance of the Directives is impacted by needs influencing migration patterns towards the EU. There are different needs depending on the type of TCN: family migrants, labour migrants, students/researchers and include a combination of socio-economic (primarily), demographic, environmental and political (security) factors in the origin and destination country or region.

The Directives continue to be relevant to address needs in regulating legal migration, which continues to be influenced by external and internal drivers.

The needs with regard to labour migration are reflected in the specific objectives of the Directives, notably the objectives focussing on **management of economic migration flows, attracting and retaining certain TCN, boosting competitiveness and growth**, as well as **addressing labour shortages**. These factors include labour market trends in light of the economic crisis impacting the demand and supply of workers at different skill levels as well as the potential impact on TCN labour demand due to the free movement of EU citizens. The migration from third countries is important in the context of continuing labour shortages and gaps for high-, medium- and low-skilled labour, in the EU which negatively affect the stock of EU's human capital and thus undermine the EU's competitiveness and the strategic ambition of the Europe 2020 strategy to deliver smart, sustainable and inclusive growth. The Directives acknowledge the continuing need for migration to tackle labour market and demographic challenges and to foster innovation. However, as section 9.2.2 addressing EQ1B below shows, medium-skilled third-country nationals are not covered by the Directives, impacting their relevance in light of the EU labour market needs.

Similarly, the Directives remain relevant to address the needs with regard to education and research. The EU aims to attract international students and researchers to foster innovation as well as to encourage the establishment of international scientific and academic networks. This is reflected in the Directives' specific goals to **enhance the knowledge economy in the EU, boost economic competitiveness and growth**, but also **mutual enrichment and better familiarity among cultures**.

As regards family migration, the relevance of the Directive's objectives are rather ambiguous. The specific objectives remain relevant, namely to support the EU in addressing needs with regard to mitigating the risks of population decline as well as strengthen the sustainability of the EU welfare system and growth of the EU economy through a growing number of integrated third-country nationals and their families. However, recent developments in Member State policies to restrict family reunification and implement tighter requirements for family members who want to join third-country nationals already in the EU does not correspond with the FRD aims to **promote integration and socio-economic cohesion, protect family life and unity as well as enhance intra-EU mobility**.

The main factors impacting migration towards the EU are primarily related to the socio-economic situation and political instability in the country of origin, with other factors such as demographic and climate change predicted to gain more importance in future (see section 4.5 addressing EQ1F), which are reflected in the specific objectives across the Directives, including the **management of economic and other legal**

migration flows, attracting and retaining TCN, boosting competitiveness and growth, addressing labour shortages and enhancing the knowledge economy.

The evolution of the GDP per capita (used as a proxy of economic opportunities) shows that the economic opportunities in the potential regions of origin have significantly improved between 1999 and 2015 leading to higher emigration from these regions. However, compared to other regions such as the US, Canada and Japan, the EU GDP per capita was still about 30% lower throughout the period and the relative attractiveness of the EU compared to other potential destinations has not changed significantly. The EU lags behind in attracting third-country nationals compared to other regions, although there are serious labour market shortages on the one hand and the untapped pool of skills and talents of migrants on the other hand⁷⁰. Thus, the objectives of the Directives remain relevant to address the needs with regard to **management of legal (and more specifically economic) migration flows, attract and retain third-country nationals, as well as enhancing the knowledge economy and addressing labour shortages and boosting the economic competitiveness, growth and investment.**

4.1.3.2 Needs in the EU

Needs with regard to labour migration

Labour demand

Employment rates were generally high and increasing since 1999 until the beginning of 2008, when the world economy was hit by the financial crisis, which heavily impacted the EU labour markets.

After years of steady economic growth⁷¹ and employment growth, the annual GDP growth fell from 2.7 percent in 2007 to 0.2 percent in 2008 and, by the end of 2009, the majority of the EU Member States were in recession (2009 GDP growth in the EU was around -1.4%). Further, after a strong cumulative increase in nominal compensation per employee between 2000 and 2007 in several Member States (notably in the Euro area) the economic crises led to a downward adjustment in nominal wages (e.g., in Ireland, Greece, Spain and Portugal) and to a shift from jobs in non-tradable to tradable sectors⁷². The recession of 2008 brought a significant decline in employment rates⁷³. Agriculture, construction, and industry were the sectors initially most affected by the crisis, and consequently male low-skilled workers were the group that suffered most from the impact of the crisis as they tend to be employed in these sectors. Between mid-2008 and mid-2013, unemployment increased by about half, from below 7% to 10.8 %, and reached historical highs in a significant number of Member States.

Following the decline observed throughout much of 2009-2013, employment in the EU has been growing again since mid-2013 and unemployment falling (for all age groups), but employment levels remain far from those at the beginning of 2008. The youth unemployment rate remains particularly high (especially in Spain, Greece, Italy and Croatia – all with more than 40% of youth unemployment), but shows some signs of slight recovery.

⁷⁰ The State of the Union Conference, Speech delivered by C. Malmström on 9 May 2013, 'Europe should give migrants the opportunities they deserve', SPEECH/13/399

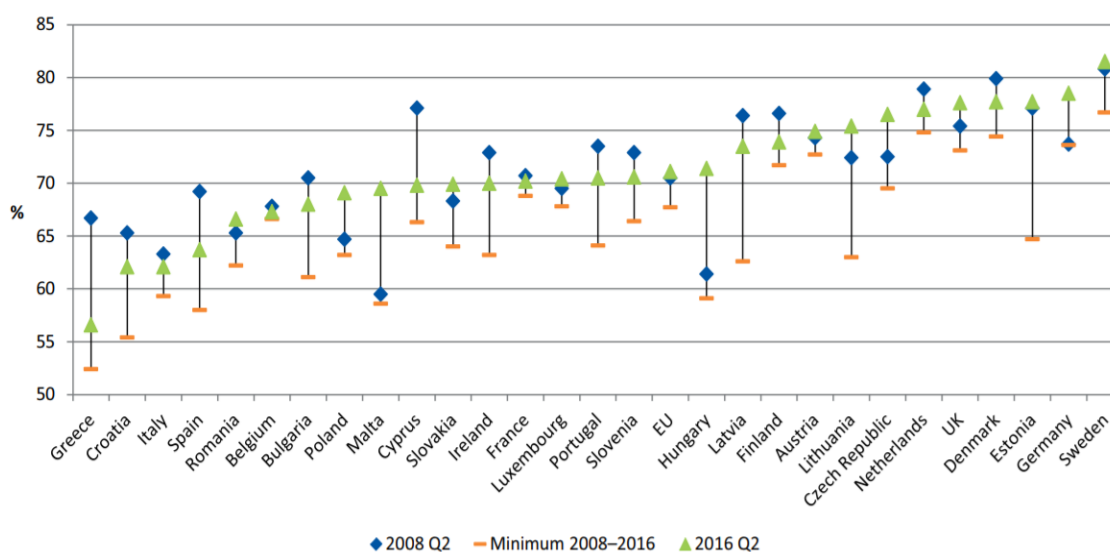
⁷¹ The average annual growth of GDP per capita in the EU28 between 1999 and 2007 was more than 2.3%.

⁷² Employment and Social Developments in Europe 2015, European Commission, Directorate-General for Employment, Social Affairs and Inclusion.

⁷³ Except for the employment rate of workers aged 45 and over - that stabilised - and of those aged 55-64, that increased.

Recent Eurostat data for 2016 shows an employment rate of 71.1% in the EU-28. However, there are significant differences between the Member States, as shown in Figure 7 below⁷⁴.

Figure 7. Employment rates of 20–64-year-olds, by Member State, 2008 Q2–2016 Q2



Source: Eurofound (2017). Occupational change and wage inequality: European Jobs Monitor 2017, p.7

As Table 9 below shows, the EU has witnessed a change in workforce composition, with a larger share of older workers as well as an increased share of ‘white collar’ workers in employment.

Table 9. Labour market indicators, EU-28

EU	2016 (%)	Change 2008–2016 (percentage points)
Employment rate (20–64-year-olds)	71.1	0.6
Gender employment gap	8.1	-2.5
Part-time share of employment	20.5	2.3
Older worker (55+ years) share of employment	18.6	4.6
High-skilled white collar worker share of employment*	41.0	1.8

Source: Eurofound (2017). Occupational change and wage inequality: European Jobs Monitor 2017, p. 7

With regard to labour demand, recent statistics show a growing demand for both high-skilled and low-skilled labour, with variations across Member States. While in some Member States the employment growth was in high-skilled jobs (Sweden), in others it was strongest in low-skilled jobs (Hungary, Ireland, Italy). Some Member States experience recent growth in mid-skilled jobs (Greece and Spain)⁷⁵.

When looking at sectors, the service sector accounts for the majority of EU employment (71%)⁷⁶. Employment in this sectors has concentrated specifically on

⁷⁴ http://ec.europa.eu/eurostat/statistics-explained/index.php/Employment_statistics

⁷⁵ https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1710en.pdf, p.

35

⁷⁶ Ibid

high- and low-skilled jobs. Following a decline immediately after the economic crisis, since 2013 there has been an increase in employment in the manufacturing sector, however focussing on high-skilled jobs in engineering, and management compared to low-skilled jobs in more traditional production roles. The sector with the fastest growth rate (7%) is however, the IT sector with a focus on high-skilled jobs.

Important skills mismatches⁷⁷ between labour demand and supply have been observed, with two in five companies indicating difficulties to recruit people with the necessary skills⁷⁸. Table 10 below shows the top 10 bottleneck vacancies in the EU in 2014.

Table 10. Top 10 occupational groups facing bottlenecks at EU level

Occupational group	No. of countries reporting shortages	No. of bottleneck vacancies reported in this group
Metal, machinery and related trade workers	23	53
Science and engineering professionals	22	48
ICT professionals	20	47
Health professionals	21	45
Building and related trade workers, excluding electricians	18	41
Personal service workers	22	32
Science and engineering associate professionals	14	29
Sales workers	13	14
Drivers and mobile plant operators	16	21
Food processing, wood working, garment and other	12	20

Source: Reymen, Dafne, et al. (2015), Labour market shortages in the European Union.

Although the scale of these shortages and the specific sectors affected vary across Member States⁷⁹, there is some consistency regarding the sectors where shortages are more evident (e.g. manufacturing, construction and health and social work sectors), in particular with regard to certain occupational groups (e.g., metal, machinery and related trade workers, science and engineering professionals, as well as IT professionals). According to an EMN study on current labour shortages and the need

⁷⁷ "(...) skills mismatches describe the imbalance between the skill requirements of (vacant) jobs and the skills held by the labour force" in (Reymen, D. et al, 2015); Beblavý, Miroslav, Ilaria Maselli, and Marcela Veselkova. "Let's Get to Work! The Future of Labour in Europe." (2014).; EMN study on Determining labour shortages, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_labour_shortages_synthesis_final.pdf

⁷⁸ Reymen, Dafne, et al. "Labour market shortages in the european union." Study for the EMPL Committee (2015).

⁷⁹ EMN study on Determining labour shortages, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/emn_labour_shortages_synthesis_final.pdf

for labour migration from third countries⁸⁰, the EU experienced significant labour shortages in the period 2011 – 2014. Most labour shortages were experienced in medium-skilled and low-skilled occupations, such as agriculture and fisheries, and personal care. As shown in Table 11, a number of Member States MS indicated that they faced occupational labour shortages in the area of medium-skilled professions, i.e. those not sufficiently covered by Member States or other EU nationals.

Table 11. Top three shortage professions (based on ISCO-08 occupations)

MS	Year	1	2	3
AT	2015	Metal working machine tool setters and operators – Metal turners	(Asphalt) Roofers	Metal working machine tool setters and operators – Milling machinists
HR	2015	Livestock farm labourer	Field crop and vegetable growers	Fitness and recreation instructors and program leaders
CZ	2014	Crop farm labourers	Heavy truck and lorry drivers	Security guards
EE	2013	Drivers and mobile plant operators	Business and administration associate professionals	Production and specialized services manager
FI	2014	Contact centre salespersons	Specialist medical practitioners	Dentists
HU	2014	Mining and Quarrying Labourers	Assemblers	Mechanical Machinery Assemblers
LV	2014	Software developers	Information and communications technology operations technicians	Film, stage and related directors and producers
PT	2014	Sewing machine operators	Waiters	Commercial sales representatives

Source: National reports EMN study 2015 on labour shortages

The table shows that whilst many Member States face shortages in medium- and low-skilled occupations, in some Member States, the shortages are focussed on highly skilled workers, hence providing an overview of the disparate labour market needs of different Member States. However, the share of high-skilled migrants in total employment in the EU remains low compared to similarly developed economies across OECD Member Countries⁸¹.

Third-country nationals can play a key role in meeting labour market shortages in selected sectors, including in ICT, financial services, household services, agriculture, transportation, construction and tourism-related services such as the hotel and restaurant industries⁸². An earlier medium-term forecasts (2006-2015) of skills supply

⁸⁰ EMN Synthesis Report 2015, 'Determining labour shortages and the need for labour migration from third countries in the EU'

⁸¹ OECD Database on Immigrants in OECD Countries (DIOC) 2000/01 and 2010/11.
<http://www.oecd.org/els/mig/dioc.htm>

⁸² Employment in Europe 2008, 'The labour market situation and impact of recent third country migrants.'

suggested that substantial labour market shifts would occur away from primary and traditional manufacturing sectors towards services and knowledge-intensive jobs⁸³. These sectoral changes would have a significant impact on future occupational skills needs.

While there would be a continued demand for high- and medium-skilled workers, labour demand for low-skilled worker will likewise increase⁸⁴. A significant expansion in the number of jobs is to be expected in the retail and distribution industry. In this context, it is worthwhile noting that even though employment is expected to fall in a number of occupational categories, in particular as regards skilled manual labour and clerks, the estimated net job losses will be offset by the need to replace workers reaching retirement age. About 85% of all jobs openings will be the result of retirement or other reasons which lead to labour inactivity⁸⁵. Conversely, the tendency on the labour market to replace leaving or retiring workers with high-qualified ones, will lead between 2016 and 2025 to a reduction in the share of those working in elementary occupations with low qualifications (from 44% to 33%); while the share of high-skilled workers working in occupations demanding lower skills levels will from 8% to 14%⁸⁶. Furthermore, specific sectors such as domestic work, care work and agricultural work experience shortages for domestic workers, thus rely on low-skilled migrant labour, and the demand for such skills might increase further in future (in particular for domestic / care work)⁸⁷.

Finally, demographic change will continue to play a role in the labour market demand. The EU working age population (15-64 years old) has been stable in recent years. It was 335 million in 2009, and 334 million in 2014⁸⁸. However, it is anticipated to decline overall with marked differences in the rate of change between countries (see more details about the demographic change in section 4.5 addressing EQ1F).

Migrant labour supply

Overall, the number of all first permits issued in the Member States of the EU-25 and increased between 2008 and 2016. While 1.8 million first permits were issued in 2008 at the EU-25 level, such number peaked to 2.4 million in 2016. A deeper look at these trends reveals that the growth of first permits was very strong in 2015 and 2016 at the EU-25. Moreover, there was a significant decrease in the number of first permits issued at the EU-25 level in 2011 and 2012.

⁸³ Cedefop 2008, 'Future skills needs in Europe – medium term forecast.

⁸⁴ Employment in Europe 2008, 'The labour market situation and impact of recent third country migrants'

⁸⁵ Cedefop 2016, 'Future skill needs in Europe: critical labour force trends'

⁸⁶ Ibid.

⁸⁷ Hein de Haas, Simona Vezzoli, Alice Szczepanikova and Tine Van Crielkinge (2018), European Migrations: Dynamics, Drivers, and the Role of Policies. JRC Science Hub

⁸⁸ Working age population historical trend is from Eurostat - population on 1 January by five year age group, sex and citizenship [migr_pop1ctz] – and projection is from Eurostat - population on 1st January by age and sex [proj_13npms]

Table 12. Number of all first permits issued in EU-25 and EU-3, 2008–2016

	2008	2009	2010	2011	2012	2013	2014	2015	2016	Trend
Covered	1,840,920	1,621,561	1,689,998	1,425,910	1,413,053	1,568,112	1,685,557	1,904,419	2,411,946	
Belgium	46,201	58,939	57,855	55,449	47,278	42,463	43,823	50,085	53,096	
Bulgaria	3,933	4,383	4,051	5,030	6,418	6,436	8,795	9,595	7,942	
Czech Republic	61,350	27,539	34,653	20,978	42,123	45,544	35,458	68,804	80,070	
Germany	114,289	121,954	117,202	110,349	184,070	199,925	237,627	194,813	504,849	
Estonia	3,884	3,777	2,647	3,408	2,530	2,496	3,222	3,984	4,308	
Greece	40,411	45,148	33,623	21,269	16,252	18,299	22,451	37,464	44,072	
Spain	399,827	290,813	258,309	282,763	223,318	196,244	189,481	192,931	211,533	
France	188,723	200,649	204,321	199,581	199,500	214,346	220,599	228,687	237,218	
Croatia	:	:	:	:	:	3,320	3,334	3,433	5,315	
Italy	550,226	506,833	589,988	331,083	246,760	243,954	204,335	178,884	222,398	
Cyprus	25,156	25,638	19,139	15,645	11,715	11,455	13,841	15,569	16,970	
Latvia	7,706	2,304	2,329	3,982	5,620	7,615	9,857	6,357	6,037	
Lithuania	5,298	2,659	1,861	2,429	3,696	4,601	7,252	5,178	6,750	
Luxembourg	:	2,969	2,366	2,698	3,804	4,169	4,289	4,918	5,627	
Hungary	37,486	14,289	14,601	14,893	13,282	16,833	21,188	20,751	22,842	
Malta	4,836	3,547	2,763	3,484	4,526	6,795	9,895	9,984	8,995	
Netherlands	62,589	56,488	54,473	55,074	51,162	64,739	69,569	86,691	95,753	
Austria	21,783	28,035	30,596	35,442	37,852	34,308	40,062	51,282	50,066	
Poland	40,896	33,427	101,574	108,036	146,619	273,886	355,521	541,583	585,969	
Portugal	63,715	46,324	37,010	35,172	32,590	26,593	29,764	29,021	30,993	
Romania	19,354	15,380	10,218	9,740	10,125	11,160	10,294	11,289	11,867	
Slovenia	29,215	15,759	7,537	9,800	9,092	8,271	9,891	11,417	13,517	
Slovakia	8,025	5,336	4,373	3,641	4,210	4,416	5,510	9,279	10,227	
Finland	21,873	18,034	19,210	20,230	20,263	21,122	21,552	21,797	28,792	
Sweden	84,144	91,337	79,299	75,734	90,248	99,122	107,947	110,623	146,740	
Not covered	693,751	723,242	783,020	750,934	683,570	788,339	640,420	717,603	948,613	
Denmark	31,655	26,409	28,577	24,707	24,812	31,311	35,886	46,153	41,440	
Ireland	28,926	25,509	22,235	24,570	26,818	32,780	36,728	38,433	41,279	
United Kingdom	633,170	671,324	732,208	701,657	631,940	724,248	567,806	633,017	865,894	

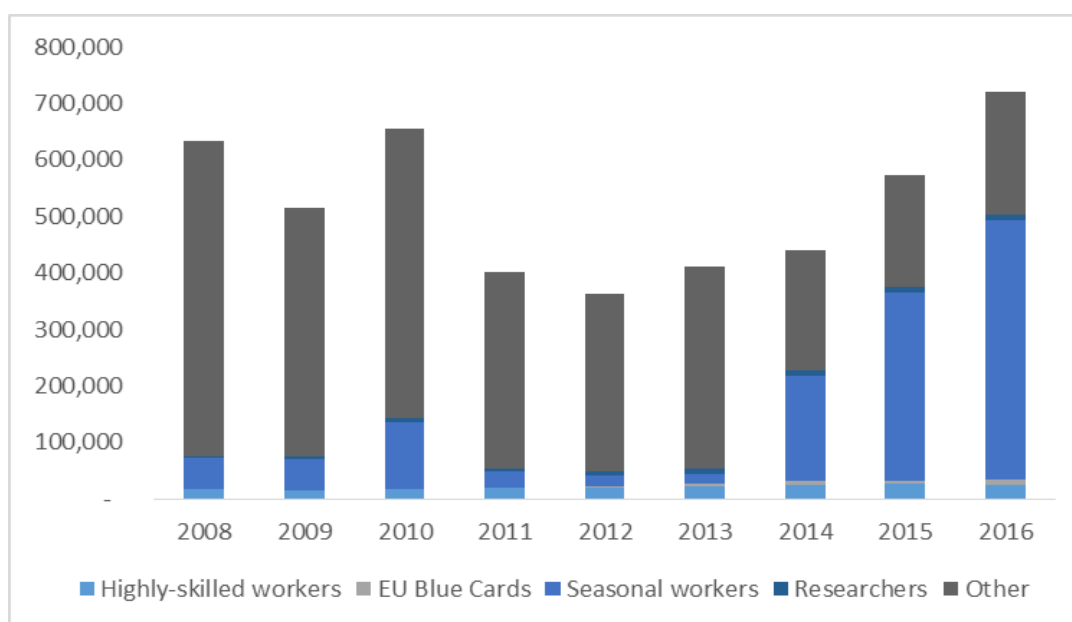
Note: Data extracted on 02/04/2018; 'residence permit': any authorisation valid for at least 3 months issued by the authorities of a Member State allowing a third country national to stay legally on its territory; 'first permit': residence permit issued to a person for the first time. A residence permit is considered as a first permit also if the time gap between expiry of the old permit and the start of validity of the new permit issued for the same reason is at least 6 months, irrespective of the year of issuance of the permit. Some countries are in the process of harmonization with the definitions, reducing conceptual disparities and changing data availability and completeness status for some categories of data; The residence permit statistics should be compiled based on same methodology and the outputs should be comparable between years. Due to the ongoing methodological improvements which may occur at different reference periods, for some categories of permits Member States may apply different rules for the same years; ":" : not available.

Source: Eurostat (migr_resfirst)

However, the trend is more complicated when considering the evolution in the number of permits issued for different reasons. The number of permits issued for family reasons did not decline between these years, but rather increased steadily.

The number of permits held for remunerated reasons varied over time and between Member States, with different Member States reaching their peak in different years. The share of first permits issued for remunerated activities reasons at the EU-25 level decreased between 2008 and 2016 (Figure 8). In 2016, it amounted to 29.8% against 34.4% in 2008. A deeper look at the trend over the period reveals that this share peaked at 38.7% in 2010 after a strong increase but went down sharply in the subsequent years. It rebounded from 2015, without, however, reaching its level at the beginning of the period. In all Member States of the EU-25 but Estonia, Latvia, Malta, and Poland, the share of first permits issued for remunerated activities reasons went down. This share fell remarkably in Czech Republic, Spain, Italy, and Romania. While it amounted to 47% in Romania in 2008, it dropped to 15% in 2016. First permits are issued for a variety of remunerated activities reasons. Eurostat provides statistics on the first permits issued for the different remunerated activities under different categories: highly skilled workers⁸⁹, EU Blue Card⁹⁰, researchers⁹¹, seasonal workers⁹², and other remunerated activities⁹³ with are not included in the previous categories.

Figure 8. First permits issued for remunerated activities by reason in EU-25, 2008-2016



Source: Eurostat (migr_resfirst)

⁸⁹ 'Highly skilled workers' refers to the first residence permits issued to third-country nationals admitted under national programmes facilitating the admission of highly skilled workers.

⁹⁰ 'EU Blue Card' refers to the first residence permits issued to persons granted such authorisation to reside. 'EU Blue Cards' means a permit as defined in Article 2(c) of the Council Directive 2009/50/EC i.e. the authorisation bearing the term 'EU Blue Card' entitling its holder to reside and work in the territory of a Member State under the terms of this Directive.

⁹¹ 'Researchers' refers to the first residence permits issued to persons granted such authorisation to reside. A researcher is defined by Council Directive 2005/71/EC as a third-country national holding an appropriate higher education qualification, which gives access to doctoral programmes, who is selected by a research organisation for carrying out a research project for which the above qualification is normally required.

⁹² In the absence of the common European legislative framework and common definition of the 'seasonal workers', this category include all third-country nationals, who retain their legal domicile in a third country but reside temporarily for the purposes of employment in the territory of a Member State in a sector of activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between the third country national and the employer established in a Member State.

⁹³ 'Other remunerated activities' includes first residence permits issued to persons granted authorisation to work not covered by the other categories above. This would include employed and self-employed persons, remunerated trainees, and remunerated au pairs.

The majority of these permits is , issued for 'other remuneration reasons' not covered by the legal migration Directives, with exception of the SPD, and in recent years for seasonal workers. In 2016, the number of first permits issued for seasonal workers amounted to 458 thousand, representing nearly 64% of the first permits delivered for remunerated activities reasons during that year. These high levels are mainly explained by Poland since it issued 447 thousand of these permits in 2016.

The gender composition of migrant inflows also changed, with female migrants increasing their share, as a result of rising unemployment in male-dominated sectors such as construction and continuing demand in more female-dominated sectors such as care work (which is related to demographic changes as outlined in Section 9.2.2 addressing EQ1F).⁹⁴

The financial crisis had a strong impact on third country nationals' employment. Since the start of the financial crisis the unemployment rates of TCN migrants increased considerably more than those of nationals⁹⁵). According to the Eurostat migrant integration statistics, the gap in employment between third-country nationals and the native population widened in the years following the crisis reaching 10.1 percentage points difference (in 2013) for third-country nationals born outside the EU compared to native born EU nationals⁹⁶. In particular, migrants with low education levels were strongly affected by the crisis as (1) they are overrepresented in the sectors which were hit harder by the crisis, such as the construction sector or in highly seasonal activities such as retail and hospitality, because (2) they tend to have less secure contractual arrangements in their jobs⁹⁷. Also (3) the considerable increasing unemployment has made many EU governments introduce measures to protect domestic labour markets⁹⁸. Although, compared to natives, TCN have generally fewer chances to move into work after being unemployed or inactive, recent migrants were considerably more affected by the crisis than previous waves of immigrants⁹⁹. Since 2013 the employment rates¹⁰⁰ of third-country nationals in the EU have been slightly increasing but at a slower speed than the total employment rates and by the end of the reference period they were still significantly lower (61.2%) compared to natives (71.8%)¹⁰¹. Notably, the gap was bigger for medium and higher-educated TCN than for lower-educated TCN when compared to the respective groups in the native population. In 2016 the unemployment rate of TCN (16.2%) in the EU was still twice as high as the overall rate of unemployment (8.6%), for both men and women¹⁰².

⁹⁴ IOM, Migration and the economic crisis in the EU: implications for policy, 2010.

⁹⁵ Arslan, C., et al. (2015), "A New Profile of Migrants in the Aftermath of the Recent Economic Crisis", OECD Social, Employment and Migration Working Papers, No. 160, OECD Publishing, Paris. DOI: <http://dx.doi.org/10.1787/5jxt2t3nnjr5-en>

⁹⁶ http://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant_integration_statistics_%E2%80%93_labour_market_indicators#Unemployment

⁹⁷ Beets, G., & Willekens, F. (2009). The global economic crisis and international migration: An uncertain outlook. *Vienna Yearbook of Population Research*, 19-37.

⁹⁸ Herm, A., & Poulain, M. (2012). Economic Crisis and International Migration. What the EU Data Reveal?. *Revue européenne des migrations internationales*, 28(4), 145-169.

⁹⁹ Employment and Social Developments in Europe 2015, European Commission, Directorate-General for Employment, Social Affairs and Inclusion.

¹⁰⁰ The employment rate is calculated as the ratio between the employed population and the total population of the same age group. In contrast to the activity rate, this rate contrasts the ratio between the labour force in work and the population of working age.

¹⁰¹ In spite of the overall positive trend in the employment situation of TCN at EU level, there are significant variations among the various Members States. In some MS (including France and Austria), after an initial period of recovery, the employment rate of TCN has declined again between 2013 and 2015.

¹⁰² http://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant_integration_statistics_%E2%80%93_labour_market_indicators#Unemployment

In most Member States, public and policy debates are characterised by concerns about the use of labour migration as a tool for addressing labour shortages, particularly for the medium- and low-skilled occupation sectors. Therefore, Member States tend to prioritise labour market activation measures for the national labour force, including Third-country nationals already residing in the Member States. According to the abovementioned EMN study¹⁰³ several Member States see attracting Third-country nationals to fill such labour shortages only as a secondary measure (these include: AT, BE (Flanders), CY, IE, MT, LT and LU).

Due to the difference in current labour market needs across Member States¹⁰⁴, some question whether harmonisation of policies at EU level would be effective in addressing this issue. There is a view that the entry and residence of workers is better regulated at national level as national legislation can react more quickly and accurately to changing labour market needs, as confirmed in the stakeholder consultation conducted for this study.

Preventing exploitation at the labour market

The prevention of exploitation of legally residing third-country nationals is highly relevant in relation to the overall objectives of the EU legal migration acquis, which aims to attract and retain third-country nationals, effectively responding to demands for labour at certain key skills levels, while counteracting a distortion of the EU labour markets by ensuring equal treatment of third-country nationals (workers mainly), notably as regards pay and working conditions, social security and other areas, thus avoiding their exploitation and preventing discrimination in the EU.

The existing legal migration Directives only partially respond to the problem. The equal treatment provisions that have been included in the legal migration Directives are necessary to begin the process of preventing and addressing situations where the working conditions of third-country nationals deviate significantly from the standard working conditions as defined by legislation. However, the legal migration Directives do not cover all third-country nationals who work in the EU (e.g. self-employed workers are excluded), and in some cases the provisions are subject to limitations. Moreover, the legal migration Directives – except the SWD – do not require Member States to establish monitoring mechanisms, nor sanctions against employers who do not comply with the provisions on equal treatment.

Other EU legislation addresses certain aspects of the problem but there are still gaps. The implementation of the EU employment acquis complements the equal treatment provisions in the legal migration Directives by harmonising basic obligations for Member States in respect of certain aspects of working conditions (safety and health but also working time). The implementation of the Temporary Agency Work Directive (TAW) is particularly relevant in this regard. The personal scope of the EU Anti-Trafficking Directive (ATD) includes legally residing third-country nationals. However, the Directive only covers those situations of labour exploitation which amount to the criminal offence of trafficking in human beings, while it does not cover other forms of labour exploitation, which are addressed by criminal and labour legislation at Member State level. Other EU instruments, including the Facilitation Package and the Employer Sanctions Directive address other forms of labour exploitation, but only cover third-country nationals in an irregular situation.

There are consequently gaps in the response at EU level. While the inspections and sanctions against employers who hire third-country nationals illegally (required by the Employer Sanctions Directive) can indirectly help legally residing third-country

¹⁰³ EMN Synthesis Report 2015, 'Determining labour shortages and the need for labour migration from third countries in the EU'

¹⁰⁴ EMN Synthesis Report 2015, 'Determining labour shortages and the need for labour migration from third countries in the EU'

nationals who are victims of exploitation in the hands of the same employers, there is only one EU instrument (the SWD) which specifically addresses their situation.

Impact of free movement within the EU

The three-stage enlargement of the EU between 2004 and 2013 expanded the free movement rights to ten new member states in 2004 (eight Central and Eastern European countries, Cyprus, and Malta), then to two more in 2007 (Bulgaria and Romania) and finally to Croatia in 2013. This was a gradual enlargement in the sense that many EU15 Member States decided to implement transitional arrangements that postponed the application of free movement of workers from the new Member States¹⁰⁵.

Although the enlargement is not likely to have had a primary effect on the third-country nationals arriving for non-economic purposes, it is not unreasonable to imagine that the increase in competition might have had some impact on the flows of TCN migrants coming for the purpose of remunerated activities. Recent studies analysing such an impact of free movement for EU citizens on third-country nationals arriving for the purposes of remunerated activities show an ambiguous picture.

In a study on the impact of EU enlargement on third-country nationals arriving for the purposes of remunerated activities, Farchy, E. (2016) identified that the enlargement increased competition and discouraged some potential TCN from moving to the EU15 for the purpose of remunerated activities, but the migrants already living in the EU15 seem not to have experienced any negative impact on their employment outcome. A recent study by JRC suggests that the freedom of movement within the EU increases cross-border non-migratory mobility for work, business and tourism as well as temporary and circular migration, but that the effects on net migration are ambiguous. The lifting of restrictions for economically less advanced EU Member States might lead to initial hikes in intra-EU mobility, but after a few years, migration levels consolidate at lower levels and migration becomes rather circular.¹⁰⁶

Needs with regard to education and research

In accordance with several EU and national policies that aim to foster innovation in the EU (*see more details on policies in the coherence section*), several EU Member States specifically focus on attracting students and researchers. According to the EMN Study 'Immigration of International students' (2013), education policies seek to advance the EU as a centre of excellence in education and training and as such the EU engages in various initiatives, including policy dialogue, bilateral agreements, programmes to encourage and support mobility and scholarships and particularly in relation to the establishment of international scientific and academic networks among universities and alumni. Member States have both medium and long term objectives they aim to achieve by actively attracting students and researchers, including attracting high level skilled migrants in order to fill existing gaps in the education and labour market (following graduation), and the promotion of international cooperation with third countries through international scientific and academic networks. The economic benefits associated with international students are also linked to strategies to enhance revenue coming from abroad.

The importance of third-country nationals entering the EU for education reasons can also be seen from the number of permits issued in the analysed period. Education

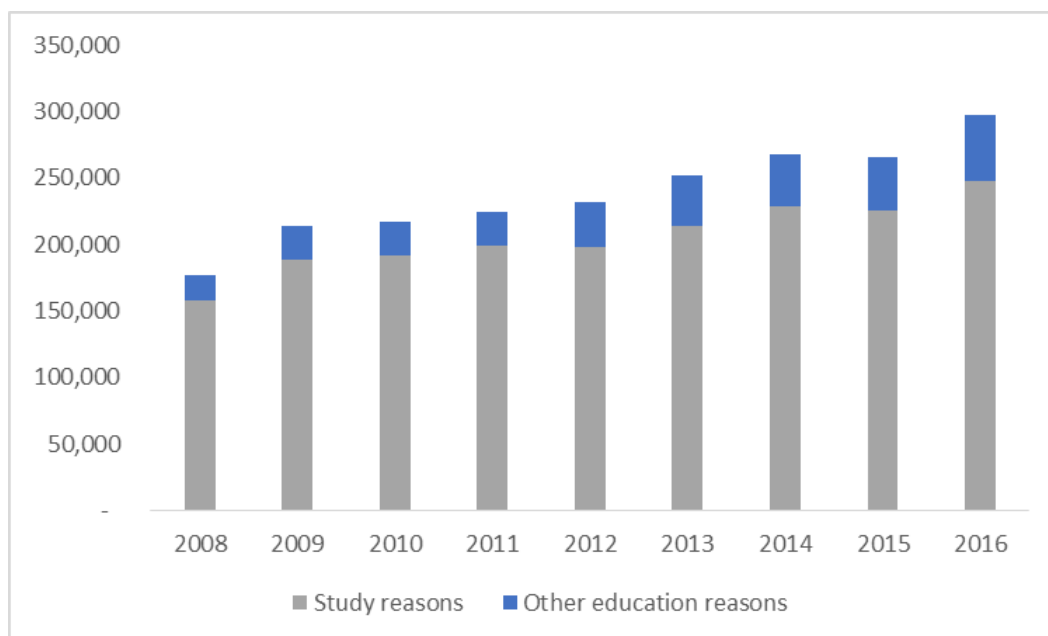
¹⁰⁵ Farchy, E. (2016), "The Impact of Intra-EU Mobility on Immigration by Third-Country Foreign Workers", OECD Social, Employment and Migration Working Papers, No. 179, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5jlwxbzbr5-en>

¹⁰⁶ De Haas, H., in collaboration with Vezolli, S. (2017), European Migrations: Dynamics, drivers, and the role of policies (draft, unpublished. To be published as part of JRC Foresight project.

reasons were the third most frequent reason for permits being issued¹⁰⁷. The number of first permits issued to third-country nationals for study reasons increased from 156 thousand in 2008 to 248 thousand in 2016 at the EU-25 level. From 2008 to 2016, the share these permits in all first permits issued for education reasons grew from 78.4% to 83.5%. It should, however, be noted that this relatively high share may be overestimated by the fact that France (and Bulgaria) does not provide a detailed breakdown of first permits for students and other educational reasons. All first permits issued for education reasons are reported under the study category. The five EU-25 Member States (excluding France) who issued the largest number of first permits for study reasons in 2016 were Germany (37 thousand), Spain (34 thousand), Poland (21 thousand), the Netherlands (16 thousand), and Italy (9 thousand). The number of first permits issued for student reasons increased in Germany between 2008 and 2016; their share in all first permits issued for education reasons also rose during that period. A different pattern could be observed in Poland: the number of first permits issued for student reasons grew during that period but their share dropped.

The number of first permits for other education purposes amounted to 49 thousand in the EU-25 Member States, compared to 20 thousand in 2008 and 38 thousand in 2016. Their share in all first permits delivered for education reasons rose from 10% in 2008 to 16% in 2016. In 2013, it was 15%. The five EU-25 Member States which issued the largest number of first permits for other education reasons in 2016 were Czech Republic (11 thousand), Poland (11 thousand), Germany (9 thousand), and Italy (8 thousand). The first two of them enjoyed both an increase in the number of first permits issued for other education purposes and in their share. All other EU-25 Member States for which data are available were lagging far behind these four countries in 2016.

Figure 9. First permits issued for study and other education reasons in EU-25, 2008-2016



Source: Eurostat (migr_resedu)

¹⁰⁷ MS provide data on first permits for students and for unremunerated trainees and volunteers, as well as researchers based on the 2004 and 2005 directives, as the data in accordance with the 2016 Directive are not yet available.

Needs with regard to family migration

In total, family migrants in the EU, as these make up one of the largest share of migrants overall (see Figure 1 in the Section 3.3).

EU and Member State policies on family reunification are driven by other EU legal migration Directives, national legal migration policies, and by several external factors. Demographic changes across the EU, linked with skills shortages in some Member States and high unemployment rates in others affect the way in which the FRD is implemented in the Member States and whether they chose to restrict or facilitate the entry of family members. Member States that face skills shortages aim to attract skilled third-country nationals and provide them with incentives to enter the Member State. The conditions regarding family reunification implemented by Member States (within the flexible terms of the FRD) are influenced by Member States' sectoral policies, e.g. educational, social and employment policies as well as Member States' policies with regard to other avenues of legal migration. For example, in order to attract highly skilled workers, investors and entrepreneurs, Member States use more favourable conditions for family reunification and employment of family members as incentives (amongst others such as tax incentives).

Nevertheless, the political climate across the EU seems to be driving family reunification policies in a more restrictive direction. The European Migration Network 'Annual Report on Immigration and Asylum' (2015) identified several trends across Member States related to family reunification, including the restriction of family reunification and implementation of tighter requirements for family members who want to join third-country nationals already in the EU (e.g. AT, BE, DE, FI, NL, SE were among the MS that introduced tighter requirements in order to be granted family reunification).

4.1.3.3 External drivers

The main factors¹⁰⁸ (i.e., adverse conditions in the origin of country) influencing emigration to the EU between 1999 and 2015 were primarily related to the socio-economic situation and political instability in the country of origin. While environmental factors also played a role in world migration flows, they had no discernible direct impact on the flows towards the EU, as those movements tend to be within countries or to neighbouring countries¹⁰⁹. However, these will be analysed in section 4.5 addressing future challenges.

Evolution of the Socio-Economic situation

The pursuit of a job, a higher income, or better career prospects is considered to be the primary emigration driver for a significant share of migrants. Additionally, the lack of (good) education and healthcare facilities in the country of origin are often mentioned as a push factor to emigration towards countries/regions with good social infrastructure, such as the EU. These push effects are amplified by two demographic characteristics – age and education level of the potential migrants.

Age and Education of Migrants and Total Working-Age Population

A number of empirical studies find a positive relation between emigration flows and two demographic characteristics of the migrant¹¹⁰: age and level of education. Young people tend to emigrate more than older people, as they expect to reap the expected

¹⁰⁸ The decision to emigrate is the result of a variety of interlinked factors including unfavourable situations in the host country and favourable conditions in the destination country.

¹⁰⁹ Warner, K., Hamza, M., Oliver-Smith, A., Renaud, F., & Julca, A. (2010). Climate change, environmental degradation and migration. *Natural Hazards*, 55(3), 689-715.

¹¹⁰ Tranos, E., Gheasi, M., & Nijkamp, P. (2015). International migration: a global complex network. *Environment and Planning B: Planning and Design*, 42(1), 4-22.; Mayda, A. M. (2010). International migration: A panel data analysis of the determinants of bilateral flows. *Journal of Population Economics*, 23(4), 1249-1274.

benefits of emigrating over a longer period. Similarly, a higher level of education is usually associated with a higher capacity to bear the cost of migration and to greater aspirations regarding the benefits of emigration, namely better career prospects and higher wage differentials when compared to their situation in their home country¹¹¹. Unsurprisingly, an increase of the total working-age population (which constitutes the pool of potential migrants) is usually followed by an increase in emigration flows¹¹².

Between 1999 and 2015¹¹³ the total working-age population and youth population increased in South and East Asia, the Middle East and Africa but dropped about 30% in the European non-EEA countries. The ageing of the population has become evident in most of the regions (except for Sub-Saharan Africa). Sub-Saharan Africa has the youngest population (with a median age of 18) and the European CIS the oldest (median age of 38). In all regions, literacy levels¹¹⁴ of the youth population have increased and were generally higher than adult literacy (which also grew). East Asia and Latin America were near global youth literacy level by 2014, and the Arab States reached levels of 90%. In the South and West Asia the youth literacy rate grew by 7% points, from 74% in 2000 to 81% in 2014. Sub-Saharan Africa presented very modest increases to the youth literacy rate, ending the period with a 70% rate.

Economic Growth, Development and Inequalities

Empirical and theoretical research on migration has extensively studied the relation between emigration and economic opportunities in the country of origin, and a significant body of empirical evidence seems to contradict the (general) idea that the poorer the country, the higher its emigration flows. According to a recent JRC report (Maestri et al., 2017) a reduction of inequality within a country is associated with an increase in emigration, especially for middle income countries. A possible explanation¹¹⁵ is that potential migrants need to have the means to migrate (capacity), and in countries with large inequalities a considerable portion of the population might lack the very means necessary to migrate. Hence, development in the poorest countries in e.g. sub-Saharan Africa could potentially lead to higher emigration from these regions to Europe.¹¹⁶ Furthermore, it is generally the case for less developed and developing countries that higher educated people have better prospects when they emigrate than less educated people do, which contributes to a positive relation between emigration flows and level of development of the country of origin. Therefore, in order to understand the evolution of migration flows it is necessary to look at the evolution of per capita income and the level of development and inequality within third-country nationals home countries. Furthermore, the socio-

¹¹¹ Please note that the described relation between these variables and changes in migration flows is depended on the existence of expected benefits. If no benefit is expected than these effects will not materialize.

¹¹² Haas, Hein de. 2010. "Migration Transitions: A Theoretical and Empirical Inquiry into the developmental drivers of international migration."
http://demografi.bps.go.id/phpFileTree/bahan/kumpulan_tugas_mobilitas_pak_chotib/Kelompok_10/Referensi_paper/de_Haas_2010b_Migration_Transitions_A_Theoretical_and_Empirical_Inquiry_into_The_Developmental_Drivers_of_International_Mig.pdf.

¹¹³ United Nations, Department of Economic and Social Affairs, Population Division (2015). *World Population Prospects: The 2015 Revision, Key Findings and Advance Tables*. Working Paper No. ESA/P/WP.241.

¹¹⁴ UNESCO Institute for Statistics (UIS). "Adult and youth literacy: national, regional and global trends, 1985-2015." (2013).

¹¹⁵ Haas, Hein de. 2010. "Migration Transitions: A Theoretical and Empirical Inquiry into the."
http://demografi.bps.go.id/phpFileTree/bahan/kumpulan_tugas_mobilitas_pak_chotib/Kelompok_10/Referensi_paper/de_Haas_2010b_Migration_Transitions_A_Theoretical_and_Empirical_Inquiry_into_The_Developmental_Drivers_of_International_Mig.pdf.

¹¹⁶ Maestri, V.; Migalis, S. and Natale, F. (2017). The relationship between inequality in the origin country and emigration. European Commission JRC, available online via:
http://publications.jrc.ec.europa.eu/repository/bitstream/JRC106311/jrc106311_inequality_migration_final_april_2017_fn.pdf;

De Haas, H. (2017), Myths of Migration: Much of what we think we know is wrong. Published in *Der Spiegel* (newspaper), available online via: <http://www.spiegel.de/international/world/eight-myths-about-migration-and-refugees-explained-a-1138053.html>

economic situation in the country of origin – including the age and level of education of the youth population - only tells half of the story, as potential migrants usually take into account the perceived difference between their economic opportunities at home and in the destination country.

The evolution of the GDP per capita (used as a proxy of economic opportunities) from 1999 and 2015 shows that the economic opportunities in the potential regions of origin have significantly improved in all regions between 1999 and 2015, notwithstanding the negative effects of the 2009 global crisis felt by almost all regions (except for Sub-Saharan Africa) and the impact of the Crimea Crisis and subsequent sanctions imposed on Russia which significantly affected the CIS region (that still presented an 86% net increase of GDP per capita over the 16 year-period). The South and East Asia regions presented a remarkable growth of GDP per capita and they were the regions where the GDP per capita grew most. The Middle East, North Africa and Sub-Saharan Africa presented a less spectacular but still considerable 42% rise of income per capita, followed by Latin America that experienced a growth of 30%¹¹⁷. Income inequalities have been declining in all regions but significantly faster in European non-EEA countries and Central, South and East Asia and all regions are witnessing overall improvements to their development levels (as measured by the Human Development Index – HDI), but large disparities between the regions remain¹¹⁸. Investment in education in general and in tertiary education in particular, measured as a percentage of the GDP remained relatively constant¹¹⁹ and similar among the various regions. There are significant differences in absolute terms as developing regions present investments per capita of more than 4 times those of less developed regions (i.e., South Asia and Sub-Saharan Africa) and about 3.5 times less than the EU.

In spite of the overall improvement of the GDP per capita in less developed and developing regions and the modest performance of the EU economy and labour market in this period (see section 1.3), the income gaps between these regions and the EU have increased in absolute terms between 1999 and 2015 (although the gaps decreased during the peak of the crisis, and since then East Asia started to converge with those of the EU).¹²⁰ On the other hand, the EU GDP per capita was still about 30% lower than that of other developed economies such as the US, Canada and Japan and 85% of the average of high income countries throughout the period. Therefore, the relative attractiveness of the EU compared to other potential destinations has not changed significantly in the period.

Migration flows due to political instability

The main conflicts that have taken place since 1999 that have led to migration towards Europe, have been civil wars¹²¹ (some with direct foreign military involvement), including wars in Ethiopia and Eritrea in 1998-2000; Afghanistan, Iraq, Somalia and South-Sudan, Yemen and the conflict in Ukraine. Several conflicts were further initiated at the time of the Arab spring in 2010-2011. The biggest flow of

¹¹⁷ Own calculations based on World Bank, world development indicators: GDP per capita (constant 2010 US\$), Unemployment, total (% of total labor force) (modeled ILO estimate) and Unemployment, youth total (% of total labor force ages 15-24) (modeled ILO estimate).

¹¹⁸ Malik, K. (2013). Human development report 2013. The rise of the South: Human progress in a diverse world.

Maestri, et al. (2017)

¹¹⁹ South Asia is the only exception, which doubled their investment rates as a percentage of GDP in the last couple of years.

¹²⁰ While analysts have noted that the poorest countries exhibit a lower level of emigration than more developed nations (de Haas, op cit), research on the relationship between **changes** in income distribution and migration outcomes has not been identified.

¹²¹ <http://www.esiweb.org/pdf/ESI%20-%20The%20refugee%20crisis%20through%20statistics%20-%2030%20Jan%202017.pdf>

Sievers, W., Fassman, H., & Bommers, M. (2014). *Migration from the Middle East and North Africa to Europe: Past Developments, Current Status and Future Potentials*. Amsterdam University Press.

asylum seekers has been caused by the civil war of Syria that began in 2011. This war has so far resulted in 4-5 million refugees that are being hosted mostly in Turkey, Lebanon and to a lesser extent the EU. Syrian nationals accounted for the greatest number of asylum applications in the EU, representing 19% of the total, or 559,260. More than half (362,775 or 29% of all first time applications lodged in 2015) of these Syrian first time applications were registered in 2015 alone.¹²² Besides the direct conflict itself, also the subsequent instability, weak governmental arrangements and economic downturn can create considerable migration flows. The effect of these conflicts on migration flows is complex and may manifest itself at different stages of the conflict: before the conflict, as the internal situation (economic, social and political) deteriorates, during the conflict and in the aftermath of the conflict, as displaced people return home to find the devastating effects of the conflict for example on infrastructure and on the internal economy. Nevertheless, it is reasonable to assume that the evolution of the number of permits for family reasons in the reference period has been influenced by the aforementioned conflicts (in particular the Arab Spring and the conflict in Syria, which is the reason for the substantial increase of permits for family reasons to Syrians in 2016)¹²³.

Eurostat data indicates that the number of asylum applications lodged in the EU has significantly increased in the last few years. The number first-time applicants especially peaked in 2015 when it amounted to over 1.26 million applications; more than double the number of first-time applications lodged in 2014 (562,680). In 2016 the figure decreased by 53,000 (amounting to 1.2 million applications) compared to 2015.¹²⁴ The latest available data for 2017 show a further decrease by 560,000 in the number of applications (amounting to 650,000 applicants) compared to 2016.

However, it is important to acknowledge that refugees (and another beneficiaries of protection) present only a fraction of the stock of all international migrants (around 7-8%). The annual number of those ordered to leave either because they have been found to reside illegally or their asylum applications have been denied is on average around 500,000 per year (493,785 in 2016). The number of positive final decisions on the asylum application is low (only 37,700 or 17% of total first time applications in 2016 received a positive decision). Therefore the stock of EU residents holding refugee or subsidiary protection status is much lower than the applications, and reached its highest level in 2016, when around 850 000 held this status in EU-28. Refugees, therefore, account only for 0.2 % of the total EU-28 population and thus their impact on legal migration numbers is limited.¹²⁵

4.1.4 Summary

As shown by the policy development as well as the impact of the push and pull factors, the general objectives of the legal migration acquis were relevant at the time they were set. The Directives remain relevant today, as they are flexible enough to changing needs in the EU. Policy developments have shown that throughout the analysed period the emphasis put on the objectives differed throughout the period (i.e. in the beginning the emphasis was more on setting common minimum standards, while the newer Directives put more emphasis on harmonised common rules). This has also been driven by the wider context (including push and pull factors such as labour market needs in the EU), but the Directives remain flexible enough to take on different developments in terms of migration.

¹²² EMN Study, Integration of beneficiaries of international/humanitarian protection into the labour market: policies and good practices https://www.udi.no/globalassets/global/european-migration-network_i/studies-reports/final-report-emn-study-on-the-integration-of-beneficiaries-into-the-labour-market.pdf

¹²³ http://ec.europa.eu/eurostat/statistics-explained/index.php/Residence_permits_statistics#First_residence_permits_by_reason

¹²⁴ These figures refer to the EU-28. Eurostat (migr_asyappctza, first time applicant).

http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics

¹²⁵ Source: Eurostat (migr_resfirst; migr_resedu; migr_resfam; migr_resocc; migr_resoth).

In sum, the **specific objectives** of the Directives continue to be relevant, as shown in the summary table below.

Table 13. Relevance of the Directives' specific objectives

Directive	Relevance of the objectives
FRD	The specific objectives, including, preventing exploitation and ensuring decent living and working conditions promoting integration and socio-economic cohesion and protection of family life and unity remain relevant, to support the EU in addressing needs with regard to family reunification, predominantly mitigating the risks of population decline as well as strengthen the sustainability of the EU welfare system and growth of the EU economy through a growing number of integrated third-country nationals and their families. The high share of family reunification permits, confirms the relevance of the Directives' goals. However, restrictive implementation at Member State affect the objective's relevance (<i>a more detailed analysis of the Directives' implementation and impact on relevance is given in section 4.5 addressing EQ1E</i>).
LTR	Similarly to the objectives in the FRD, the specific objectives, including preventing exploitation and ensuring decent living and working conditions, promoting integration and socio-economic cohesion; protection of family life and unity; and enhancing intra-EU mobility remain relevant in addressing the needs of the EU with regard to demographic change (<i>see section 4.1.3.2 for a detailed overview of needs in the EU</i>), as well as enhancing the attractiveness of the EU through promoting mobility within the Union (<i>see section 4.3.8 addressing intra-EU mobility</i>) and equal treatment (<i>see section 4.3.7.4 addressing equal treatment</i>).
BCD	The specific objectives of the BCD cover the following: management of economic migration flows, attracting and retaining certain TCN categories, enhancing the knowledge economy in the EU, boosting competitiveness and growth, addressing labour shortages (through admission conditions) preventing exploitation and ensuring decent living and working conditions, protection of family life and unity; as well as enhancing intra-EU mobility . As with the previous Directives, these continue to be relevant when looking at the needs of the EU labour markets to attract and retain highly skilled TCN. However, as the number of permits issued under this Directive was below expectations, a new proposal aims to offset some of the shortcomings identified in the implementation of the Directive (2016/0176) ¹²⁶ (<i>further details on the implementation of the Directive as well as its effectiveness are given in the following sections on the relevance of the implementation at Member State level in section 4.4 and on the effectiveness of the Directive specific objectives in section 6.1.2</i>).
SPD	The specific objectives of the SPD focussing on management of economic migration flows; preventing exploitation and ensuring decent living and working conditions as well as improving monitoring and control of overstaying and other irregularities , remain relevant as they aim to reduce the 'rights gap' between TCN workers and nationals of Member States. By creating a (more) level playing field in terms of wages and working conditions for all workers (in the relevant categories covered by the Directive), regardless of nationality, the equal treatment provisions are relevant as they aim to have positive results for both third-country nationals that obtain a single permit and for EU citizens. The equality provisions should make TCN workers feel more valued and reduce the possibilities for their exploitation, while it should reduce the incidence of unfair competition between EU citizens and third-country workers. The approximation of the rights enjoyed by third-country nationals and EU citizens would also help to promote economic and social cohesion in the Member States (<i>see section 4.3.7.4 addressing equal</i>

¹²⁶ Proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment (2016/0176). The new EU Blue Card proposal is currently under negotiation. Further information are available at: <http://eur-lex.europa.eu/legal-content/EN/HIS/?uri=COM%3A2016%3A378%3AFIN>

	<i>treatment</i>).
SWD	The specific objectives addressed by the SWD include management of economic migration flows; addressing labour shortages (through admission conditions); preventing exploitation and ensuring decent living and working conditions ; as well as improving monitoring and control of overstaying and other irregularities . The goals remain relevant as they intend to address labour shortages in lower-skilled professions across Member States, and at the same time reducing the exploitation of the seasonal workers and facilitating the re-entry of bona fide seasonal workers (see <i>section 4.1.3.2 and section 6.1.2.6 on preventing exploitation</i>).
ICT	The specific objectives covered by the ICT are the following: attracting and retaining certain TCN categories; enhancing the knowledge economy in the EU; boosting competitiveness and growth; addressing labour shortages (through admission conditions); preventing exploitation and ensuring decent living and working conditions; protection of family life and unity ; and enhancing intra-EU mobility . Similarly to the objectives of the BCD, these continue to be relevant to address the EU's needs to attract highly skilled TCN in specific sectors. The temporary transfer of personnel within multinational companies who share their know-how was seen as beneficial to enhance productivity and stimulate innovation see <i>section 4.1.3.2 and section 6.1.2</i>).
S&RD (recast), SD, RD	The specific objectives of the recast S&RD (replacing the SD and RD), include the following: attracting and retaining certain TCN categories, enhancing the knowledge economy in the EU; boosting competitiveness and growth; preventing exploitation and ensuring decent living and working conditions; mutual enrichment and better familiarity among cultures; protection of family life and unity; enhancing intra-EU mobility ; and improving monitoring and control of overstaying and other irregularities . These continue to be relevant with regard to needs across the EU to foster innovation and thus make the EU more attractive for students and researchers alike, considering that they represent a source of highly skilled human capital in the global competition for talent (see <i>section 4.1.3.2</i>).

The continuing relevance has also been confirmed in stakeholder consultations, albeit with some differences between stakeholder groups. For example, Member States regard the Directives as relevant, and at the same time they emphasise the need to keep the flexibility in the implementation at national level.

For third country nationals consulted via the open public consultation the most relevant Directives are those **addressing workers and students**. Stakeholders did not mention family reunification, although this is clearly relevant for third-country nationals too, which suggest that stakeholder responses must be taken with caution, as they only reflect the views of the sample which responded to the OPC. However, the **current conditions** for how to enter, live and work in EU countries are an **obstacle** for them when entering the EU. National authorities responsible for education confirmed the importance of attracting students in the EU and emphasised that the **2016/801 Directive** is relevant for the needs of Member States. This was confirmed by ETUCE who additionally emphasised the need for ensuring that foreign professional qualifications (skills, experience, etc.) are assessed and recognised.

Representatives of social partners and EGEM experts confirmed the **importance of non-EU workers on different skills levels** and the need of the legislation to focus more on these categories, as opposed to the current focus on highly skilled non-EU workers.

Other stakeholders questioned the relevance of the sectoral approach in terms of labour migration, and confirmed the importance of non-EU workers on different skills levels and the need of the legislation to focus more on these categories, as opposed to the current focus on highly skilled non-EU workers (see also section 4.2 below).

Furthermore, some stakeholders called for a restrictive migration policy that prioritises the needs of EU nationals over those of Third-country nationals, others emphasised the need to protect certain third country nationals and avoid labour exploitation, which corresponds with the specific objectives of the Directives. However, limitations and gaps remain that will be addressed in the subsequent sections.

4.2 EQ1B. To what extent does the scope of the legislation match current needs in terms of the categories of TCN migrants initially intended to be covered by the legislation?

This section addresses the scope of the Directives in terms of categories covered and the impact of the exclusion of some categories. In order to provide a detailed answer to evaluation question EQ1B the sections below will seek answers to the following research questions:

- To what extent does the scope of the legislation match current needs in terms of the categories of TCN migrants initially intended to be covered by the legislation?
- Are certain relevant categories of third-country migrants (in terms of migration flows, labour market needs, etc.) not covered by the legislation?
- What is the impact of such exclusion?

The table below gives an overview of the main sources of information utilised and the key conclusions of EQ1B.

Research Questions	Sources of information	Key conclusions
To what extent does the scope of the legislation match current needs in terms of the categories of TCN migrants initially intended to be covered by the legislation?	1Bi Contextual analysis: overview of the evolution of the EU legal migration acquis 1Bii Contextual analysis: overview and analysis of legal migration statistics. 1Biii Contextual analysis: drivers for legal migration: past developments and future outlook, 1Ci Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives	Overall, the Directives cover a wide group of Third-country nationals, thus overall meeting the needs in terms of categories to be covered. Some Third-country nationals fall within the scope of more Directives, compared to other groups (highly-skilled Third-country nationals (including researchers) and family members). The share of these TCN groups compared to the total number of migrants differs. While the share of family migrants remains high, those of highly-skilled is low. Nevertheless, attracting highly-skilled Third-country nationals remains relevant to meet the needs in the EU. However, there might be a lack of successful application of the Directives, (see Section 5 on effectiveness for more detail).
Are there relevant categories of third-country migrants that are not covered by the legislation?	Contextual analysis : Intervention logic: Directive specific paper 2A Evidence base for practical implementation of	Relevant categories not covered, include: certain family members, the large group of low and medium-skilled workers (except for SWD) and self-employed, including (innovative) entrepreneurs. Those not covered could represent a substantial percentage of the total EU migrant

Research Questions	Sources of information	Key conclusions
To what extent is the impact of such exclusions significant in economic, social and political terms, and in terms of fundamental rights?	<p>the legal migration Directives: Synthesis report</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC Summary Report</p>	<p>population.</p> <p>The effects of excluding certain categories from the Directives' scope, might include the following:</p> <p>In relation to economic migration, currently excluded categories (low and medium skilled workers other than seasonal workers, transport workers, and international service providers) could potentially support the EU in addressing existing and future skill shortages and contribute to Directive specific objectives such as management of economic migration flows, attracting and retaining certain TCN categories, but also preventing exploitation. Furthermore, excluding self-employed and investors might allow the EU to address the objective relating to boosting competitiveness, growth and investment.</p> <p>In relation to excluded family members, the lack of any EU legal instrument and uncoordinated national initiatives may cause unjustified differences in treatment and/or reverse discrimination.</p>

The sections below first give an overview of the categories covered, their share in the total legal migration, followed by a description of categories not covered and potential impacts thereof.

4.2.1 To what extent does the scope of the legislation match current needs in terms of the categories of TCN migrants initially intended to be covered by the legislation?

4.2.1.1 Key points

Overall, the scope of the Directives matches the current needs in terms of the categories initially intended to be covered by the legislation. They address a wide group of third-country nationals. However, some third-country nationals fall within the scope of more Directives, compared to other groups:

- Highly skilled third-country nationals (including researchers) i) can apply for more than one status (making it easier for these third-country nationals to enter and reside in the EU) and they seem to enjoy better conditions compared to other third-country nationals in terms of ii) access to long term residency and iii) family reunification. Indeed the EU legal migration acquis overall favours the category of highly skilled third-country nationals.
- Family members of third-country nationals i) it is easier for their family members to enter and reside in the EU), and they enjoy ii) facilitated conditions to access the labour market as well as iii) long term residency. Hence, the acquis seems to favour those categories as well.

- The SPD in principle applies also to the BCD and, as concerns the rights granted, to those allowed to work under the FRD, SD, RD and the S&RD. These relationships are however not made explicit in the BCD and may give rise to confusion.

The share of these TCN groups compared to the total number of migrants differs. While the share of family migrants remains high, those of highly-skilled is low. Nevertheless, attracting highly-skilled third-country nationals remains relevant to meet the needs in the EU.

In addition, there are also some 'gaps' in the Directives concerning the categories of third-country nationals covered, for example:

- 'Inactive' family members falling under the FRD are not granted the right to equal treatment under the SPD.
- The SWD does not apply to seasonal workers who are already in the EU.
- The SPD allows Member States to not apply the single application procedure to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months and those who work on the basis of a visa.

In addition, several categories of third-country nationals are not to be fully covered by the current legal migration Directives, including for example low and medium-skilled workers who are not seasonal workers (as regards admission conditions), entrepreneurs / self-employed, service providers, third-country nationals benefiting from national forms of protection and those who cannot be returned, family members of non-mobile EU citizens, post-secondary students, trainees who are not studying or who are not in the possession of a university degree.

A summary of categories explicitly excluded according to the scope of the Directives is provided in the table below. Most commonly a category is excluded, due to it being covered by other EU legislation, but in some cases this is not so.

Table 14. Categories explicitly excluded according to the scope of the Directives

Category	SPD	FRD	LTR	BCD	SWD	ICT	SRD
Family members of citizens of the Union exercising free movement	EX	EX	EX	EX	EX	EX	EX
Equivalent to family members of citizens of the Union exercising free movement	EX				EX	EX	EX
Posted workers	EX			EX		EX	
Intra-corporate transferees	EX					IN	EX
Blue Card holders							EX
Certain trade and investment related reasons				EX			
Seasonal workers	EX		EX	EX	IN		IN
Au pairs	EX		EX				IO
Other temporary grounds, like cross-border provision of services			EX				
Temporary protection	EX	EX	EX	EX			
Applicants for refugee status/international protection	EX	EX	EX				EX

Category	SPD	FRD	LTR	BCD	SWD	ICT	SRD
Beneficiaries of international protection	EX			EX			EX
stateless persons as refugees or as persons who otherwise need international protection and the content of the protection	EX						
Beneficiaries of protection in accordance with national law, international obligations or the practice of a Member State.	EX	EX	EX	EX			EX
Long-term residents (2003/109/EC)	EX			EX			EX
Those whose removal has been suspended on the basis of fact or law;	EX			EX			EX
Self-employed	EX					EX	
Seafarers for employment or work in any capacity on board of a ship registered in or sailing under the flag of a Member State	EX						
Those residing for study or vocational training						EX	
Researchers				EX		EX	
Diplomatic status			EX				

Source: ICF Key: EX: explicitly excluded. For the purpose of this analysis, only the new S&RD is included.

Finally, some of the Directives may co-exist with parallel national schemes, as allowed by the LTR and the BCD. While such parallel schemes are not allowed in respect to the FRD, SWD, ICT and S&RD, Member States may (and de facto have) national rules covering situations which are outside the personal and material scope of the Directives.

4.2.1.2 Overview of categories covered by the Directives

Overall, the legal migration Directives cover a wide range of Third-country nationals. Those Third-country nationals covered by most of the Directives include highly skilled Third-country nationals (including researchers) as well as family members of TCN. Table 15 below gives an overview of the categories covered by the Directives, which are described in more detail below.

Table 15. TCN categories covered by the legal migration Directives

TCN Categories and Directives	SPD	LTR	FRD	S&RD, SD, RD	BCD	SWD	ICT
Highly skilled TCN	X	X	X	X	X		X
Family members of Third-country nationals	X (if allowed to work)	X	X	X (only if researchers)	X		X
Students	X (if allowed)			X			

TCN Categories and Directives	SPD	LTR	FRD	S&RD, SD, RD	BCD	SWD	ICT
	to work)						
Researchers	X (if allowed to work)	X		X		X	
Pupils (taking part in an exchange)				X			
Unremunerated trainees				X			
Volunteers				X			
Remunerated trainees							X
Third-country nationals entering and residing in the EU for the purposes of work (other than highly skilled)	X	X	X (under certain conditions)				
Third-country nationals admitted for other purposes, but who are allowed to work (other than highly skilled)	X	X		X (only if students)			
Seasonal workers						X	
Self-employed (with restrictions)		X	X	X			

In relation to the groups of third-country nationals covered a differentiation is needed between the three Directives covering broad categories of third-country nationals (SPD, FRD, LTR) and the remaining Directives (S&RD, SD, RD, BCD, SWD, ICT) focussing on specific groups of third-country nationals (students and researchers, highly skilled workers, intra-corporate transferees, seasonal workers).

SPD¹²⁷

The Directive applies to three main categories of third-country nationals:

- Third-country nationals who apply to reside in a Member State to work,
- Third-country nationals who have already been admitted to a Member State for the purpose of work,
- Third-country nationals who have already been admitted to a Member State for purposes other than work and who are allowed to work (for e.g. family members of migrant workers, students¹²⁸ and researchers).¹²⁹

The main added-value of the SPD is twofold: introducing a single application procedure and a single permit, and extending equal treatment rights also to those

¹²⁷ For an overview figure of the number of single permits issued, please see Section 3.3.6.2.

¹²⁸ Art.3(3) includes a may clause enabling Member States to decide whether the SPD shall apply to TCNs who have been either authorised to work in the territory of a Member State for a period not exceeding six months or who have been admitted to a Member State for the purpose of study.

¹²⁹ The SPD covers third-country nationals who are allowed to work. This can also cover national permanent residence, national highly skilled workers schemes and third-country nationals joining static EU citizens.

third-country national admitted on the basis of national rules and some third-country nationals covered by other Directives.

However, the Directive also provides for a long list of categories of third-country nationals that are excluded from its scope. Beneficiaries of international protection, family members of mobile EU citizens and EU long-term residents are excluded from the scope due to the special and enhanced status that they already enjoy based on other EU instruments. Those holding national permanent resident permits, and family members of non-mobile EU citizens are however included, provided they fulfil the condition of being third-country workers. Posted workers and intra-corporate transferees (ICTs) are excluded, as they are not considered to be part of the labour market to which they have been posted. For similar reasons, seasonal workers are excluded due to the temporary nature of their status. These categories are now also covered by other specific Directives, but the Single Permit refers to the broad category of third-country nationals applying for work reasons. Third-country nationals seeking entry and residence on the basis of self-employment are also excluded.

FRD

The scope of the Directive covers the members of the 'nuclear family', i.e. the spouse and the minor, unmarried children of the sponsor or of the spouse. Member States may however extend it to first-degree dependent relatives, adult unmarried children unable to provide for themselves due to their state of health, unmarried partners and registered partners. The Directive does not specify the treatment of same-sex couples, which means that they enjoy rights under the Directive according to their status under the national law of each Member State.

Family reunification has been one of the main reasons for immigration into the EU for the past 20 years. Three possible scenarios of family reunification with third-country nationals can be observed, for which the applicable rules depend on the nationality and the status of the person entitled to family reunification (also referred to as the 'sponsor').

- The first scenario is represented by those 'sponsors' who are non-EU citizens residing legally in an EU country and their third-country national family members, and is regulated by the Family Reunification Directive.¹³⁰
- The second scenario concerns those EU citizens¹³¹ who move to or reside in another Member State than that of their nationality, and their third-country family members who accompany or join them. This situation falls under the Freedom of Movement Directive.¹³² EU citizens who return to their MS after having resided in another MS, must, in accordance with the jurisprudence of the CJEU, be granted equal rights with mobile Union citizens
- The third scenario is not covered by any EU legal instrument as regards admission conditions and thus falls under the Member States' competence. In this case, the persons entitled to family reunification are EU citizens residing in a Member State of which they are nationals, who did not exercise their right to free movement (so-called 'non-mobile' or 'static' EU citizens'), and who wish to reunite with their third-country family members. This third scenario could in theory result in reverse discrimination where EU Member States treat their own nationals who have not exercised their right to freedom of movement, less

¹³⁰ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

¹³¹ The term EU citizens in the context of this factsheet refers to all citizens of the EU Member States and citizens of associated countries (EEA and CH).

¹³² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

favourably than nationals of other Member States or their own nationals who move or have moved between EU Member States, and have returned. Reverse discrimination is possible because EU law and national law on family reunification may provide for different levels of rights for different groups¹³³. When it comes to the question of how many non-mobile EU citizen sponsors actually face reverse discrimination to other groups of sponsors, there are numerous court cases before the Court of Justice of the European Union (CJEU) which give an indication of the scale of the problem.¹³⁴ It is however possible that Member States grant their own nationals additional rights compared to the ones granted by EU law to mobile EU citizens. While family reunification of non-mobile EU citizens falls under national law, family reunification of mobile EU citizens is regulated under EU law. In this last scenario, however, family members of non-mobile EU citizens have the right to work, they are then covered by the SPD, in terms of the format of the permit (Article 7) as well as the right to equal treatment (Chapter 3). Those family members who do not have the right to work (such as children) are, however, excluded from these provisions

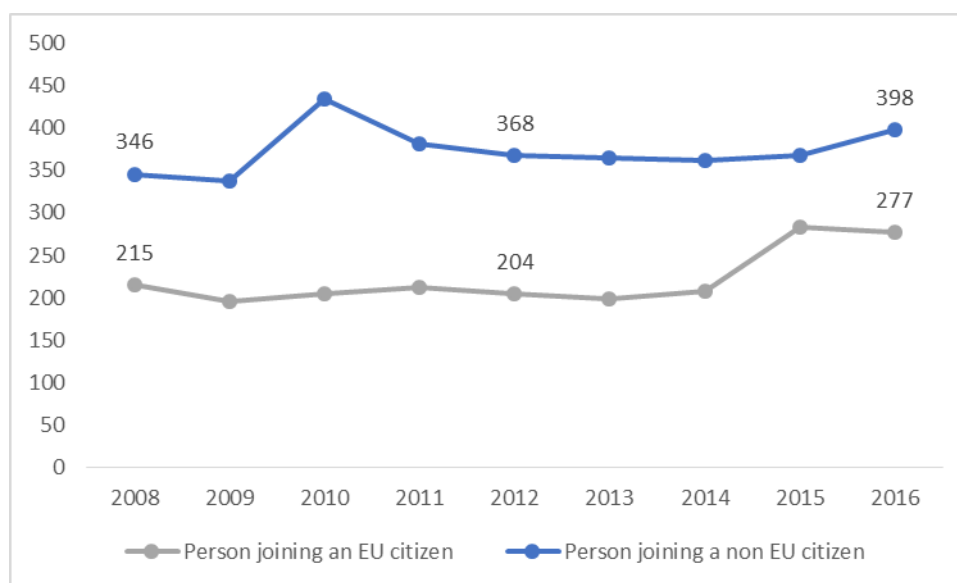
Moreover, there are specific complementary conditions for the family reunification with third-country nationals for highly skilled workers, researchers and intra-corporate transferees laid down in the respective Directives. These conditions are more favourable than the general policy defined under the Family Reunification Directive. For instance, family reunification is not dependent on the sponsor's perspective to obtain a permanent residence permit, or on the fulfilment of specific integration measures (referred to in Art. 7(2) of the FRD). Moreover, the time to process applications is faster, and family members of researchers and highly skilled workers have the right to immediately access the labour market.

Over the examined period there was no significant changes in the number of family permits issued for persons joining their EU and non-EU family members as shown in Figure 10 below.

¹³³ This was the reason to include this category in the initial proposal for the Directive, it was however excluded in negotiations. A significant proportion of complaints received by the Commission related to family reunification relates to family reunification with 'static' EU citizens that falls outside of the scope of both pieces of legislation.

¹³⁴ For example: See, among others, Joined Cases 314-316/81 and 83/82, *Waterkeyn*, [1982] ECR 4337 (goods); Case 298/84, *Iorio*, [1986] ECR 247 (workers); Joined Cases 54 and 91/88 and 14/89, *Niño*, [1990] ECR 3537 (establishment); Case C-97/98, *Jägerskiöld*, [1999] ECR I-7319 (services); Case C-513/03, *Van Hilten-van der Heijden v. Inspecteur van de Belastingdienst/Particulieren/Ondernemingen buitenland te Heerlen*, [2006] ECR I-1957 (capital). See, also, Case C- 200/02, *Zhu and Chen*, [2004] ECR I-9925 (Article 18 EC).

Figure 10. Number of first permits issued for family reasons (thousands), 2008-2016, EU 25



Source: Eurostat (*migr_resfam*)

In the analysed period, the overall number of those holding a permit for family reasons increased from 4.1 million in 2008 to 5.4 million in 2016.

LTR¹³⁵

Third-country nationals are entitled to acquiring the LTR status in a Member State after residing legally and continuously for a period of 5 years within the territory of an EU Member State. The calculation of 5 years of continuous residence allows for absences of up to 6 months at a time (not exceeding 10 months during the 5 year period however, although Member States may exceptionally accept a longer period of absence).

Applicants must prove that they have sufficient resources to live without social assistance as well as proof of sickness insurance. Furthermore, Member States may require the compliance with integration conditions, which are only broadly outlined in the Directive, although there is some clarity from ECJ case law on this concept.

Although the Directive is supposed to apply to all third-country nationals, several groups are excluded from its scope, such as students or persons pursuing vocational training, seasonal workers, diplomats, applicants for refugee status or other forms of protection, and persons who reside on temporary grounds or hold a residence permit that has been formally limited (as they only reside in a Member State for a short time).

S&RD, SD, RD

The three Directives are considered jointly here, as the S&RD (recast) will replace SD and RD, and because they address similar categories of third-country nationals.

The scope of the Directives apply to TCN students (SD, S&RD), researchers (RD, S&RD), (unremunerated) trainees¹³⁶ and volunteers engaged in the EVS (SD, S&RD). Member States may opt to extend the Directive's provisions to pupils, volunteers outside the EVS and au-pairs (S&RD). Third-country nationals who are EU long-term

¹³⁵ See also section 3.3.2.2. in the baseline.

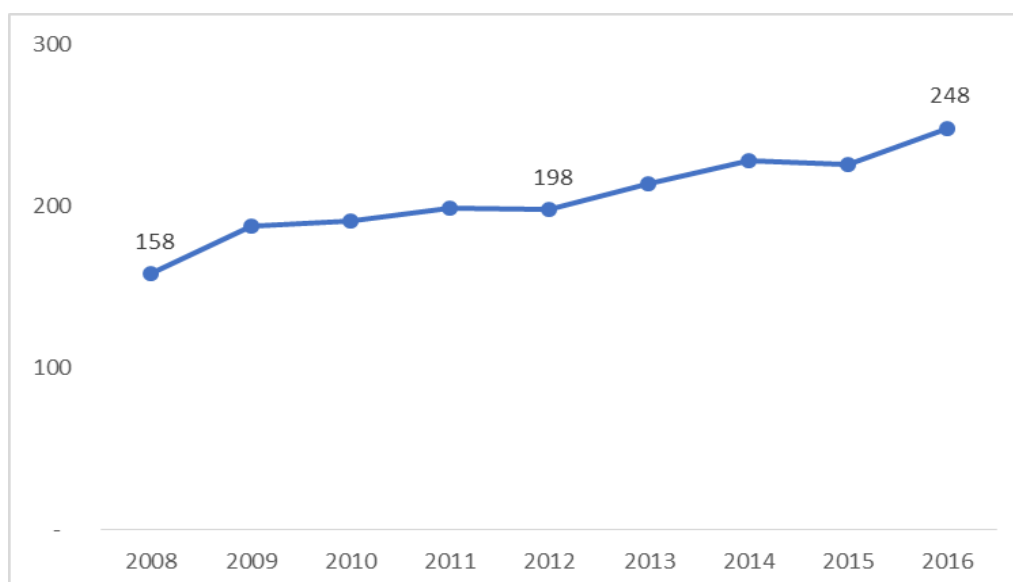
¹³⁶ The S&RD covers all trainees (with the exception of those who enter through ICT), not only unremunerated, whereas the SD covers only unremunerated trainees.

residents, refugees or residing in the EU on a strictly temporary basis are excluded from its scope. In addition, the notion of trainee has also been restricted to third-country nationals who hold a degree of higher education (or are pursuing a course of study that leads to a higher education degree). This restriction is reflecting the interest of the European Union in favouring highly skilled migration.

The S&RD also provides for the right to access the labour market of researchers' family members (Article 26), granting more favourable conditions by waiving restrictions set in the FRD. The new rules provide their family members immediate access to the labour market, including in cases where the researcher moves to another Member State. The EU Member States may set limitations in cases of exceptional circumstances such as particularly high levels of unemployment (Article 26(6)).

Similarly to the number of seasonal workers, there was an increase in the number of students during the examined period. The Figure 11 below depicts the change in numbers over time.

Figure 11. Number of first permits issued for study reasons (thousands), 2008-2016, EU-25



Source: Eurostat (*migr_resedu*)

BCD

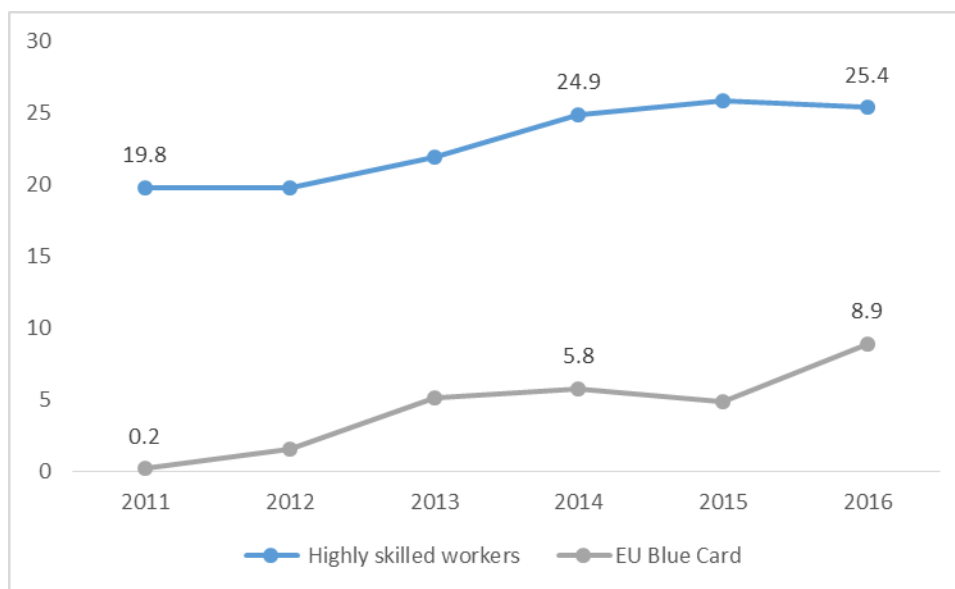
The BCD covers highly skilled TCN. These are TCN who fulfil specific criteria. The prospective Blue Card holder is required to have a valid contract or a binding job offer of at least one year, as well as health insurance. The main requirements for the Blue Card¹³⁷ holders are the professional qualification (educational qualification or, by way of derogation, professional experience) and the salary offered for the position to take up (at least 1.5 times the average gross annual salary in the Member State concerned, or optionally at least 1.2 times the average gross annual salary for professions that suffer from workforce shortages).

¹³⁷ See also section 3.3.3 in the legal baseline.

Family members of Blue Card holders are eligible for family reunification and may apply simultaneously with the sponsor. They shall also have immediate access to the labour market, once in the Member State.

As depicted in the Figure 12 below, the number of Blue Card holders is low especially compared to the overall permits issued to highly skilled workers. Thus, it is less relevant for attracting and retaining highly-skilled third-country nationals.

Figure 12. Number of EU Blue Cards and permits for highly skilled workers issued (thousands), 2011-2016, EU-25



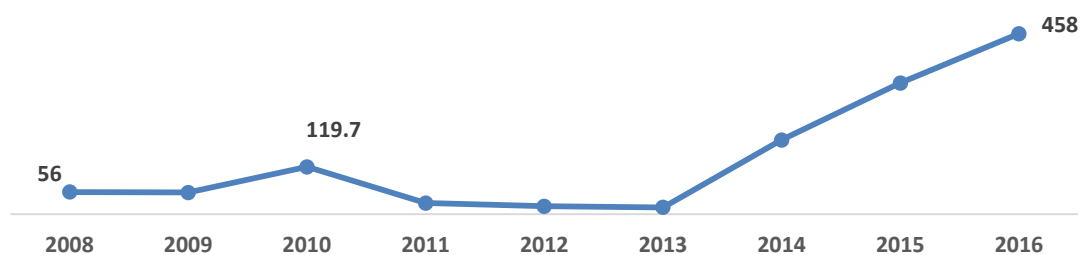
Source: Eurostat (migr_resocc)

SWD

The Directive focuses on seasonal workers by setting out fair and transparent rules for admission and stay and by defining the rights of seasonal workers. The SWD sets out the conditions for admission, some procedural rules and a set of rights for seasonal workers, for stays both within and above 90 days (up to 9 months). As per Article 79(5) of the Lisbon Treaty, Member States remain fully competent on the volume of admission and can set specific quota for seasonal workers.

The period between 2008-2016 was characterized by a sharp increase in the number of first permits issued for seasonal workers after 2013 (see Figure 13 below). This can mainly be explained due to the high number of permits issued by Poland. These permits accounted for 90% of the first permits issued for remunerated activities in Poland. The other EU-25 Member States reporting on these permits only showed marginal numbers in 2016 compared to those of Poland. Yet, first permits for seasonal workers made up 37% of all first permits delivered for remunerated activities in Italy and around 7% in Spain and France in 2016. New statistics on seasonal workers with 2017 as the first reference period are in the preparation phase to be released through the Seasonal Workers data collection under Article 26 of Directive 2014/36/EU. Until now, the reporting on this category of first permits is voluntary.

Figure 13. Number of first permits issued for seasonal workers (thousands), 2008-2016, EU-25



Source: Eurostat (*migr_resocc*)

ICT

The scope of the Directive concerns temporary assignments of highly skilled TCN, to subsidiaries in the EU, thus allowing multinational companies to efficiently utilise their human capital. Furthermore, it aims at facilitating transfers by setting up harmonised conditions for admission, residence and work, including fast application procedures (maximum 90 days) and by creating a unique intra-EU mobility scheme for workers in the same undertaking or group of undertakings.

The ICT Directive sets more favourable conditions for family members (Article 19) than those provided under the Family Reunification Directive, whereby the decision to grant family reunification shall not depend on the perspective of the sponsor to obtain long-term residence or on the family member's compliance with integration measures. The residence permit of family members must be issued at the same time as that of the ICT, or within 90 days after the application is submitted and family members have immediate access to the labour market, once in the Member State.

The Directive does not apply to researchers, posted workers, self-employed workers, students and persons assigned by any undertaking specialised in providing labour (e.g. employment agencies) (Article 2). Moreover, Member States remain fully competent on the volume of admission and can set specific quota for ICTs.

In order to assess to what extent the scope of the legislation matches current needs, a statistical overview is provided below on the share of those categories covered compared to the total number of migrants in EU Member States.

4.2.1.3 The share of third-country nationals covered under the legal migration Directives

On 1 January 2017, 21.6 million TCNs¹³⁸ were residing in EU-28 Member States, and nearly 18.7 million in EU-25¹³⁹. They represented 4.2% of the EU-28 population (and 4.3% of the EU-25).

While the migration flows of TCN into and intra the EU-28 have mostly been stable over the period 1999-2015, there has been a strong increase in the number of asylum applications from 2013. This number peaked in 2015 as a result from the Syrian Civil War and general political instability in the Middle East, and to a lesser extent in Africa. In 2016 the majority of third-country nationals in the EU-25 were holding a permit for family reasons (39% or 5.4 million)¹⁴⁰ followed by 'other' reasons¹⁴¹ (35% or 6.2

¹³⁸ Eurostat defines a third country national as any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty, including stateless persons (see Article 2.1(i) of the Council Regulation (EC) no 862/2007).

¹³⁹ All EU-28 Member States less Denmark, Ireland, and United Kingdom (EU-3).

¹⁴⁰ These include TCNs joining another TCNs as well as those joining an EU citizen. Furthermore, they include family reunification of refugees, which are outside of the scope of this study.

million) , remunerated activities reasons (16% or 2.5 million), refugee status (4.8% or 843 thousand) whereas only 3% (or 615 thousand) were holding a permit for education reasons.

Permits for **family** reasons rose continuously -- from 27% of all permits in 2008 to 39% in 2016. However, their share in the overall population remains low. Those holding a permit for family reasons made up only 1% of the total population in 2008 and around 1.6% in 2016. When looking at the working age population, the percentages remain similar (from 1.5% of the working age population in 2008 to 1.9% in 2016. Third country nationals may be issued residence permits or residence cards when they join or accompany either another third country national or an EU citizen. Generally, the movement of third-country nationals is regulated by the FRD. The Directive was to be transposed by Member States by 3 October 2005. The scope of the directive is limited only to third country nationals joining other third country nationals. Third-country nationals who join EU citizens, are covered by more the favourable rules of Directive 2004/38. In recent years the rights of family members to join or accompany family members have also been covered in the BCD, the ICT and the S&RD¹⁴².

The share of permits issued for **remuneration activities reasons** declined slightly from 20% in 2008 to 15.7% in 2016. Across the EU-25 third-country nationals with permits for remunerated activities reasons made up less than 1% of the total population and around 1% of the working age population. This has been fairly constant over the analysed period.

The trends in first permits for remunerated reasons are influenced by different factors than the other categories of permits. While education and family permits have remained fairly stable over the past decade the 'remunerated' are reflective of the labour market needs of the EU economies. Therefore they are largely related to changes in economic growth and unemployment.

Researchers – the available data since 2008 does not allow to make any analysis concerning the effect of the 2005 RD, but it does show that gradually more countries started reporting permits under this category. While in 2008, eight MS still didn't report any figures for the number of permits issued, by 2016, all 25 MS, with the exception of Malta were reporting data. The reported number of these permits has gradually grown from 4,220 in 2008 to 9,672 in 2016. In reality, the figures are comparable only after 2013, when almost all MS were reporting on these permits – the number of permits for EU-25 has been flat at around 9000 permits per year (see Table 15 in section 4.2.6.2 in the legal baseline).

Seasonal worker permits: seasonal workers as a category of permits existed in 8 MS (EL, ES, FR, IT, CY, HU, SI, SE) already in 2008, and these countries reported numbers under the category. In 2014 the Seasonal Workers Directive was adopted and data from the implementing countries is still scarce and scattered. By 2016 little has changed in terms of reporting, as the first official reporting date is 2018 and the MS transposing the Directive will have to report their 2017 statistics. Aside from this, Greece stopped reporting data, while Poland is the only country which following the adoption of the Seasonal Workers Directive started to report in 2014 such numbers. In 2016, Poland issued 446,779 out of 458,191, or 97.5% of all reported permits (see table in section 3.3.9.2 in the baseline).

Blue card permits are available only from 2011 onwards. They grew from 156 in 2011, to 5,825 in 2014, to 8,988 in 2016. In 2016, 69.5% of all Blue Card permits,

¹⁴¹ Other reasons: humanitarian reasons, residence only, unaccompanied minors and victims of trafficking in human beings.

¹⁴² Of these, only data on family members of Blue Card holders is available, while others are supposed to be available after 2017.

were reported by Germany (6,189). The 12 Member States that had national “highly skilled workers” schemes, and were already reporting in 2008 on the number of permits issued under such schemes, continued to issue them, and none of them seemed to increase the number of Blue Cards issued. With the exception of Germany, all other national Member States continued to higher highly skilled workers under their national schemes, not under the BCD. In 2016, these 12 MS (CZ, EL, ES, FR, IT, CY, LV, NL, AU, PL, FI, SE) issued 24,645 high skilled workers permits compared to only 2011 Blue Card permits.

The share of permits held for **education reasons remained** constant at around 3% of all valid permits in the period 2008-2016. Across the EU-25, TCN with permits for education reasons made up only 0.1% of the total population and around 0.2% of the working age population. This has been fairly constant over the analysed period.

The third-country nationals’ share of **family migrants** remains high, while the overall share of highly-skilled compared to the total number of migrants is rather low. However, as the description in the previous section 4.1.3 shows, there is a need to attract highly-skilled third-country nationals to meet the Directives’ objectives. Hence, the scope of the Directives remains relevant. However, there might be a lack of successful application of the Directives, which will be addressed in Section 5 focussing on effectiveness. Nevertheless, there are several gaps in coverage, which are addressed below.

4.2.2 Are there relevant categories of third-country migrants that are not covered by the legislation?

4.2.2.1 Key points

Overall, the Directives focussing on labour migration do not contain specific admission conditions for certain categories, thus there is a gap for certain categories such as low- and medium skilled (except for SWD), and self-employed, including (innovative) entrepreneurs.

While some of these categories might fall under the coverage of the SPD, not all enjoy equal treatment as per SPD. For example, low skilled workers do enjoy equal treatment under the SPD, but they do not benefit from EU harmonised admission conditions, procedural guarantees, residence rights, etc. Also the SPD does not apply to seafarers on seagoing ships registered on an EU Member State flag. Further, the right to access to self-employment as a side-activity for specific categories of Third-country nationals is regulated by four EU legal migration Directives (LTR, FRD, S&RD, SD), which is however subject to possible restrictions at discretion of the EU Member States. Self-employment per se is not covered by the Directives.

With regard to gaps in family reunification, third-country nationals who are family members of non-mobile EU citizens are neither covered by the FRD nor Free Movement, as regards admission and residence conditions, but those allowed to work are covered by the SPD. They might constitute a significant share of third-country nationals entering the EU for family reason, but harmonised data is available at EU level to ascertain this share.

4.2.2.2 Categories not fully covered as part of economic migration

Medium- and low-skilled workers, other than seasonal workers (partially covered)

Medium- and low-skilled workers¹⁴³ from third-countries, other than seasonal workers, encompass a broad group that can potentially support the overarching objectives of

¹⁴³ Definitions of medium- and low-skilled workers focus on their qualifications. For example, the International Organization for Migration (IOM) defines low and medium skilled TCNs based on their educational attainment. Thereby, the low skilled are defined as those with pre-primary and lower-secondary

EU legal migration acquis especially in **addressing existing and future skill shortages** that have become a major challenge affecting European competitiveness¹⁴⁴ as well as **manage economic migrant flows**.

Changes in the demographic structure, technological advancements and climate change will significantly impact future employment¹⁴⁵. As emphasised in a recent EU Communication, the EU needs a more proactive labour migration policy to attract third-country nationals with the skills and talents required to address demographic challenges and skills shortages.¹⁴⁶ According to an EMN study on current labour shortages and the need for labour migration from third countries¹⁴⁷, the EU experienced significant labour shortages in the period 2011-2014. Most labour shortages were experienced in medium-skilled and low-skilled occupations, such as agriculture and fisheries, and personal care.

Member States who have established shortage occupation lists, tend to have a more favourable regulatory framework, which allows labour migrants to apply to work in professions listed as a shortage occupation. This may include exemptions from labour market tests (AT, BE, ES, IE, FR, HR, PL) and quota regimes (IT, EE, HR, PT) as well as reduced minimum income thresholds (EE)¹⁴⁸.

Whilst the SPD covers the application procedure and the right to equal treatment for most categories of third-country workers (excluding some groups covered by other EU legislation, as well as workers posted from third countries), it does not cover admission and residence conditions for those medium- and low-skilled third-country nationals. Even though medium- and low-skilled workers have certain sets of rights (equal treatment) and procedural guarantees as per the SPD, their rights are not established under a specific EU admission scheme (e.g. EU Blue Card for the highly skilled).

The consequences of a lack of harmonised EU admission and residence rules for attracting low and medium skilled third-country nationals are difficult to assess in light of the different needs Member States face regarding these groups of third-country nationals. The significance of this gap in the future stems from the fact that projected labour market trends suggest the demand for low- and medium-skilled workers will increase, with an expansion in the number of jobs particularly expected in the retail and distribution industry.¹⁴⁹

Self-employed workers and entrepreneurs

Self-employed workers are generally understood as persons starting a business without being in a contractual relationship with an employer and carrying out an economic activity in self-employed capacity.¹⁵⁰

education (ISCED 0-2) and the medium-skilled as those with upper and post-secondary education (ISCED 3-4).¹⁴³ With regard to skills levels, the International Labour Organisation (ILO) ISCO-08 classification is also used, which differentiates between 10 major groups – highly-skilled from 1 to 3, medium-skilled from 4 to 8, and with low-skilled as 9.

¹⁴⁴ Cedefop 2016, 'Future skill needs in Europe: critical labour force trends'.

¹⁴⁵ Cedefop 2016, 'Future skill needs in Europe: critical labour force trends'.

¹⁴⁶ Communication from the European Commission, Brussels, "Towards a Reform of the Common European Asylum System and Enhancing Legal avenues to Europe" 6.4.2016 COM(2016) 197 final; See also the factsheet on attractiveness of the EU

¹⁴⁷ EMN Synthesis Report 2015, 'Determining labour shortages and the need for labour migration from third countries in the EU'

¹⁴⁸ According to the EMN (2015) study on determining labour shortages, 21 MS currently produce shortage occupation lists.

¹⁴⁹ Cedefop (2014), 'Skills Mismatch: more than meets the eye'.

¹⁵⁰ The Eurostat definition of 'self-employed persons' is persons who are the sole or joint owner of an unincorporated enterprise (one that has not been incorporated i.e. formed into a legal corporation) in which s/he works, unless they are also in paid employment which is their main activity (in that case, they are considered to be employees).

The EU has recognised the potential of the contribution that TCN self-employed workers¹⁵¹, in particular entrepreneurs admitted for business purposes into the EU for boosting economic growth and development of knowledge economy.¹⁵²

Regulatory and support frameworks as well as a better climate for entrepreneurship have been implemented to entice qualified migrant entrepreneurs from other regions of the world to come to Europe. However, the EU lags behind other countries like the US, Canada or East Asia.¹⁵³ European migrant businesses are mainly micro-businesses with no or very few employees, and comparatively small in terms of turnover and profit.

While the problems faced by self-employed third-country nationals seeking to enter and stay in Europe may differ, depending on whether they are existing business owners or entrepreneurs with start-up plans, the following issues have been identified as causing particular difficulties for these groups, e.g. the complexity of the application procedure, confusion by the range of different permits and visas in place, and limited access to the European single market for their products.

In order to analyse the scale of the identified problems, data on two general aspects is required, particularly:

- Data on the number of applications by third-country nationals for entrance/residence permits for self-employed activity, including admissions;
- Number and share of existing migrant self-employed/businesses compared with EU nationals.

However, comprehensive statistical information on third-country nationals applying and admitted for the purpose of self-employment is scarce and not fully comparable across countries due to the different data sources, quotas, and the existing different sub-categories, or since some self-employed categories have been introduced too recently (along with the corresponding scheme or programme) to be able to provide such comprehensive information.¹⁵⁴ Include the stats summarised in the gap fiche (some of them that are most relevant)

At national level Member States provide solution for third-country nationals seeking self-employment. In the 2015 EMN study three types of schemes for business owners can be distinguished: (i) special visas/residence permits for 'innovative entrepreneurs' (AT, EE, ES, FR, IT, HU, LT, NL, SK, UK)¹⁵⁵; (ii) special start-up schemes for graduates (ES, FR, IE, UK) and (iii) wider category of entrepreneur/self-employed person (BE, CY, CZ, DE, EE, ES, FI, FR, IE, IT, LU, LV, PL, PT, SE, SI)¹⁵⁶. However, there are currently complex admission and stay criteria for migrant business people at Member

¹⁵¹ Self-employed workers are generally understood as persons starting a business without being in a contractual relationship with an employer and carrying out an economic activity in self-employed capacity

¹⁵² See European Commission (2012b), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Entrepreneurship Action Plan 2020 - Reigniting the entrepreneurial spirit in Europe', COM(2012) 795 final; European Commission's Network (2008), 'Supporting Entrepreneurial Diversity in Europe - Ethnic Minority Entrepreneurship/ Migrant Entrepreneurship: Conclusions and Recommendations of the European Commission's Network (ECN) "Ethnic Minority Businesses"', ENTR.E.1./TJ D(2008); European Council (2014), 'Conclusions of the European Council of 26 and 27 June 2014', EUCO 79/14; and European Commission (2016b), Minutes from the Conference on Migrant Entrepreneurs of 23 February 2016.

¹⁵³ Gropas, R. (2013), 'Migration and Innovation: Why is Europe Failing to Attract the Best and Brightest?', March 2013. Available at: <http://globalgovernanceprogramme.eu/migration-and-innovation-why-is-europe-failing-to-attract-the-best-and-brightest/>

¹⁵⁴ European Migration Network (2015); European Commission's Network (2008); and Organisation for Economic Co-operation and Development (OECD) (2010), 'Main Findings of the Conference on Entrepreneurship and Employment Creation of Immigrants in OECD Countries, 9-10 June 2010'.

¹⁵⁵ Slovakia aims to introduce schemes as well, however it is not operational yet.

¹⁵⁶ European Migration Network (2015), Study on Admitting third country nationals for business purposes, pp. 15-16

State level. Simplifying these could contribute to bringing greater competition and flexibility to EU markets.

At EU level, right to access to self-employment activities for specific categories of third-country nationals is regulated by four EU legal migration Directives (LTR, FRD, S&RD, SD). This is subject to possible restrictions at discretion of the EU Member States. The LTR Directive grants equal treatment to third-country nationals with nationals as regards access to among others self-employed activity. The FRD allows sponsors' family members access to self-employed activity. The SD and S&RD allow students outside their study time to exercise self-economic activity. As for the latter Directive, after the completion of their studies or research, students and researchers have the possibility to stay in the Member States for at least nine months in order to seek employment or set up a business.

In relation to self-employed third-country nationals the less favourable business conditions currently in place may not allow the full economic potential of businesses to grow and hinders their success, productivity and longevity. This could have a negative impact on both national and EU level by preventing migrant entrepreneurs from contributing to economic growth and job-creation and diversifying the supply of goods and services.

In addition **the Blue Card recast proposal allows** holders to exercise a self-employed activity in parallel with their Blue Card occupation as a possible gradual path to entrepreneurship. This entitlement does not change the fact that the admission conditions for the EU Blue Card have to be continuously fulfilled and, therefore, the EU Blue Card holder must remain in highly skilled employed activity.

Investors

Currently, there is no harmonised EU legislation which regulates the admission of investors in the EU. The EU's investment policy is centred on providing investors with market access, with legal certainty and with "a stable, predictable, fair and properly regulated environment in which to conduct their business".¹⁵⁷

So far in 18 Member States¹⁵⁸ have been specific admission provisions for investors identified where investment of a minimum threshold is most commonly a condition for obtaining the permit. The importance of attracting investors has been emphasised in EU policy documents. In its trade policy, the European Commission (EC) points out that attracting investors to the EU brings many benefits, including job creation, transfer of skills and technology as well as boosting trade.¹⁵⁹

Statistics on immigrant investors are provided by Member States. However, comprehensive statistical information on third-country nationals applying and admitted for investment is scarce and not fully comparable across countries due to the different data sources. Furthermore, Eurostat does not publish statistics on migrant investors; hence, EU-wide data on this group of migrants is missing. The different national approaches result in uneven playing field for investors. Schemes vary significantly in terms of their design (e.g. duration, admission of family members and other rights) as well as the conditions applied, including varying thresholds of minimum investment required.

International service providers not linked to commercial presence (contractual service suppliers and independent professionals), excluding ICTs that are covered by Directive 2014/66/EU

Under the ICT Directive, EU legislation covers TCN professionals (managers, specialists) transferred to the EU for work by a business entity with a commercial

¹⁵⁷ http://ec.europa.eu/trade/policy/accessing-markets/investment/index_en.htm

¹⁵⁸ BG, CY, DE, EE, FR, HR, HU, LV, LT, LU, MT, NL, ES, PT, RO, IE, UK

¹⁵⁹ http://ec.europa.eu/trade/policy/accessing-markets/investment/index_en.htm

presence in the EU and graduate Trainees (GT) (persons with a university degree who are being transferred for career development purposes or to obtain training in business techniques or methods; designated "employee trainees in the ICT Directive).

Outside of ICTs, other types of TCN professionals not seeking access to employment as employees (either on a temporary or permanent basis), residence or citizenship in the EU are however not covered by EU legislation.

Measuring the scale of this gap is rather difficult as realistic estimates of Mode 4¹⁶⁰ transactions are first of all virtually non-existent. Statistical parameters that are used to approximate the volume of Mode 4 service supply include those of the Balance of Payment (BOP), foreign affiliates' statistics¹⁶¹ (FATS) as well as migration and tourism statistical frameworks.

In 2015, around 14% of all international tourists reported travelling for business and professional purposes (approximately 167 million people)¹⁶².

There are already several coexisting schemes that regulate the immigration of TCN who enter the EU for business purposes: e.g. from intra-corporate transferees to investors. Yet, there are no comprehensive EU schemes regulating the entry into the EU of Third-country nationals for business purposes, including third-country nationals wishing to perform service transactions in the EU. As far as Member States in the Schengen Area are concerned, short-term entry visas usually regulate their entry¹⁶³:

- Visa type C: valid for maximum 90 days in the course of a period of 180 days
- Visa type D: valid for longer than 90 days with one or more entries in the Schengen Area and free circulation in Schengen countries other than the issuing one for a period of not more than 90 days per half-year and only if the visa is valid.

Issues arise as regards the suitability of the existing visa regimes for international service providers, in particular as regards the suitability of the length and costs of the procedures attached to the granting of such visas

The absence of EU wide schemes also means that there is no intra-EU mobility for these types of TCN, and therefore there might be little possibility for the European Single Market to take full advantage of the business opportunities created by non-EU investors or service providers. In addition, with regard to international service providers, most Member States do not have specific legislation or programmes to facilitate their entry.

Transport workers

The situation of TCN transport workers may be precarious, in particular those that never establish residence in any Member State. Problems can stem from identifying if the person is "residing/staying", and if so in which Member State the person is "residing/staying" and thereby which Member State is responsible for authorising work, and issuing a work permit or work visa and enforcing equal treatment requirements. In some situations, the third-country national who has entered into and thereafter stayed the Schengen area, may overstay if the period of work exceeds the 90 permitted days in any 180 days. From the migration perspective, these workers

¹⁶⁰ Mode 4 relates to the temporary movement of natural persons (TMNP) for service transactions. For further information see Annex 1Ci Contextual analysis: Intervention logics Internal Coherence: of the EU legal migration acquis and 1Cii Contextual analysis: Intervention logics: External Coherence of the EU legal migration Directives

¹⁶¹ The activities of foreign affiliates – would also include companies with commercial presence in the EU. https://www.wto.org/english/res_e/reser_e/ersd200805_e.pdf

¹⁶² UN World Tourism Organisation (UNWTO), Tourism Highlights, 2016 Edition

¹⁶³ http://www.esteri.it/mae/en/ministero/servizi/stranieri/ingressosoggiornoinitalia/visto_ingresso/tipologie_visto_durata.html

neither fit into the frame of the currently existing legal migration Directives nor into the frame of the EU Visa and Border legislation.

Although available statistics show that a relatively low proportion of third-country workers fall within this category, their share is increasing, presenting a downward pressure on salaries and working conditions (as also described in a recent example from Sweden).¹⁶⁴ Further knowledge gathering is needed as regards the extent of the problem.

Whilst certain problems related to the transport sector applies also to EU nationals (exploitative business models, lack of enforcement of social rules, difficulties in establishing home base or MS competent for labour disputes), the situation of third country national transport workers may be more precarious, in particular those that never establish residence in any Member State.

Currently, the different modes of transport present specific challenges and are governed by different sectorial pieces of EU legislation. The EU has developed a plethora of employment law instruments to strengthen the protection of transport workers in different sectors, particularly those whose work involves cross-border operations. The work-related legal migration Directives contain equal treatment provisions aimed at ensuring the fair-treatment of third-country nationals, including as regards pay and working conditions, social security and other areas. The Blue Card Directive includes provisions on equal treatment in respect of employment conditions and remuneration which can benefit highly skilled third-country transport workers (e.g. pilots).

The SPD extends equal treatment provisions also to low and medium-skilled third-country workers, which can benefit in particular in the road transport industry but also among cabin crew. The Directive however explicitly excludes one specific group of transport workers, namely those "*who have applied for admission or have been admitted as seafarers for employment or work in any capacity on board of a ship registered in or sailing under the flag of a Member State*" (Article 3.2.l) Also posted workers (Article 3.2.c), seasonal workers (Article 3.2.e) and self-employed workers (Article 3.2.k) are excluded from its scope. The Directive furthermore allows the exclusion of those who are authorised to work in a Member States for a period not exceeding 6 months from the procedural rules (in chapter II), however, it shall be noted that such an exemption does not apply to the right to equal treatment (Chapter III, although some more limited exemptions may be applied in that respect).

The ICT may be relevant for specific skilled crew who are transferred by an international airline to an EU Member State for their home base.

With regard to national level responses, some Member States exempt transport workers from the need to hold a work permit or work visa, under strict conditions whilst they operate on their territory. Further measures to address exploitative practices are implemented in some Member States. However, the internationalisation of transport markets makes it difficult for Member States to address the problems on their own. With the situation that there is no legislative instrument at EU level that effectively enables or required Member States appears to take the main responsibility for certain transport workers, that is by issuing a work authorisation (permit/visa) also means that the objective "controls of the legality of the third-country nationals' residence and employment" cannot be fulfilled.

In the stakeholder consultations, several stakeholders, including those consulted through the OPC, as part of EGEM, consulted experts, EESC and civil society

¹⁶⁴ Nordic Council: Transport ser på minimilöner för att begränsa social dumping i Sverige (<http://www.arbeidslivnorden.org/i-fokus/i-fokus-2015/minsteloenner-i-norden/article.2015-02-03.2051910754>)

organisations agree that categories of third-country transport workers (notably in aviation and road transport) could be part of the scope of the legal migration acquis.

4.2.2.3 Categories not covered as part of family reunification: Third-country family members of non-mobile EU citizens

The categories not covered under family reunification include third-country family members of non-mobile EU citizens, i.e. who are 'static' and reside in their country of citizenship. EU legislation on the right of free movement is applicable to mobile EU citizens but not to "static" or non-mobile EU citizens that have chosen not to make use of this right: this issue concerns so called "internal situations" which are competence of the MS. This category of third-country family members of static EU citizens are however covered by the SPD as regards equal treatment, if they have the right to work, which excludes minors below the age where work is not permitted. They are also entitled to apply for LTR status once the residence time has been accumulated.

In the period under review, the overall number of those holding a permit for family reasons increased from 4.1 million in 2008 to 5.4 million in 2016. While available statistics distinguish between sponsors who are EU citizens and sponsors who are third-country nationals, there is no specific data distinguishing between mobile and non-mobile EU citizen sponsors, thus it is difficult to establish the size of this category. Moreover, data on the profile of non-EU nationals, both sponsors and family members, is limited.¹⁶⁵

Given that family reunification of third-country national family members with non-mobile EU citizens is not covered under EU law as regards admission and residence conditions, the following implications should be highlighted:

The problem/gap is relevant to the overall objective of the EU legal migration acquis to create an equal level playing field to manage migration flows in the EU through the approximation and harmonisation of Member States' national legislation, however Member States decided in negotiations to exclude this group from the FRD and keep regulation at national level.

The existing EU legal migration Directives only partially respond to the problem, since the FRD only concerns sponsors who are non-EU citizens residing legally in an EU country and their third-country national family members. The SPD provides for rights to third-country nationals who have the right to work, but certain key aspects of equal treatment can be limited to those who are or have been in employment. Furthermore, that Directive does not cover aspects linked to procedures and admission criteria.

The lack of any EU legal instrument as regards admission for those situations in which persons entitled to family reunification are non-mobile EU citizens (who wish to reunite with their third-country family members), whereby Member States' laws regulate this matter in line with subsidiarity.

4.2.3 To what extent is the impact of such exclusions significant in economic, social and political terms, and in terms of fundamental rights?

4.2.3.1 Key points

The impact of excluding certain categories from the Directives' scope, might include the following:

In relation to economic migration, currently excluded categories (low and medium skilled workers other than seasonal workers, certain transport workers, and international service providers) could potentially support the EU in addressing existing

¹⁶⁵ http://www.emn.at/wp-content/uploads/2016/12/00_family_reunification_synthesis_report_final_en_print_ready.pdf

and future skill shortages and contribute to Directive specific objectives such as management of economic migration flows, attracting and retaining certain TCN categories, but also preventing exploitation, for instance in relation to highly mobile transport workers. Another category of low-and medium skilled workers who are especially at risk of exploitation (as highlighted by the consultations with civil society) are domestic care workers, due to their often more precarious situation with individual families as employers. Difficulties often arise from enforcing and monitoring equal treatment.

In line with the objectives of the EU migration acquis, preventing the exploitation of workers and ensuring decent living and working conditions of third-country nationals through equal treatment provisions would contribute to reducing unfair competition between a Member State's own nationals and third-country nationals resulting from the possible exploitation of the latter resulting in significant positive social impact.

Furthermore, excluding self-employed and investors might allow the EU to address the objective relating to boosting competitiveness, growth and investment.

In relation to excluded family members, the lack of any EU legal instrument and uncoordinated national initiatives may cause unjustified difference in treatment and reverse discrimination.

4.2.3.2 Impact of the gap

As explained in the sub-sections above, the Directives remain relevant in terms of scope for certain third-country nationals, although some categories are not covered. The stakeholder consultation has also confirmed that the legal migration Directives remain relevant to address the needs of various stakeholders, although several issues impacting their relevance remain. Representatives of social partners confirmed the importance of non-EU workers on different skills levels and the need for legislation to focus more on these categories, as opposed to the current focus on highly skilled non-EU workers. This is in line with the existing demand for low and medium-skilled workers, which are currently not covered by EU legislation. This is also in line with the findings from the focus groups that which showed that people on other skills level, e.g. craft skills are necessary to attract; these people are often not available at EU labour markets (tourism, construction).

Although the SPD guarantees certain rights (including equal treatment with nationals) and procedural guarantees, there is no harmonised EU instrument for **admission of medium- and low-skilled workers**.

Low and medium skilled workers other than seasonal workers are currently not covered in the Directives as regards admission and residence conditions which hinders their potential in fulfilling labour market shortages in Member States that have become a major challenge affecting European competitiveness. However, due to the difference in current labour market needs across Member States¹⁶⁶, some question whether harmonisation of policies at EU level would be effective in addressing this issue. There is an argument that the entry and residence of workers is better regulated at national level as national legislation can react more quickly to changing labour market needs.

In relation to **self-employed third-country nationals** negative consequences of the current system have been highlighted in the stakeholder consultations¹⁶⁷:

Consequences for self-employed third-country nationals: Less favourable business conditions (e.g. no access to financial credit or to risk insurance) may not allow the full economic potential of such businesses to grow and hinder its success, productivity,

¹⁶⁶ EMN Synthesis Report 2015, 'Determining labour shortages and the need for labour migration from third countries in the EU'

¹⁶⁷ European Migration Network (2015).

longevity. Access to social welfare for self-employed third-country nationals is restricted in some Member States.

Consequences for Member States: Member States may restrict the access to self-employment for certain categories of third-country nationals covered by the EU migration acquis. Restrictive admission criteria for self-employed third-country nationals may prevent migrant entrepreneurs from contributing to economic growth and job-creation and diversifying the supply of goods and services. On the other hand, although there seems to be little evidence of systematic misuse / abuse of business migration channels across the EU, the lack of more sophisticated mechanisms to detect cases of bogus enterprises¹⁶⁸ may result in misuse with a negative effect on the market and, as evidenced in national debates, may also raise social tensions.¹⁶⁹

Consequences at EU level: There are currently complex admission and stay criteria for self-employed third-country nationals at Member State level. Simplifying these could contribute to bringing greater competition and flexibility to EU markets.

The lack of harmonised approach on EU level could also have a negative impact on investment. Where Member States are free to attract **investors** in a situation of competition, in the absence of a harmonised regulation, the door may be open to irregular investors /money launderers who could in time obtain access to the whole of the EU territory through mobility rights. In this respect, a key challenge is to strike a balance between selective admission criteria able to prevent and reduce abuses and yet provide for favourable channels for genuine third-country investors and business owners.

Furthermore, the lack of an overall approach for regulating the entry of **international service providers** may reduce the EU's attractiveness for foreign companies to do business. Furthermore, there could be consequences related to disadvantages for certain categories of service providers in terms of pay, health and safety and other rights¹⁷⁰.

Addressing the problems related to certain of **third-country national transport workers** is highly relevant to the EU legal migration acquis, since there are shortcomings in how the objectives can be reached for this group as regards ensuring equal treatment of third-country nationals, notably as regards pay and working conditions, social security and other areas, thus avoiding their exploitation and preventing discrimination in the EU.

While the potentially relevant SPD, BCD, SW and ICT contain equal treatment provisions aimed at providing third-country national workers with the same pay and employment conditions as workers (and, in the case of the ICT Directives, posted workers), these Directives include exemptions from their scope categories of third-country nationals that are particularly relevant to the transport sector and who are vulnerable to unfair employment practices, namely, self-employed workers, seafarers on seagoing ships registered on an EU MS flag, posted workers and workers for whom it is difficult to determine the home base and in the case of Seasonal Workers intra-EU mobility would mean certain transport workers in for instance intra-EU cruise ships would be excluded from the legislation. The way Member States are attempting to address the issues related to exploitative practices might not be sufficient. Although some Member States are attempting to address the problem through national provisions (e.g. requiring collective agreements that are binding on an employer to extend to all the agreements in a sub-contracting chain), the internationalisation of transport markets makes it difficult for Member States to address the problems on

¹⁶⁸ Aside from the initial control at admission stage, cases of misuse / abuse of the migration channel are only manifest upon renewal of the residence permit or when specific inspections are carried out (European Migration Network, 2015).

¹⁶⁹ European Migration Network (2015).

¹⁷⁰ http://www.migrationdrc.org/publications/briefing_papers/BP4.pdf

their own. Thus, the transnational nature of the problems mean there would be added value in developing further actions at EU level, both addressing the legality of stay and work in a highly mobile context, as well as in relation to the enforcement of rights, including procedural rights and right to equal treatment.

In relation to **family members of non-mobile EU citizens**, the lack of an EU legal instrument covering admission and residence conditions and uncoordinated national initiatives may cause disparity. Although an initiative would not be legally possible, there could be added value in addressing the issue at EU level. This would have the possibility to address so called reverse discrimination.

4.3 EQ1C. To what extent does the scope of the Directives, and the way it is implemented, meet the current needs in all the different steps of the migration process, and in all aspects of migration?

This section addresses the implementation of the Directives and whether the needs across the different steps of the migration process are met. The table below gives an overview of the main sources of information utilised and the key conclusions of EQ1C.

Research questions	Sources of information	Key conclusions
EQ1C. To what extent does the scope of the Directives, and the way it is implemented, meet the current needs in all the different steps of the migration process, and in all aspects of migration?	<p>1Ci Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives</p> <p>1Cii Contextual analysis: Intervention logics: External Coherence of the EU legal migration Directives</p> <p>Contextual analysis : Intervention logic: Directive specific paper</p> <p>2A Evidence base for practical implementation of the legal migration Directives: Synthesis report</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC Summary Report</p>	<p>Overall the provisions of the Directives are fit for purpose across the phases, although the way in which some have been implemented in practice is problematic Those issues across the phases point to the conclusion that the Directives' implementation does not fully meet the demands of third-country nationals across the different phases (e.g. income requirements, equal treatment provisions with regard to social security benefits and access to public goods and services, or differences in the duration of permits).</p>

After a summary of the key points, the remaining subsections below provide, per migration phase, an overview of the extent to which the way in which the Directives

have been implemented in the Member States is in line current needs. It is noted that this evaluation question 1C focusses on any application issues which are considered potentially in breach of a Directive or which are, as a minimum, not “in the spirit” of a Directive (i.e. with the practical approach seemingly going against one or more of the Directive’s objectives).

4.3.1 Key points

While overall the provisions of the Directives are fit for purpose, across the phases some practical implementation issues have been identified, which point to the conclusion that the Directives’ implementation does not fully meet the demands of third-country nationals and other relevant stakeholders (e.g. Member State authorities) across the different phases (e.g. with regard to changes of status, equal treatment provisions, or differences in the duration of permits).

Pre-application (information) phase: The provisions in the Directives regarding information remain overall relevant but do not fully address stakeholder needs. The implementation in the Member States has revealed practical problems with regard to the availability as well as quality and completeness of information provided. These might also impact the effectiveness of the Directives (as discussed in EQ7).

Pre- application (documentation) phase: Most Member States require one application. However in some Member States applicants have to submit more than one application, which goes against the concept of single residence and work permit enshrined in the SPD. Conversely, a few of the requirements do not meet stakeholder needs and hence diminish the relevance of the Directives (e.g. recognition of diplomas). The Directives’ relevance might be impacted by the fact that national equivalent statuses for some permits require less documentation compared to the EU status (BCD, LTR, SD, RD).

Application phase: Applications can be lodged in person in country or, in a lower number of Member States, in their diplomatic representations. High fees charged might not be conform to the Directives. With regard to processing times, there might be scope for the Directives to specify a timeframe for the issuance of the permit.

Entry and travel phase: While most Member States have some timeframes for granting entry visas, in those cases where there are no timeframes application problems may arise, as Member States may be held in violation of their obligation to facilitate the issuing of visas.

Post-application phase: Differences across Member States with regard to the permit duration pose practical implementation issues (mainly for the LTR).

Residence phase: With regard to residence permits, all Member States comply with the Directives’ provisions regarding the format. With regard to access to employment and application issues identified with regard to the inclusion of a reference to the right of the card holder to access the labour market reduces the relevance of the respective provisions. With regard to equal treatment, most issues have been identified with regard to social security benefits and access to public goods and services.

Intra-EU mobility phase: third-country nationals and their families overall are facilitated if they wish to exercise their right to intra-EU mobility.

End of stay phase: The main needs refer to the export of social security benefits after moving to a third country. According to provisions in the SPD, SWD and ICT and BCD equal treatment with nationals applies. However, in some Member States an export is only possible through bi-lateral agreements, thus possibly undermining the relevance of the Directives’ provisions. With regard to possible periods of absences, most Member States comply with LTR provisions, confirming their relevance for those holding a LTR status.

Additionally, throughout the steps Member States who have parallel national schemes potentially undermine the relevance of EU Directives, if they for example promote

national schemes, but not the Directives themselves. The parallel schemes are analysed more in detail under Coherence, section 5.2.

4.3.2 Pre-application (information) phase

With regard to the pre-application phase, the main needs of prospective applicants include information about the possibilities for migration to the EU (different types of information channels, sufficient amount of information provided in a timely fashion and easy to understand).

The four more recent Directives (SPD, SWD, ICT and S&RD) contain provisions obliging Member States to provide access to information to third-country nationals and where relevant to their employers (i.e. SPD) and host entity (i.e. ICT). In the case of the SWD, ICT and S&RD it is specified that such information should be “easily” accessible. The SPD includes provisions on information (Article 9) stating that information shall be provided upon request to prospective applicants and employers, as well as that information shall be made available to the general public concerning admission and residence conditions for third-country nationals (Article 14). As a framework Directive, it also covers other categories of migrants such as those covered by the BCD and certain national statuses¹⁷¹. The SWD, ICT and S&RD specify that Member States shall make the information available to applicants who can be either the third country national or the hosting entity. Three of the four Directives which oblige Member States to provide information also include detailed provisions on what information should be provided (SWD, ICT and S&RD), covering as a minimum information on entry and stay/residence, including the rights and obligations and the procedural safeguards. The SPD states that information should be provided on “the documents required to make a complete application” and “holder’s own rights linked to the permit”.

The structured legal analysis undertaken as part of the Task II application study¹⁷² shows that information on the legal migration acquis throughout Member States is provided online, via the websites of relevant institutions (ministries, migration offices, employment agencies, etc.) but also by relevant NGOs and business associations. Hotlines and information desks are also available, but seem to be affected by understaffing and administrative capacity of authorities. In their countries of origin, third-country nationals mainly have access to online information, as well as information provided by embassies and consulates. National languages and English prevail as languages in which information is given; information upon request is also available, depending on the capacity of institutions.

While almost all Member States have transposed the requirements in the SPD (with the exception of BE) and only limited conformity issues were, the structured legal analysis undertaken as part of the Task II application study has identified several practical problems resulting from operationalisation¹⁷³. Regarding the **provision of information in general**, Member State representations in third countries have varying capacity and expertise to provide information, the information provided differs depending on the channel and information upon request is in practice not available in all Member States. With regard to the **quality of information provided**, the main issues identified include: limited user-friendliness and comprehensiveness of the information on the application procedure; the information provided upon request is not always satisfactory or is too general, and the information is overly legalistic or difficult to understand.

¹⁷¹ Art. 3(1) (c) of the Directive specifies that the Directive shall apply to “third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law”.

¹⁷² For a detailed overview see Task II Synthesis report and accompanying Annex 2A Evidence base for practical implementation of the EU legal migration Directives: Synthesis report..

¹⁷³ Information on the other Directives is not available as of now.

Consulted stakeholders confirmed issues with access to information. For example, stakeholders present at the European Migration Forum indicated that information provided by Member States authorities is often not satisfactory and third-country nationals have to rely on civil society organisations to get relevant information. Third-country nationals responding to the open public consultation specifically complained about the lack of clear and practical information coming from official sources on procedural aspects (i.e. types of visa, expected processing times, mandatory insurance, the types of documents that need to be provided and notarised, etc.).

While the Directives' provisions with regard to information are broadly relevant, the need for stakeholders to be guaranteed more detailed information is relevant (on how to apply and what kind of information should be provided as a minimum), but there appears to be a gap in the requirement for MS Authorities to provide such information. Also, the implementation issues identified above might impact their effectiveness (which will be discussed as part of EQ7).

4.3.3 Pre- application (documentation) phase

In this phase, the main needs relate to clear format, content, supporting documents and user-friendliness of the application forms for prospective applicants (or employers/research institutes/other sponsors) which need to be submitted in order to apply for admission under different Directives.

The structured legal analysis undertaken as part of the Task II application study found that throughout the EU, Member States offer single and/or standardised **application forms**, often depending on wider Member State administrative procedures and practice. The time required to complete applications seems overall reasonable and the information requested overall relevant. Application forms are available on paper, as well as in digital format, but a full online application can only be made in a small number of Member States. Guidance on how to fill in the forms is available mainly in person and online.

However, in a few cases practical problems with regard to the application forms were identified, as these are for example difficult to complete, the questions in forms lack clarity, and they are not user-friendly.

The **documentation requirements** under the different Directives primarily serve to prove that the key requirements of the status have been met (hosting agreements, work contracts/job offers, proof of family relations, etc.), as well as provide evidence that the applicant and/or his/her family members will not become a burden to Member States' social and health systems (proof of sufficient resources, health insurance, proof of accommodation, etc.). Proof of not being a threat to national security is also a common requirement, attested mostly by criminal records.

The structured legal analysis undertaken as part of the Task II application study shows a number of practical application issues across Member States. Translation and certification requirements overall pose a heavy burden on TCN. Some Member States require a clean criminal record (i.e. even petty crime is considered a threat to public security). In Luxembourg an additional requirement exists that the person should not threaten the country's international relations. Specifically with regard to the FRD, Spain requires proof of family relations for both the permit and the visa to enter the Member State. A number of national BCD, LTR, SD, RD equivalent statuses seem to offer more favourable conditions and thus wider access to potential applicants.

Recognition of diplomas is a widely posed requirement, especially for work-related permits, but the related guidance is relatively difficult to find. The structured legal analysis undertaken as part of the Task II application study shows that the process to obtain recognition is costly, burdensome and lengthy. Most of the application forms and related guidance in the Member States do not contain information on the requirement to have recognition of qualification and the related process. This, together with the complex process of recognition itself and the multitude of requirements

especially concerning regulated professions make recognition one of the more burdensome requirements for foreigners.

Based on the issues listed above, some of the Directives' requirements present challenges in practice for prospective applicants (predominantly with regard to recognition of diplomas), and a few of the requirements do not meet stakeholder needs and hence diminish the relevance of the Directives. For example, the recognition of diplomas requirement is relevant, but there seems to be an information gap as it is not specified that the Member States have to provide information on the process of recognition as part of the application documentation.

Also, as some national statutes require less documentation compared to EU statuses (lower or no income threshold for BCD equivalent national permits; no language knowledge requirement for SD equivalent national permits no proof of legal and continuous residence in the Member State for five years immediately prior to the submission for LTR equivalent national permits), this might impact the relevance of some requirements under the Directives.

4.3.4 Application phase

In this phase, the main needs for prospective applicants include an accessible and speedy application procedure. Overall, the application procedure as set in the Directives appear relevant and in line with stakeholder needs (also those of Member State authorities to the extent that they offer sufficient time and opportunity for scrutiny of the application). Nevertheless, some application issues have been identified which, in addition to affecting the effectiveness of the Directives, may also impact on their relevance. This includes, as further detailed below, the fees charged; the lack of a compulsory timeframe to provide a form of authorisation which will enable the third-country national to start benefiting from the status granted, and; the concept of administrative silence. The relevance of the Directives would be improved if they would include additional clarifications and/or requirements to Member State authorities.

The structured legal analysis undertaken as part of the Task II application study shows that in all Member States, **applications** can be lodged in person in country or, in a lower number of Member States, in their diplomatic representations. Some application issues have been identified with regard to the accessibility of the application procedure, for example when the applicant has to appear more than once in person as part of the application process in third countries where this can only be done centrally, or where consulates are far away. Problems arise also when short deadlines for personal appearance are involved and the applicant has to travel. Furthermore, the interpretation of what documentary evidence is required may vary between missions abroad from the same Member State.

The easiness of application also depends how many authorities are involved. As shown by the structured legal analysis undertaken as part of the Task II application study, 14 Member States involve multiple authorities in processing the applications, compared to 10 Member States where just one authority is involved. In some Member States, **application issues** have been identified due to the partial or non-transposition of the SPD and the need for applicants to apply for their work and residential permits separately.

In terms of **fees** charged, these vary greatly between the Member States, also proportionally, when considering the fees as a share of the mean monthly gross earnings each Member State. A practical issue arises from the fact that the high application fees charged may create an impediment to the enjoyment of the Directives, in the sense that they potentially could act as a deterrent. This would go against the provisions in the SPD, SWD, ICT and S&RD stipulating that the fees "shall

not be disproportionate or excessive"¹⁷⁴. Third-country nationals that responded to the open public consultation indicated as well that the costs of procedures are not reasonable.

With regard to **processing times**, most Member States have put in place legally applicable deadlines within which to process applications. In several countries, these deadlines may exceed those set in the Directives, constituting a possible **application issue**. The actual number of days required to process applications usually complies with the Directives' deadlines, with some exceptions. Another issue is that the timeframes set in the Directives oblige Member States to take a 'decision', but it does not oblige them to provide, at the same time, the permit and/or other form of authorisation which would allow the third-country national to benefit from the status (e.g. by being allowed to travel to the Member State). The Directives do not specify a timeframe for the issuance of a permit or 'usable' authorisation, which means that the timeframe for delivering these is left to the Member States. There is a gap in the EU legal migration acquis as regards specifying a timeframe for the issuance of the permit.

Most Member States inform the applicants when their application is incomplete, giving them a new deadline. However, there are possible issues in some Member States. Poland sets very short deadlines (seven days) for an applicant to appear in person before the competent authority in cases of issues with the application. Authorities in Malta often refuse to accept incomplete applications or reject them without any notification in writing, which means that applicants are rarely aware of the status of their application.

Applicants are usually **notified** of the authorities' decision in writing via post, in the Member States' national languages, mostly via a single administrative act with reasoning. Even when the employer is the main applicant, the third-country national is usually also informed.

Various judicial review mechanisms are in place, either in the Member State or in the third country, mostly through a legal representative or by sending the **appeal** to the respective embassy/consulate which forwards it to relevant authorities. The structured legal analysis undertaken as part of the Task II application study points to possible application issues in Austria, Finland and Belgium concerns the overall effectiveness of the appeal procedure, as these are too costly and lengthy (some TCN prefer to lodge a new application). Furthermore, the decision and possibility of appeal are often written in the language of the MS. **Administrative silence** exists as concept in a little over half of the reviewed Member States and, in half of those cases, it is construed as tacit rejection, which can be appealed.

4.3.5 Entry and travel phase

In this phase, the main needs for prospective applicants include legal certainty and swift administration as part of the procedures and conditions to enter and travel across the EU Member States, as well as the procedures that apply upon arrival in the country of destination. The issues identified below suggest that there are some obstacles to both. The relevance of the Directives in this migration phase may be affected by the lack of clarification of what is meant by "facilitating" the issuing of visas, as in practice this does not seem to happen in all Member States or only to a limited extent.

¹⁷⁴ Disproportionate administrative fees have been subject of earlier CJEU rulings, such as case C-508/10, where the court ruled that the Netherlands had failed to fulfil its obligations under the LTR by charging third-country national applicants "excessive and disproportionate administrative charges which are liable to create an obstacle to the exercise of the rights under the LTR". The obligation therefore exists even where not expressly mentioned in the legislation.

With regard to **entry visas**, most Member States have some timeframes for granting the visas to applicants who do not yet hold a valid permit to enter the Member State. Application problems may arise where there are no such timeframes, or where they are regulated by general administrative law. If timeframes are too long or missing, Member States may be held in violation of their obligation to **facilitate** the issuing of visas to legal migration applicants.

Few Member States impose entry requirements on third-country nationals from visa free countries, and those that do mainly refer to general requirements such as valid travel documents, a justifications for the reasons of entry and stay and proof of sufficient resources. In particular the latter may overlap with the requirements of the Directives and thus mean an unnecessary burden for the applicant. Practical difficulties encountered by third-country nationals relate to complex procedures for airport transit visas (e.g. having to be requested and picked up in person), long processing times for transit visas, border guards in transit countries not always easily accepting the fact that the person is travelling to a visa free country.

4.3.6 Post-application phase

The main needs of third-country nationals in this phase relate to legal certainty, efficiency and speed as regards the delivery of residence permits. The issue related to the timeframe for issuing permits described below should be considered together with the issue identified under 4.3.4 above on the timeframe for notifying decisions.

With regard to the **timeframe to deliver permits**, most Member States do not have a set timeframe. Where there is a set timeframe, the deadlines are generally respected, and, in some cases, the real average number of days to deliver the permit is even lower than the timeframe allowed. The only exception is Italy, for which the time needed to deliver the permit after the notification can range between 90 and 290 days. This is potentially a practical issue as the residence permit is often needed for accessing other essential public services.

Usually, **different authorities** are involved in the application and permit issuing procedure, however, in many cases the number of authorities depends on the type of status applied for. In several cases, the number and type of authorities involved in the issuing of permit are different from those involved in the application procedures. This can lead to issues in the practical application, e.g. in Spain the involvement of different authorities' means that documentation may be assessed differently depending on the authority reviewing it.

Regarding the **duration** of the first permit, it varies significantly across Member States. Some application issues have been identified in Finland and Lithuania with regard to the LTR, where the maximum duration of the permit is 1 year, and in Czech Republic, where it is 2 years (although the status is permanent).

4.3.7 Residence phase

The main needs of third-country nationals in this phase include legal certainty, flexibility (e.g. as regards change of status, renewals, etc.), information/transparency, access to labour market, equal treatment during residence in the EU. The issues summarised in the section below suggest that:

Residence permit: the format requirements are in line with stakeholder needs (including Member State authorities for the purpose of control) and hence relevant, however some of the issues in relation to renewal may affect relevance as they may add restrictions to obtaining a renewed permit which go beyond the requirements in the Directives.

Changes of status: possible relevance issues have been identified as in general such changes are not regulated in the Directives (with the exception of S&RD).

Access to employment and employment-related rights: the application issue identified with regard to the inclusion of a reference to the right of the card holder to access the labour market reduces the relevance of the respective provisions.

Equal treatment: Both, the conformity and application issues might affect the relevance (and effectiveness) of the Directives, as described below.

Integration requirements: no issues affecting the relevance of the Directives provisions were identified

4.3.7.1 Residence permits

Seven out of nine Directives include provisions with regard to the format of the permit (FRD, LTR, BCD, SPD, SWD, ICT and S&RD). The SD and RD do not contain provisions; however, this is amended by the recast S&RD which contains a provision on the format. All seven Directives provide that Member States shall issue a single permit using the uniform format as laid down in Regulation (EC) No 1030/2002. All Member States use the format as set out in Regulation (EC) No 1030/2002 for **residence permits**, confirming the relevance of the Directives' provisions. The permits issued by Member States include biometric data as per the Regulation. Residence permits can be used by permit holders in some Member States as a proof of identity and legal residence in a number of situations, including to access public and private services as well as for short-term stay in other EU Member States. In some Member States (e.g. Germany, Poland, Portugal and Romania), third-country nationals are required to provide a proof of identity which is generally the passport. If the passport is not available, in some circumstances, the residence card can be provided as a proof of identity.

However, the periods of **renewal and the renewal fees** differ significantly across Member States and across statuses. Third-country nationals are required to renew their residence documents within a specified timeframe prior to expiry of the permit, ranging from 3-6 months prior to expiry to 60 days after the expiration of permit. Several application issues were identified with regard to renewal. With regard to the FRD, too wide interpretation of grounds of public policy or public security or public health, in particular with regard to not taking into account the severity of an offence can lead to refusals. Some Member States broaden the scope of refusal grounds in the FRD, e.g. Slovenia and Germany (sickness and disability), Spain (also sickness and disability, tax and social security violations), as well as the LTR potentially impacting the relevance of the Directives' provisions.

4.3.7.2 Changes of status

In the vast majority of Member States, third-country nationals are allowed to **change status**, provided that the conditions for the new status are satisfied. In most Member States¹⁷⁵, in order to change status, third-country nationals must meet the same eligibility conditions and submit the same application along with required documents as in the case of those applying for the first time and there is no facilitated procedure. The main difference in terms of procedure is that the applicant does not need a visa and the application can be submitted on the territory of the Member States, whereas for some statuses, the first time applicants are subject to submission at the diplomatic mission/representation in the country of origin. A practical obstacle reported by the majority of Member States is that it is difficult to find publically available information and understand the conditions and requirements for status change. Finally, while most of the evidence required is easy to provide or can be obtained ex officio by the competent authorities, some types of evidence, such as travel tickets may not necessarily be kept by the applicant over the five year period. Also, documents to prove 'integration' leave a certain level of discretion to the authorities. While change

¹⁷⁵ AT, BE, BG, CY, DE, EE, EL, ES, FI, HR, LV, LT, MT, NL, PL, PT, RO, SI, SE

of status is identified as a stakeholder need, the Directives remain 'silent' on this topic with the exception of the S&RD that after completion of research or studies allows for a status change for students and researchers for at least 9 months to either seek employment or set up a business (Art.25(1)). This may affect relevance of the Directives to meet the needs of third-country nationals with regard to status changes as such changes are in general not regulated in the Directives.

4.3.7.3 Access to employment and employment related rights

All nine Directives include provisions on the right to **access employment** and restrictions to this right. The FRD and LTR provide a 'general' right to employment and self-employment (subject to some restrictions), while for the remaining categories of third-country nationals (i.e. seasonal workers, ICTs, highly qualified, researchers, students and the remaining categories under S&RD), employment is restricted to the purpose for which the third-country national has been admitted for (e.g. seasonal work).

The right to access to employment is indicated on the residence card in 19 Member States¹⁷⁶, in line with the SPD, which requires residence permits issued in accordance with Regulation (EC) No 1030/2002 to indicate the information relating to the permission to work irrespective of the type of the permit. Five Member States (BG, EL, HR, IT, MT) do not indicate on the residence card that access is granted to the labour market, in line with Regulation No 1030/2002, which raises an application issue with regard to Art. 7(1) of the SPD (see section 6 on effectiveness for further details). This may also affect relevance, as the reference to access to the labour market is of use to Member State authorities in order to (quickly) control the legality of TCN's employment situation and for TCN to be able to quickly prove this to different authorities and services.

4.3.7.4 Equal treatment

Ensuring equal treatment of third-country nationals with nationals of the host Member State, albeit with some restrictions, lies at the heart of the EU legal migration acquis and constitutes an important factor in migration decisions by TCN. Seven Directives (LTR, RD, BCD, SPD, SWD, ICT, S&RD) include provisions on equal treatment of third-country nationals with respect to nationals of the Member State concerned, covering a number of detailed aspects, including, *inter alia*, working conditions, freedom of association, social security benefits, education, recognition of academic and professional qualifications, tax benefits, access to goods and services and advice services. The FRD and SD do not include provisions on equal treatment. As per the SPD, with its very broad scope which also includes holders of purely national permits, equal treatment also applies to (i) any holder of a residence permit who is allowed to work and (ii) those who have been admitted for the purpose of work, which can thus also include TCN falling under the FRD and SD.

As a general point, a substantial number of conformity issues in many Member States have been identified, across all Directives, which may all also have an impact on the practical application. This can result in certain equal treatment rights not being (explicitly) guaranteed which may lead not only to uncertainty for third-country nationals but also to exclusion of third-country nationals from certain equal treatment rights that are guaranteed by the EU acquis.

Most issues have been identified with regard to social security benefits and access to public goods and services.

In several Member States¹⁷⁷, this concerns **access to social security**. In **Latvia**, all relevant national laws on state social allowances, social services and assistance

¹⁷⁶ AT, BG, CY, CZ, DE, EE, ES, FI, HU, LU, LV, NL, PL, PT, SE, SI, SK.

¹⁷⁷ BE, CY, HU, LV, PL, SI

explicitly exclude from the scope of its application persons with fixed-term residence permits, which may lead to improper application of the requirement of Regulation No.1408/71 and replaced by 883/2004 and the respective equal treatment provisions in the Directives. Similarly, in **Slovenia**, access to most payments under family benefits schemes (e.g. childbirth grant, special childcare allowance, large family allowance), payable from the state budget, are only granted when one of the parents and/or the child, or only the child, possesses a permanent residence permit and actually resides in Slovenia.¹⁷⁸ Furthermore, in **Cyprus** and **Hungary**, it was also reported there is little information available about the right and modalities of accessing social security and social assistance.

With regard to **access to public goods and services**, in **Slovenia**, only those with LTR status can apply for non-profit rental housing, rental subsidies and housing loans under public scheme.¹⁷⁹ In **Poland**, the Polish Constitution allows for a possibility of setting differentiation in access to goods and services based on nationality with respect to foreigners. Currently, however, no legislation in force has introduced such restrictions. Some problems are identified also in Malta and Cyprus.

With regard to the right to equal treatment in terms of **working conditions**, cooperation between national (governmental) authorities for the identification of Third-country nationals is established formally by law or regulation¹⁸⁰. While 16 Member States¹⁸¹ have a mechanism in place to monitor labour exploitation, eight Member States¹⁸² do not. This is for example the case of **Italy** which, although it has a sufficiently developed legal framework to sanction labour exploitation both at a criminal and administrative level and to offer protection to victims, neither has a mechanism to monitor labour exploitation, nor any other specific measures to prevent labour exploitation¹⁸³. In Member States which have a monitoring mechanism, this falls within the competence of various authorities such as the Labour Inspection Office, the Anti-discrimination authority, the Tax and Customs Board etc. Despite their existence, the mechanisms in place are not always specifically tailored to third-country nationals. As a result, abusive situations involving specific groups of migrants might not be easily detected. Stakeholder consultations with the EESC confirm similar issues.

4.3.7.5 Integration requirements

Two Directives (FRD and LTR) stipulate that Member States may require compliance with integration 'measures' (FRD) and 'conditions' (LTR). The Directives do not define integration 'measures' and 'conditions'. According to the Commission's guidelines on the FRD¹⁸⁴, Member States may impose a requirement on family members to comply with integration measures under Article 7(2), but this may not amount to an absolute condition upon which the right to family reunification is dependent. The Directives do not define integration 'measures' and 'conditions'. Integration 'measures' (or pre-integration measures) could refer to measures conducted in the immigrant's country of origin, including language courses, 'adaptation' and civic orientation courses, including courses on history and culture of the country of origin¹⁸⁵. In contrast,

¹⁷⁸ Parental Protection and Family Benefits Act/ Zakon o starševskem varstvu in družinskih prejemkih, 3 April 2014, and subsequent modifications.

¹⁷⁹ Housing Act/ Stanovanjski zakon, 19 June 2003, and subsequent modifications.

¹⁸⁰ Ibid.

¹⁸¹ BE, BG, CY, CZ, DE, EE, EL, ES, FI, LT, LU, MT, NL, RO, SE, UK.

¹⁸² AT, HR, HU, IT, LV, PL, PT, SI.

¹⁸³ Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) (2014), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy, GRETA(2014)18, <https://rm.coe.int/1680631cc1>; Council of Europe, Group of Experts on Action against Trafficking in Human Beings (GRETA) (2017), Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, GRETA(2016)29, <https://rm.coe.int/16806edf35>.

¹⁸⁴ COM(2014) 210 final

¹⁸⁵ IOM (2009), Stocktaking of international pre-integration measures and recommendations for action aimed at their implementation in Germany

integration 'conditions' as laid down in the LTR refer to evidence of integration in the host society.

Integration requirements and measures differ significantly across Member States. In 12 Member States¹⁸⁶, there are mandatory integration requirements, while in the remaining Member States, integration measures (such as language and integration courses) are voluntary. In five of these¹⁸⁷, the mandatory integration requirements only concern applicants for long-term residence, who need to demonstrate integration through knowledge of national language(s) and knowledge about society and culture of the country. In some Member States (BE, DE, NL), not attending the integration and language courses may also result in a financial fine or in the withdrawal of social benefits for a number of days. However, no issues affecting the relevance of the Directives provisions were identified.

4.3.8 Intra-EU mobility phase

Enhancing and promoting intra-EU mobility, with the underlying aim to make the EU an attractive destination as a whole, is a specific objective in several Directives and provisions regulating intra EU-mobility of third country nationals from one Member State to a second one for the purpose of taking short or long-term residence and work can be found in six Directives (LTR, BCD, ICT, SD, RD S&RD). The main needs of third-country nationals eligible for intra-EU mobility relate to simple, inexpensive and swift access to residence permits in a second Member State. Overall, these needs appear to be met both in terms of the Directives' relevant provisions and their practical application, although possibly relevance could be increased if the facilitations to intra-EU mobility could be expanded to also cover (some) procedures and documentation requirements.

Third-country nationals and their families overall are facilitated if they wish to exercise their **right to intra-EU mobility**, without needing to acquire entry visa and with the possibility to submit their residence or work applications without having to leave the European Union (either inside the first or second Member State).

Few Member States have provided for additional facilitations to the procedures and documentation requirements for mobile third-country nationals (e.g. shorter application processing times, an exemption from need to provide proof of sickness insurance, as well as exemptions from integration measures, proof of accommodation and labour market tests). Member State also still have the discretion to decline an application.

In terms of rights for family members of mobile third country nationals: these are subject to national legislation, and very few Member States make any connection with rights in first Member States.

Short-term mobility, as far as regulated by the current Directives is facilitated by the fact that only five Member States apply any regime for notification and only two for authorisation; only two Member States require additional documents in addition to residence permit and valid travel documents for short term mobility.

4.3.9 End of stay phase

The main needs of third-country nationals in this phase are clear information about the right to export certain benefits, as well as the possibility to de facto export these, as well as the possibility to be absent from the Member State during a certain period without loss of residence permits/rights. While some of the Directives include address the right to export benefits and periods of absences, certain implementation issues might affect their relevance.

¹⁸⁶ AT, BE, BG, CY, DE, EL, FI, HR, IT, LU, MT, NL

¹⁸⁷ CY, EL, HR, LU, MT

The SPD, SWD and ICT and BCD include provisions regarding the **export of social security benefits** to the home country that the TCN or family members who reside in a third country and who derive rights from the TCN shall receive, in relation to old age (SPD and ICT), invalidity and death (SPD and ICT), statutory pensions (SPD, ICT and SWD) based on those workers' previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country (equal treatment applies). In several cases, the exportability of social security benefits is governed by bilateral agreements with the respective third country. Where this applies, the scope, modalities and procedures for the transfer of the benefits are set out in the agreement. In such cases, third-country nationals would usually have to apply for a transfer of social security benefits to local authorities in their country of origin.¹⁸⁸ However, finding information on the scope and modalities of transferring certain social security benefits is a challenge. In the absence of a bilateral agreement with a third country, the general principle of the portability of pensions in respect of old age, death or invalidity should apply.¹⁸⁹

There are however practical implementation issues in a number of Member States, potentially undermining the relevance of the Directives' provisions.¹⁹⁰ In the Netherlands, benefits can be transferred without the existence of a bilateral agreement, but only a certain share of the total amount (e.g. receive a pension based on a minimum of 50% of the net minimum wage) can be accessed, whereas a social security treaty can guarantee access to the full amount. Lastly, in Slovenia, national legislation specifies that a third-country national may receive pension rights in a third-country if Slovenia concluded a bilateral agreement or if a third country recognises such a right to Slovenia's nationals.

With regard to absences from a Member State, the LTR¹⁹¹ and BCD¹⁹² contain provisions regulating the **period of absences** tolerated outside the EU before a residence permit is withdrawn. As the other legal migration Directives do not contain provisions on this topic, the legislative framework in a number of Member States' does not provide for rules in this area for permits issued based on the FRD, SD and RD.¹⁹³ Most Member States comply with the provisions set in the LTR regarding the minimum period of absences from the EU before a long-term residence permit is withdrawn¹⁹⁴ and a few have allowed for a longer period of absence in their legislation, in accordance with the option left in Article 9(2) of LTR.¹⁹⁵ However, there is incorrect transposition of Article 9(1)(c) in some Member States¹⁹⁶ It is due to a restrictive interpretation of the geographical scope of the provision – 12 consecutive months outside the EU and it was transposed as 12 consecutive months outside the Member State. As these issues are limited, they do not affect the relevance of the Directives' provisions.

¹⁸⁸ BG, CZ, EE, HU, LV, PT and SI.

¹⁸⁹ As established by Articles 12(4) of the SPD and in the other relevant Directives.

¹⁹⁰ As shown by the transposition of Article 12(4)(e) of the SPD, partial conformity was noted in BG, CZ, DE, EL, FR, LV and SI. For example, in CZ, national legislation does not provide explicitly for such principle in its national legislation, and in DE and LV this principle can be limited by the scope of bilateral agreements signed with third countries.

¹⁹¹ Article 9(1) of the LTR stipulates that third-country nationals are now longer entitled to the states in case of an absence for a period of 12 consecutive months from the territory of the Member State

¹⁹² Article 16(4) of the BCD states that by way of derogation from Article 9(1)(c) of the LTR, Member States shall extend to 24 consecutive months the period of absence from the territory of the Community which is allowed to an EC long-term resident holder of a long-term residence permit with the remark referred to in Article 17(2) of this Directive and of his family members having been granted the EC long-term resident status.

¹⁹³ AT, BG, CZ, EE, FR, HU, LV, MT, PL, SE and SI.

¹⁹⁴ With the exception of EE and ES.

¹⁹⁵ AT and FI provide for two years of absence, and France provides for three years of absence.

¹⁹⁶ HR, NL, PL, SI and SK.

With regard to **overstaying**, a document from the Parliamentary Assembly of the Council of Europe, from 2007, estimates that **over 5.5 million irregular migrants live in the EU**.¹⁹⁷ Overstaying and transition into irregular stay may have serious consequences, including:

- Loss of legal status may lead to destitution and social problems (irregular migrants do not have **access to healthcare, education, or language support**)
- The presence of irregular migrants may lead to **exploitation in the grey/black labour market**.
- Overstayers who transition into irregular stay are subject to return and **expulsion** measures, possibly including detention measures. This causes expenditure for Member States and human costs for migrants.

There are several EU and national level responses to overstaying, however gaps remain. The EU level response on the issue of overstay therefore focused – in essence – on promoting more efficient return and, at the same time, setting up a legal frame (rules on legal migration, visa and borders) which makes sure that those who are admitted will comply with migration rules and return upon expiry of their right to stay.

The Directives covering legally residing Third-country nationals include indeed some clauses in relation to overstaying/ transition into irregular stay (without explicitly referring to the issue in most cases). The Seasonal Workers Directive¹⁹⁸ is particularly relevant in this respect, as it contains provisions to prevent overstaying and temporary stay from becoming permanent.

Member States broadly have resorted to three main policy options to address the issue of irregular migration:

- **Temporary toleration (or tolerated stay)** – implemented, for example, because return is temporarily not possible (due to problems with readmission or other circumstances making fundamental rights compliant return impossible)
- **Regularisation** – this accepts the social reality of the presence of irregular migrants and confers a legal status upon them. Regularisations may have unwanted effects, such as a 'bus stop queue' whereby irregular migrants continue to enter a Member State in anticipation of a further regularisation. Moreover, large scale regularisation measures may be a pull factor for further irregular migration. Regularisation are also contrary to the logic of fair migration management, since they "reward" irregularity.
- **Return** – which, although expensive and time-consuming, is most consistent with the logic of border controls and 'migration management'.¹⁹⁹

In recent years, Member States increasingly use **voluntary departure** (e.g. through reintegration packages) as an incentive to encourage irregular migrants (including overstayers) to voluntarily comply with the obligation to return. Few (seven) Member States have established measures encouraging circular migration as per SWD (recital 34).²⁰⁰ Measures encouraging circular migration in two Member States are mainly targeted at allowing seasonal work in specific sectors such as agriculture and/or tourism.²⁰¹ Employment in the Member State is possible for 9 months within a 12 months period and the scheme is accompanied by measures encouraging return to the country of origin.

¹⁹⁷ Regularisation programmes for irregular migrants, <http://www.unhcr.org/4b9fac519.pdf>

¹⁹⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0036&from=EN>

¹⁹⁹ Research on Migration: Facing Realities and Maximising Opportunities. A Policy Review, https://ec.europa.eu/research/social-sciences/pdf/policy_reviews/ki-04-15-841_en_n.pdf

²⁰⁰ DE, EL, ES, IT, PL, PT and SE.

²⁰¹ ES and IT.

4.4 EQ1E. To what extent is the way that Member States implement the Directives relevant to the initial objectives, and to current needs?

This section addresses the implementation of the Directives with regard to 'may clauses' and the extent to which the transposition and application of these clauses by Member States impacted on the relevance of the Directives to meet their initial objectives and the current needs across the migration phases.

The table below gives an overview of the main sources of information utilised and the key conclusions of EQ1E²⁰².

Research questions	Sources of information	Key conclusions
EQ1E. To what extent does is the way that Member States implement the Directives relevant to the initial objectives and to current needs?	<p>1Ci Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives</p> <p>1Cii Contextual analysis: Intervention logics: External Coherence of the EU legal migration Directives</p> <p>Contextual analysis : Intervention logic: Directive specific paper</p> <p>2A Evidence base for practical implementation of the legal migration Directives: Synthesis report</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC Summary Report</p>	<p>Member States have implemented several more restrictive may clauses across the migration phases that might impact the ability of the Directives to meet some of their initial objectives. However, overall the implementation in Member States does not particularly impact the relevance of the Directives.</p>

The sections below give an overview of the extent to which the scope of the Directives and their implementation meets across the different migration phases.

4.4.1 Key points

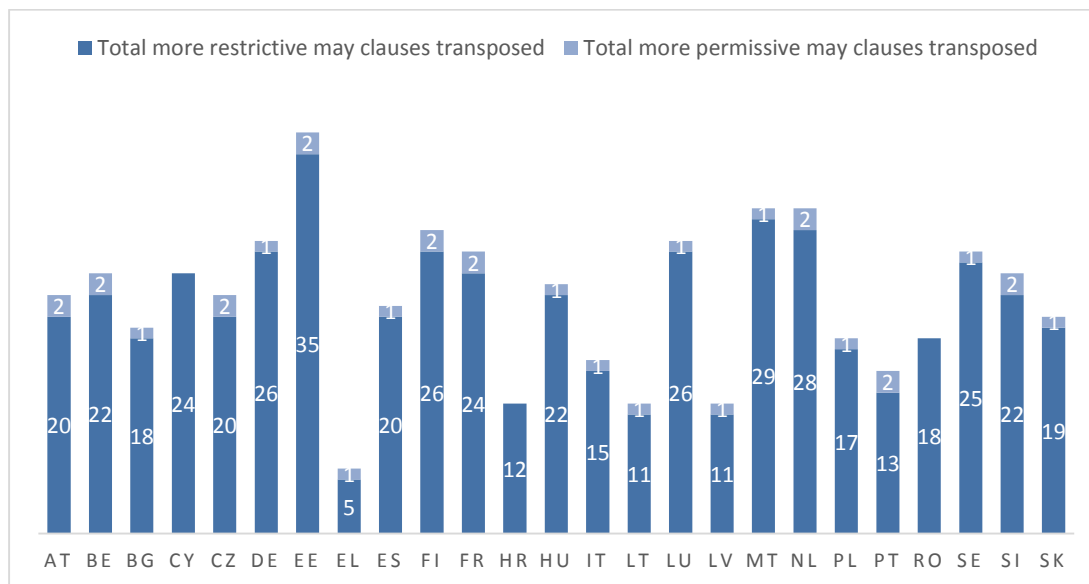
Overall, the Member States collectively transposed the 40 more restrictive may clauses analysed as part of the Task II application study 508 times (based on provisions which were reviewed as part of the structured legal analysis undertaken as

²⁰² Please note that EQ1D is addressed as part of the EU added value section.

part of the Task II application study), and the 6 more permissive may clauses 31 times resulting from the Directives across the phases²⁰³.

Figure 14 shows the total number of transposed may clauses by Member State. It is visible that the Member States have overwhelmingly implemented restrictive may clauses and those that have implemented most may clauses are Estonia, Malta, Netherlands, Luxembourg and Germany, whereas Greece, Croatia, Lithuania, Latvia and Portugal have transposed the least may clauses.

Figure 14. May clauses transposed in Member States



Source: Task II, Annex 2

The transposition of several may clauses in the Member States might impact the relevance of the Directives to meet their initial objectives as summarised below:

1. Pre-application (information) phase: no may clauses identified.
2. Pre-application (documentation) phase: Limiting the scope of the FRD may to some extent hamper the relevance of the Directive to meet the **objectives to protect family life and unity**.
3. Application phase: 17 Member States have transposed more restrictive may clauses in Art.20 of the SD enabling Member States to require applicants to pay fees for the processing of applications in accordance with this Directive, which might influence the relevance of the Directive **to attract and retain students** especially when these fees are high.
4. Entry and travel phase: No issues were identified with regard to SPD Art.4(1) on the single application procedure.
5. Post-application phase: May clauses in Art.13 LTR enabling Member States to issue residence permits of permanent or unlimited validity on terms that are more favourable than those in the Directive but which do not confer the right of residence in other EU Member States might reduce the relevance of the LTR to achieve the objective **to enhance intra-EU mobility**.
6. Residence phase: More favourable may clauses transposed under the SD might contribute to increased relevance of the Directive to meet the objective of

²⁰³ A total of 46 may clauses were included in the structured legal analysis and checked for conformity. Those that were not included as of now (for example those related to personal scope) will be submitted in a revised version of this report.

attracting and retaining certain categories of TCN. Several may clauses transposed under the BCD and SPD, such as enabling the Member States to conduct labour market tests, might reduce the relevance of the Directive to meet its initial objectives, although they might impact more the effectiveness. The transposition of several restrictive may clauses may reduce the relevance of the LTR to meet the objectives with regard to **promoting integration and socio-economic cohesion.**

7. Intra-EU mobility phase: While the Member States have transposed rather restrictive may clauses under the RD and the LTR, reducing the ability of these Directives to meet the objectives regarding **enhancing intra-EU mobility**, those more permissive may clauses transposed by Member States as part of the BCD (enabling TCN to launch an application for another Blue Card from the first Member State or issuing temporary permits in cases where the BCD expires during the procedure) enhance the Directives' ability to meet this objective.
8. End of stay phase: More restrictive may clauses in Art.5(3) of the RD, concerning the need for a written statement of a research organisation regarding the responsibility for reimbursing the costs related to return of an illegally staying TCN, do not impact the relevance of the Directive to meet the initial objectives, but might impact the relevance of meeting the needs of stakeholders. The more permissive may clauses in Art.9(2) of the LTR, which indicate that absences exceeding 12 consecutive months or for specific or exceptional reasons shall not entail withdrawal or loss of status, might enhance the relevance of the Directive to respond to the objective of **promoting integration and socio-economic cohesion** in the Member States.

4.4.2 Pre-application (information) phase

No may clauses identified.

4.4.3 Pre- application (documentation) phase

In this phase the structured legal analysis undertaken as part of the Task II application study has identified several relevant may clauses in the FRD, SD, RD and BCD. Below, their transposition in Member States is shown.

The majority of Member States has transposed the **more restrictive may clauses in Art.7(1) of the FRD** requiring the applicant to prove evidence on a) accommodation (15 Member States), b) sickness insurance (13 MS) and c) stable and regular resources sufficient to main him/herself and the family (19 Member States). However, only a limited number of Member States transposed the may clause focussing on complying with integration measures (Art.7(2), 5 Member States). Furthermore, 12 Member States have restricted the **scope** of the FRD through may clauses in Art.15(1) that state that issuance of an autonomous residence permit may be limited to spouses or unmarried partners in cases of breakdown of the family relationship. These limits might impact the relevance of the Directive to meet the objectives to **protect family life and unity** especially if the couple have children.

In the BCD transposition, 16 Member States have transposed the more restrictive may clause in Art.5(2) requiring the applicant to provide his/her address in the territory of the Member State concerned. This however, has no impact on the relevance of the Directive.

4.4.4 Application phase

In this phase the structured legal analysis undertaken as part of the Task II application study has identified several relevant may clauses in the SD, RD, SPD, and BCD. Below, their transposition in Member States is shown.

As part of the **SD**, 17 Member States have transposed more restrictive may clauses in Art.20 enabling Member States to require applicants to pay fees for the processing of

applications in accordance with this Directive, which might influence the relevance of the Directive to **attract and retain students**, especially if the fees charged are high. In the **RD**, 14 Member States have transposed more permissive may clause in Art.14(3) enabling applicants to submit an application in accordance with national legislation when the TCN is already on the territory of the Member State. This in fact enhances the objective to attract researchers, as those already legally present in the Member State do not have to return to their country of origin to lodge the application, for example if they have identified a suitable research post and would like to take it up immediately.

With regard to the **SPD**, 13 Member States have transposed the more permissive may clauses in Art.4(1) enabling either third-country nationals or employers to submit an application, and in cases of submission by third-country nationals enabling a submission either from a third country or within the EU. Similarly, 13 Member States have transposed more permissive may clauses from the BCD (Art.10(3)) enabling TCN to submit the application within the Member State if the TCN is legally present in the Member State. Allowing for different application modes will simplify the process for TCN and their sponsors.

4.4.5 Entry and travel phase

In this phase the structured legal analysis undertaken as part of the Task II application study has identified relevant may clauses in the SPD (Art.4(1), described already above.

4.4.6 Post-application phase

In this phase the structured legal analysis undertaken as part of the Task II application study has identified several relevant may clauses in the **SPD** (in Art.4(1), described already above), and **LTR**. With regard to the LTR 13 Member States have transposed Art.13 enabling Member States to issue residence permits of permanent or unlimited validity on terms that more favourable than those in the Directive, (while 13 Member States have transposed this partially). This transposition might reduce the relevance of the LTR to achieve the objective to enhance intra-EU mobility, as the permits resulting from transposing this may clause do not confer the right of residence in other Member States provided by Chapter III of the LTR.

4.4.7 Residence phase

In this phase the structured legal analysis undertaken as part of the Task II application study has identified relevant may clauses in the SD, RD, BCD, LTR and SPD. Below, the transposition of key may clauses in Member States is presented.

Under the **SD**, more permissive may clauses in Art.17(1) enabling students to exercise self-employed economic activity have been transposed by 15 Member States, whereas only 8 limit the economic activity in the first year (Art.17(3)) and only 9 require students to report in advance (Art.17(4)) that they are engaging in economic activity. These clauses contribute to the relevance of the Directive to meet the objective of attracting and retaining certain categories of TCN, as well as boosting competitiveness and economic growth.

Member States have transposed several may clauses under the **RD**. 16 Member States have transposed the may clauses in Art.5(6), which enable Member States to withdraw or refuse to renew the approval of a research organisation that does not meet the necessary requirements. Further, 17 Member States have transposed may clauses in Art.10(1) on withdrawing or refusing to renew a residence permit acquired fraudulently or for reasons of public policy, security and health (Art.10(2), which however has not impact on the relevance of the Directive to meet its objectives, as long as the interpretation of the reasons is not too wide, which would negatively affect the general objective of transparency and legal certainty for TCN.

Several may clauses under the **BCD** have been transposed across the Member States. 15 Member States have transposed more restrictive may clauses under Art.8(2) enabling the Member States to conduct labour market tests for Blue Card applicants and 12 Member States have transposed more restrictive may clauses under Art.9(3) enabling them to withdraw or refused to renew Blue Cards on the basis of a) public policy, security or health, b) when the Blue Card holder does not have sufficient resources to main him/herself, c) when the TCN has not communicated an address, and d) when the Blue Card holder applies for social assistance. On the other hand, a smaller number of Member States have restricted equal treatment through may clauses in Art.14(2); 9 Member States have restricted access to university and 4 Member States have restricted equal treatment of Blue Card holders to those cases where the residence lies within the Member State's territory. Nevertheless, these restrictions might reduce the relevance of the Directive to meet their initial objectives to attract and retain certain categories of third-country nationals, or addressing labour shortages, although they might impact more the effectiveness (see section 6).

Under the **LTR**, 13 Member States have transposed the may clauses in Art.5(2) imposing the requirement to comply with integration conditions on third-country nationals, which is indeed relevant considering the objective to promote integration and social cohesion.

With regard to equal treatment, 11 Member States have transposed may clauses in Art.11(2) restricting equal treatment to third-country nationals and their family members whose residence is within the territory of the Member state. Further, 12 member States have transposed may clauses in Art.11(3)(a) restricting equal treatment with nationals with regard to access to employment and self-employment and 12 Member States have restricted access to education and training to those with proof of an appropriate language proficiency (Art.11(3)(b)). However, only 4 Member States have transposed the may clause in Art.11(4) restricting equal treatment in respect of social assistance benefits, although only 2 Member States have transposed the more permissive may clause in Art.11(5) granting access to additional benefits to third-country nationals. These transpositions may reduce the relevance of the LTR to meet the objectives with regard to promoting integration and socio-economic cohesion, as well as the general objective to ensure equal treatment (albeit with certain restrictions).

In this phase the structured legal analysis undertaken as part of the Task II application study has identified several relevant may clauses in the **SPD** (Art.4(1), described already above. Further, nine Member States have transposed may clauses in Art.12(2) restricting equal treatment in respect to access to employment of some third-country nationals, access to university, limiting family benefits and restricting access to housing, which however does not impact the relevance of the Directive to meet its objectives regarding Management of economic migration flows, or preventing exploitation.

4.4.8 Intra-EU mobility phase

In this phase the structured legal analysis undertaken as part of the Task II application study has identified relevant may clauses in the RD, BCD and LTR.

19 Member States have transposed more restrictive may clauses under the **RD** Art.13(3) requiring the TCN to have a new hosting agreement for a researcher staying in another Member State for more than three months, which might restrict the ability of researchers to stay longer in another Member State and impact the relevance of the Directive to meet the objective of enhancing intra-EU mobility.

With regard to the **BCD**, several may clauses have been transposed in the Member States. 14 Member States have transposed more permissive may clauses enabling the TCN to launch an application for another Blue Card while still residing in the first

Member State (Art.18(3)), and 17 have transposed the may clause on issuing a temporary permit in cases the BCD expires during the procedure (Art.18(5) thus providing conditions for easier intra-EU mobility. However, 14 Member States have transposed the more restrictive may clause in Art.18(6) holding the applicant and/or the employer responsible for the costs of return, if necessary. These might inhibit the ability of the Directive to respond to needs of stakeholders for facilitated intra-EU mobility.

As regards the **LTR**, 12 Member States have transposed Art.14(3) enabling Member States to give preference to EU citizens at their labour markets, as well as to third-country nationals already residing in a Member State compared to third-country nationals entering the Member State, de facto having a negative impact on the intra-EU mobility and the ability of the LTR to meet this objective.

4.4.9 End of stay phase

In this phase the structured legal analysis undertaken as part of the Task II application study has identified relevant may clauses in the RD, and LTR.

19 Member States have transposed more restrictive may clauses in Art.5(3) of the **RD**, which state that Member States may require in accordance with national legislation, a written undertaking of the research organisation that in cases where a researcher remains illegally in the territory of the Member State concerned the research organisation is responsible for reimbursing the costs related to his/her stay and return incurred by public funds. This however does not impact the relevance of the Directive to meet the initial objectives, although it might impact the ability to meet the needs of stakeholders, including third-country nationals and the hosting institution, as it might contribute to a reluctance of the hosting institutions to provide such guarantees and in turn pose difficulties for researcher to find an institution willing to provide this guarantee.

With regard to the **LTR**, 17 Member States have transposed more permissive may clauses in Art.9(2) indicating that that absences exceeding 12 consecutive months or for specific or exceptional reasons shall not entail withdrawal or loss of status, thus enhancing the relevance of the Directive to respond to the objective of promoting integration and socio-economic cohesion in the Member States.

4.5 EQ1F. To what extent are the provisions of the Directives, and the way these are implemented, relevant in view of future challenges?

The section below addresses how the provisions outlined across the EU legal migration Directives are relevant in the context of future socio-economic, demographic, security and environmental challenges forecasted to affect both the EU and wider regions globally. Once these particular projected global trends are outlined, particular provisions of the EU legal migration acquis (in addition to the methods through which they are implemented) that are likely to be affected by these projections, are considered in order to surmise to what extent the Directives will remain relevant in their current form in light of future challenges.

The table below gives an overview of the main sources of information utilised and the key conclusions of EQ1F.

Research question	Sources of information	Key conclusions
<p>To what extent are the provisions of the Directives, and the way these are implemented, relevant in view of future challenges?(EQ1F)</p>	<p>1Biii Contextual analysis: drivers for legal migration: past developments and future outlook,</p> <p>2A Evidence base for practical implementation of the legal migration Directives: Synthesis report</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC Summary Report</p> <p>Additional desk research</p>	<p>The flow of migration to the EU is likely to be affected by a number of projected socio-economic, demographic, environmental and security factors. Socio-economic and demographic factors are expected to have the greatest impact to the provisions currently outlined across the EU legal migration Directives and the methods in which they are implemented across Member States.</p> <p>Socio-economic and demographic pull factors will include the EU's aging population, skills shortage across sectors and the sectoral transition to a service-based workforce.</p> <p>Socio-economic push factors will include the 'youth-bulge' phenomena and expansion of middle class populations in migrant sending regions. In addition, significant environmental drivers which can stem from immediate, environmental disasters that compel forced migration, or the gradual degradation of domestic living conditions and economic prospects, are likely to affect the flow of migrants seeking protection.</p> <p>In light of future global trends likely to affect legal migration to the EU, the legal migration Directives are to some extent "undermined" by the accessibility of the application processes. This accessibility applies to both high application costs in some Member States and complex application procedures, which could deter the high and low skilled migrants the EU needs from applying to work in the EU. Other factors that undermine the application processes include the current procedure for recognising diplomas (which similarly can deter highly skilled and educated workers from applying to work in the EU)</p>

Research question	Sources of information	Key conclusions
		At present, some national schemes offer more favourable conditions and procedures than their EU legal migration Directive equivalents. Additionally, the intra-EU mobility under the BCD, ICTD, S&RD and RD could be strengthened. A final point of consideration for the future relevance of the EU legal migration Directives are their current provisions regarding TCN vulnerability to labour exploitation.

The sections below explore the different drivers forecasted to influence migration patterns towards the EU. These span **socio-economic, demographic, environmental** and political (in terms of **security**) factors which will affect Third-country nationals dependent on the category of migrant they represent. These varying projected factors are then considered in the context of potential problems identified with the provisions of the legal migration Directives and their current methods of implementation across Member States.

4.5.1 Future challenges affecting migration to the EU

4.5.1.1 Key points

The flow of migration to the EU in the short to medium term (2015-2030) is likely to be affected by a number of drivers (push and pull factors) which comprise socio-economic, demographic, security and environmental components. These projected trends are expected to occur in the EU directly, or affect the regions from which migration to the EU will stem; they are important to the relevance of the provisions outlined across the EU legal migration acquis, and the ways in which they are implemented.

Socio-economic drivers are expected to be the dominant factors affecting migration flows to the EU; GDP growth, poverty alleviation and expansions of middleclass populations across regions globally are expected to affect skills shortages, employment levels and labour supply and demand in both origin and destination countries or regions. Forecasted **demographic** trends include global aging populations (most pertinent in the EU), increases and declines in fertility rate and the 'youth bulge' phenomena effecting migrant origin regions. To accommodate these socio-economic and demographic transitions, the current EU legal migration Directives will need to remain accessible in order to attract and retain workers from outside the EU.

Environmental drivers, which can stem from immediate, environmental disasters that compel forced migration, or the gradual degradation of domestic living conditions and economic prospects, are likely to affect the flow of migrants seeking protection. Of particular relevance is the anticipated growth in the number of asylum seekers arriving to Europe from agricultural regions experiencing pronounced temperature increases. Projected population growth and change will in turn transfigure the individual needs of Member States in accommodating this population influx, and thus there will be a need to redefine and recalibrate the scope and conditions of the EU legal migration Acquis to accommodate this.

Security factors are embodied by the projection of the continuation of current protracted conflicts. While political, economic and social conditions in the MENA region, sub-Saharan Africa and South Asia will likely remain a source of new conflicts

and affect refugee flows out of these areas and into Europe, the impact of forced migration due to conflict will not likely have a significant impact on the labour markets of destination Member States and so is not expected to affect either legal migration flows to the EU, nor the relevance of the EU legal migration Directives. The four categories of factors are outlined below.

4.5.1.2 Socio-economic factors

A recent World Bank estimation predicts that world GDP growth will strengthen to 2.9%²⁰⁴ for 2018 and 2019, thus demonstrating a relatively firm increase from 2.7% in 2017.

The socio-economic factors of particular pertinence to the provisions outlined across the EU legal migration acquis, and the methods of their implementation, will be those that stem from projected rises in global GDP and GDP per capita growth, an expansion of the middle-classes across regions and a rise in the working age population ('youth bulge' phenomena) in the MENA region and sub-Saharan Africa, which is expected to stimulate migration flows from these regions to the EU. Other factors relevant to the EU legal migration Directives are anticipated skills shortages across EU Member States, European sectoral transition to a service-based workforce and a corresponding alteration in the skills needed across Europe, for which a projected surplus of medium skilled workers will create a demand for the migration of both high and low skilled workers from outside the EU. Many of these demographic factors are foregrounded by the demographic global trend of an ageing population, which is expected to be most pronounced in Europe.

Forecasting global poverty, development and inequality

The economies of the EU and other developed regions will present less growth than the world average of 2.9%²⁰⁵, yet still represent considerable levels of growth irrespective of the global average estimate. Although Middle Eastern, North African, Sub-Saharan African and Latin American countries will experience higher rates of growth of their overall **GDP and GDP per capita**, this will not be significant enough to reduce the income disparities between these regions and those countries with advanced economies, by 2030. This particularly applies to the EU; for example, by 2030, Sub Saharan African GDP per capita is expected to double, yet it will still only comprise approximately 10% of the EU's²⁰⁶.

Russia, Turkey, China and India are expected to experience a dramatic increase in their **GDP and GDP per capita**; this might affect migration flows to the EU that stem from Asia. These emerging economies outperform developed economies when looking at projected average growth of real wages over 2011-2030, including real exchange rates²⁰⁷; yet despite this level of growth, income per capita in India and China will still remain at a much lower level than the EU average. A negative relationship between inequality within the country of origin, and emigration rates was found to be particularly applicable in the case of middle-income countries²⁰⁸. This suggests that lower levels of inequality in middle-income economies will drive migration. This creates a complex picture of how such growth in China and India will affect migratory flows to Europe. Although a middle-income country, China has a level of inequality

²⁰⁴ 'Chapter 1: Global Outlook' in *Global Economic Prospects: A Fragile Recovery*, World Bank Group, 2017 <https://openknowledge.worldbank.org/bitstream/handle/10986/26800/9781464810244.pdf>

²⁰⁵ Growth for the United States, Euro Area and Japan for 2018 and 2019 are as follows: (2.2%, 1.9%; 1.5%, 1.5%; 1.0, 0.6%) *Global Economic Prospects*, World Bank Group, 2017

²⁰⁶ Gros, D., & Alcidi, C. *The Global Economy in 2010: Trends and strategies for Europe*, 2014.

²⁰⁷ *Global wage projections to 2030*, PWC, 2013. <https://www.pwc.co.uk/assets/pdf/global-wage-projections-sept2013.pdf>

²⁰⁸ 'The relationship between inequality in the origin country and emigration' *JRC Contribution to Policy documents*, 2017.

higher than both India and at the EU level²⁰⁹, therefore migration from China to the EU, coupled with its own considerable growth, is unlikely to present a significant, or growing migratory pressure to the EU. As India is a lower-middle-income country, the negative relationship between in-country inequality and emigration does not apply to it. However, its high level of inequality (representing a large disparity between its highest and lowest earners) and its own growth in GDP and income per capita, suggests that India and China will contribute to a significant pull effect on migratory flows from Asia and thus possibly contribute to a relieving of pressure relating to Asian migratory flows to Europe, other factors remaining constant.

In 2030, it is estimated that the world will have 40% fewer people living in extreme poverty and witness a **considerable expansion of its middle class**. All regions will show improvement in terms of human development, with low-income regions converging relatively fast with developed ones.

Sub-Saharan Africa will remain the sub-region with the lowest HDI and far behind the next two lowest sub-regions (South Asia and the Middle East and North Africa)²¹⁰. Furthermore, despite some improvements in terms of poverty reduction and the expectation that the current rate of poverty in Sub-Saharan Africa could fall to between 16 and 30 %²¹¹ by 2030, the sub-region's share of global poverty will increase to 82%²¹². This will be confounded by the anticipated continued decrease in poverty in Asia²¹³. However, while the Asia Pacific's share of the global middle class is expected to have risen from 46% in 2015 to 65% in 2030, Sub-Saharan African's share is expected to stay at 4%²¹⁴.

The Middle East and North Africa (MENA) region will also experience a significant increase in their middle class populations, yet this will still only represent around 4% of the global share²¹⁵. The MENA region is defined by extreme disparities with regard to income (between both countries and individuals within that country), productivity levels of various economies, and by a large gulf between energy and non-energy sectors in countries with ample resources. Factors driving migration flow from the MENA region to the EU include the emigration of skilled personnel to countries (including EU) where skilled workers are lacking. Levels of young adults that immigrate to Europe or North America has been interpreted as a form of irregular migration, as it has been observed that in some cases, migrants from particular regions already have a job when migrating²¹⁶. Regardless, the fact that the MENA region retains the highest youth unemployment rate in the world (against an average global decline²¹⁷)²¹⁸ due to a stark increase in the working age population and due to the economic deadlocks facing some MENA countries²¹⁹, means that future migratory

²⁰⁹ The Gini coefficients (where 0 represents total equality and 1 total inequality) for the EU-28, India and China are, respectively: 30.7, 35.2, and 42.7. (Eurostat 2016; World Bank)

²¹⁰ Human Development Report 2013, The Rise of the South: Human Progress in a Diverse World, United Nations Development Programme (UNDP), 2013

²¹¹ Africa's Pulse', The World Bank, 2013

²¹² Chandy, L., Penciacova, V., Ledlie, N., 'Africa's Challenge to End Extreme Poverty by 2030: Too Slow or Too Far Behind?' Brookings, 2013 <https://www.brookings.edu/blog/up-front/2013/05/29/africas-challenge-to-end-extreme-poverty-by-2030-too-slow-or-too-far-behind/>

²¹³ Poverty and Equity Databank and PovcalNet, World Bank.

²¹⁴ Kharas, H., 'The unprecedented expansion of the global middle class: an update', 2017.

²¹⁵ Ibid.

²¹⁶ Bommers, M., Fassmann, H., Sievers, W. 'Migration from the Middle East and North Africa to Europe: Past Developments, Current Status and Future Potentials'. Amsterdam University Press, 2014. P163. The authors cite a study on irregular migration in Algeria, which found 63% of all irregular migrants already had a job in Algeria.

²¹⁷ International Labour Organization, 2015. http://www.ilo.org/beirut/media-centre/news/WCMS_412797/lang--en/index.htm

²¹⁸ 'Arab Youth Survey. The Middle East: A Nation Divided' ASDA', A Burson-Marsteller Arab Youth Survey 2017. Youth unemployment in the region currently stood at 30% in 2017.

²¹⁹ 'Education and Entrepreneurship to address Youth Unemployment in MENA Region' part of Expert Group Meeting on "Strategies for Eradicating Poverty to Achieve Sustainable Development for All" United Nations,

flows from the MENA region to the EU will likely affect the environment in which these Directives are implemented.

Collectively, these global socio-economic trends relating to growth, poverty and income will contribute to migratory flows to the EU up to 2030 in the following ways:

- The significant socio-economic growth of China and India will likely present a variety of pull factors with regard to Asian emigration flows. The result of this will be that a future Asian migration flow to the EU will not present a considerable challenge or pressure to how the Directives will be implemented in the future.
- A slight increase in emigration from Sub-Saharan Africa to the EU is anticipated because of a current decrease in levels of poverty, meaning that access to the means needed to migrate will increase. However, this increase is estimated to be slight because the high share of the Sub-Saharan population in poverty will likely dictate that much of the Sub-Saharan population will still be unable to participate in inter-continental migration flows.

Emigration from the MENA region to the EU due to socio-economic factors is expected to have a considerable impact on the environment in which the Directives are implemented. Push factors driving migration to the EU from the MENA region include a considerable increase in the working age population, corresponding low levels of youth unemployment and the economic deadlocks affecting some countries. The lack of skilled personnel in the EU presents a continuing pull factor for skilled individuals emigrating from the MENA region. As these are socio-economic trends which are not expected to be mitigated up until 2030, migration flows from the MENA region will present an important factor in the context of the implementation of the Directives on legal migration.

EU labour market demand and supply: future trends

A number of factors may lead to a significant shrinking of the EU labour work force and corresponding need for immigrant workers. It is anticipated that the projected increase in life expectancy for women and men in Europe²²⁰, and the corresponding **ageing of the EU population** will lead to inevitable aggregated labour shortages²²¹, for which there will be a demand for a younger working population. Similarly, an increase of female older workers is to become a driving force behind growth in the employment levels of older people, and represents a rising trend across EU Member States²²².

Qualitative (or qualification) shortages²²³ in the form of **skills shortages and mismatches** have been observed at EU level. Through European Company Survey data, it was observed that four in ten establishments in Europe reported difficulty in recruiting employees with the skills required²²⁴. Qualification mismatch, defined as the phenomenon of employees working in positions which are ill-matched to the qualifications they hold (either through being over-qualified or under-qualified for their

New York, 10-11 May 2017. https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2017/04/Imed-Drine-ExpertMeeting_UN.pdf

²²⁰ European Commission, 'The 2015 Ageing Report: Underlying Assumptions and Projection Methodologies', 2015. A EUROPOP2013 projection suggests an increase of 7.1 years and 6.0 years for men and women respectively, from 2013 to 2060.

²²¹ Ibid.

²²² 'Employment and Social Developments in Europe: Annual Review 2016', European Commission, 2016.

²²³ A quantitative labour shortage being defined as a situation in which labour demand is larger than labour supply. 'Labour market shortages in the European Union: Study for the EMPL Committee', Policy Department A: Economic and Scientific Policy, 2015.

²²⁴ 'Matching Skills and Labour Market Needs: Building Social Partnerships for Better Skills and Better Jobs', The Global Agenda Council on Employment, 2014

http://www3.weforum.org/docs/GAC/2014/WEF_GAC_Employment_MatchingSkillsLabourMarket_Report_2014.pdf

current position) demonstrates a relative shortage of medium-level qualifications compared with the share of jobs at that same level, with a relative glut of candidates with low level qualifications. The implications of high incidences of mismatched employment can be lower wages for over-educated and under-educated employees²²⁵; over-educated workers earn less than those with the same level of education that are well-matched, while under-educated workers earn less than a well-matched individual that has the same job. It has also been observed that over-educated workers demonstrate less fidelity to the workplace and are more likely to be engaged in job searching²²⁶. The implications of employment mismatching has a direct impact on labour market supply and demand, affecting economic growth and productivity²²⁷.

The European economy is envisaged as undergoing a transition in which the service sector will become its main driver²²⁸. This **sectoral change** is foregrounded by other globalisation trends, in which increased technological dominance across sectors will lead to a decline in manufacturing and primary sectors. In turn, this will further contribute to the increasing globalisation trends that precipitated the transition to service sector dominance. Implications of this sectoral transition are a move toward knowledge-based and consumer services, meaning the skills demanded to supply a service-based workforce will change.

The EU legal migration Directives, with regard to employment, tend to focus on the migration of highly skilled workers. In addition, policy structures across Europe tend to favour high-skilled migrants over low-skilled, which might be detrimental in the context of future labour gaps. The old-age dependency ratio²²⁹ in Europe is anticipated to increase from 25.9% to 38%; this will demand an increase of primary care workers, which might be confounded also by the possible rise in a demand for childcare workers, as a result of the increase in women entering the workforce²³⁰. Consequently, both of these factors could represent a future need for low-medium skilled workers in order to meet the demand to fill low-medium skilled occupations in the EU. As such, the EU legal migration acquis might not be well enough equipped- with regard to its personal scope - to accommodate and facilitate the flow of such low-medium skilled migrants in the future. Although appropriate in the context the EU's current labour needs, the EU legal migration acquis might not be sufficiently relevant to address these future skill needs.

The **EU employment rate** for 2016 stood at an average figure of 71.1%, the highest that has ever been recorded annually for the EU. However, this figure encompasses a considerable distribution between Member States with strikingly different respective rates of employment. The Member State with the highest rate of employment in 2016 was Sweden (80%²³¹), while countries with employment rates below 60% fall into a Balkan/ Caucasus group (including Greece). According to the European Commission's annual review of European employment and social developments for 2016, from 2013 to 2015 all Member States (except Luxembourg, Austria and Finland) recorded increases in their levels of employment²³². Unemployment levels in the EU are expected to decline, reaching their 2008 levels by 2030. Nevertheless, considerable disparities will continue to exist across the EU.

In 2015, both permanent and temporary employment increased across the EU; the share of employees engaged in temporary contracts in 2016 was 14%. **Job**

²²⁵ 'Skills mismatch in Europe: Statistics Brief', International Labour Organization, 2014.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ 'Future skill needs in Europe: critical labour force trends', Cedefop, 2016.

²²⁹ The percentage of people who have reached retirement age (women from 60, men from 65). Kobzar, S., Hellgren, T., Hoorens, S., Khodyakov, D., Yaqub, O., 'Evolving patterns and impacts of migration: Global societal trends to 2030: Thematic Report 4', Rand Europe, 2015.

²³⁰ Ibid.

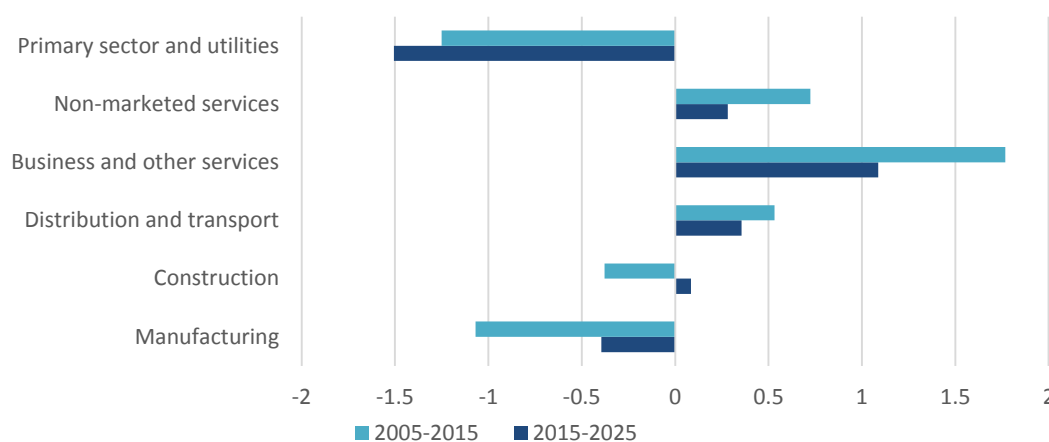
²³¹ and the only country whose rate is over 80%.

²³² 'Employment and Social Developments in Europe: Annual Review 2016', 2016

insecurity (identified through precarious employment, namely: temporary agency work, zero-hour contracts, fixed-contract work, undeclared work, etc), has starkly increased in certain Member States, including Spain, Portugal, Ireland, Latvia and Greece; part-time work has increased in Italy, Lithuania, Spain, Ireland, Latvia and Greece; involuntary work has increased considerably in Ireland and Latvia²³³. Job precariousness is of relevance to the future EU labour market in the context of the transition to the service sector. The service sector tends to be more at risk of precariousness²³⁴.

Across EU Member States, levels of employment in the primary sector and manufacturing sectors are expected to decline by 13% and 4 % respectively, during 2015-2025²³⁵. Employment levels in non-marketed services are expected to rise by around 2.5% for the same time period, attributed to increased employment in health and education sectors; this slower growth – although still encouraging – is attributed to the austerity measures rolled out across many Member States. Employment in business services and retail (tertiary sectors) is expected to rise by 1.1% and 3%. The differences in industrial structures and the varying stages of economic development which most Member States are undergoing, mean that the aforementioned expected **sectoral employment transitions** will be experienced by all Member States at different rates to each other. Figure 15 demonstrates how these trends are expected to be reflected in the employment growth rate from 2015 - 2025, when - albeit with a lower average growth rate - the tertiary sector will remain the leader with regard to job creation, followed by the secondary sector (i.e. construction and manufacturing), which will present a slight recovery when compared to 2005-2015.²³⁶ On the other hand, the average employment growth rate in the primary sector will decrease as compared to the already negative growth rate from 2005-2015.

Figure 15. Past and projected employment growth rate by sector (average) in EU



Source: Cedefop, *Employment trends, 2016 Skills Forecast*.

Current projections of EU **labour supply** predict a near stabilisation for the period between 2013 and 2023 (EU and euro area; age group: 20-64)²³⁷. This can be accredited to higher participation rates of women and the elderly²³⁸. As shown in Figure 16, this increase will be driven by significant growth of the highly qualified labour force (of which women represent 46% of this group). However, between 2023

²³³ 'Precarious Employment in Europe, Part 1: Patterns, Trends and Policy Strategy', Study for the EMPL Committee, European Parliament, 2016.

²³⁴ Ibid.

²³⁵ 'Future skill needs in Europe: critical labour force trends.' 2016.

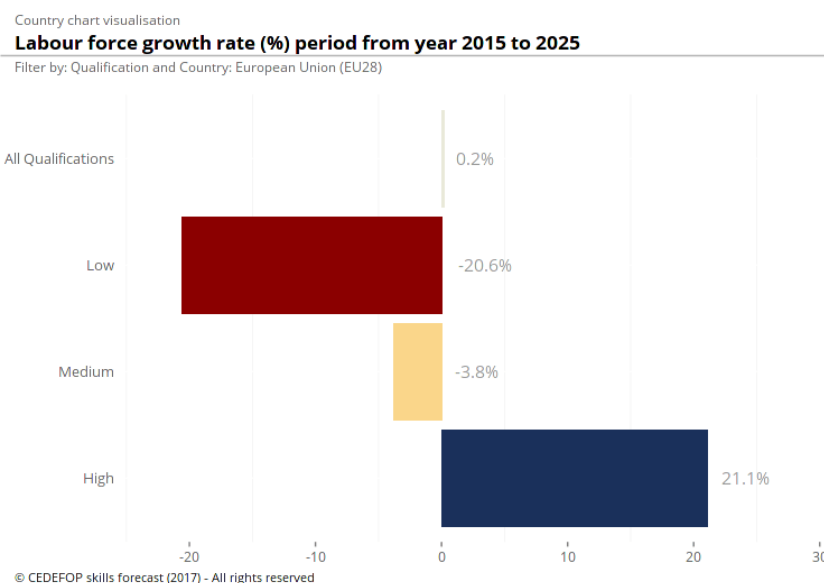
²³⁶ Ibid.

²³⁷²³⁷ 'The 2015 Ageing Report: Underlying Assumptions and Projection Methodologies'. 2015.

²³⁸ 'Future skill needs in Europe: critical labour force trends.' 2016.

and 2060, the EU labour supply is expected to decrease by 8.2 %²³⁹: this will represent a population deficit of approximately 19 million. The eight largest EU Member States (with regard to labour force)²⁴⁰ represent around 75% of the total EU labour force. Of these, only the UK, FR and IT are predicted to present stabilisations of their total labour forces. ES & NL are predicted to show annual declines of approximately 0.25%, while DE, PL and RO are expected to register labour force declines approximate to 0.5 and 0.75%. The EU average is expected to register - 0.2%²⁴¹.

Figure 16. Projected labour force²⁴² growth by level of qualification in EU28 (2015-2025)



Source: Cedefop, Projected labour force, 2016 Skills Forecast.

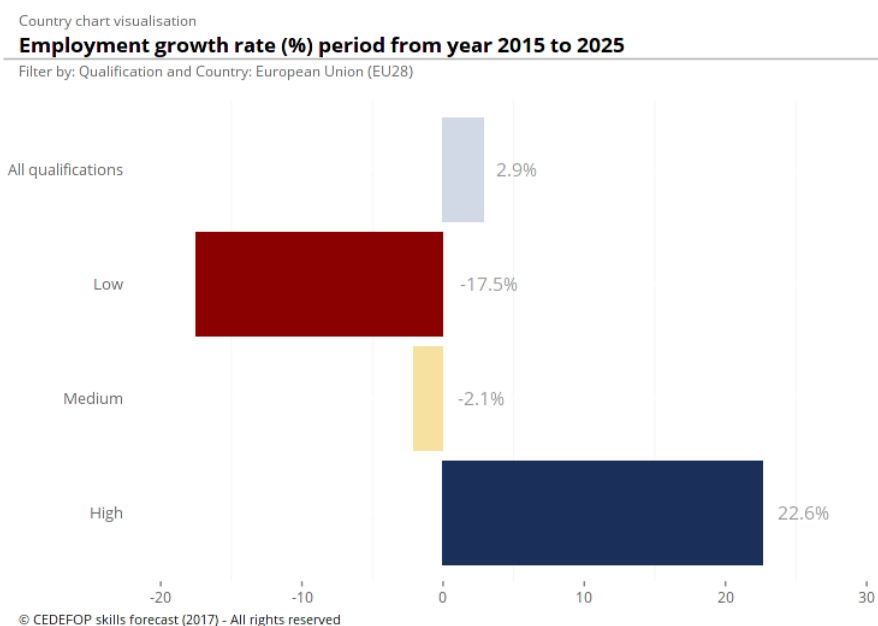
²³⁹ 'The 2015 Ageing Report: Underlying Assumptions and Projection Methodologies'.

²⁴⁰ DE, ES, FR, IT, NL, PL RO, UK.

²⁴¹ 'The 2015 Ageing Report: Underlying Assumptions and Projection Methodologies'.

²⁴² Labour force refers to the population aged 15+ who are economically active, i.e., the labour force includes employed and disposable unemployed persons (actively seeking for jobs). People from the population 15+ who are not considered as labour force are those voluntary unemployed (not seeking for job and even if offered they are likely to refuse it), disabled, retired or on parental leave etc. (Cedefop).

Figure 17. Projected employment growth rate²⁴³ by level of qualification in EU28 (2015-2025)



Source: Cedefop, *Projected employment trends, 2016 Skills Forecast*.

Based on the projections for labour force and employment growth by level of qualification (between 2015 and 2025), the levels of respective growth seem relatively commensurate (as demonstrated in Figure 16 & Figure 17). However, superficial correlations can disguise what could be potential labour market imbalances with regard to supply and demand of the appropriate relevant skills required for a particular occupation. The indicator of future imbalances of demand (IFIOD), measures the extent to which recruitment challenges are likely to arise owing to short supply of skills relative to total demand in the economy. Cedefop found that Scandinavian countries, Central and Eastern European, France and Benelux, present lower²⁴⁴ IFIOD levels for the following occupations: elementary occupations; plant and machine operators and assemblers and craft and related trades workers. This future indicator suggests a trend in the qualification composition of occupations across Member States, and reinforce polarising trends in the EU labour market in which there are shortages of higher and lower skilled labour, and a growing surplus of medium skilled workers.

In the context of this socio-economic projection regarding the growing supply of medium skilled workers, it will be necessary that the EU legal migration acquis is able to accommodate the migration to the EU of both low and high skilled workers, in order to tackle predicted skills shortages in these areas. The BCD, ICT, RD, SD and R&SD all cover highly skilled workers (by virtue of the TCN needing to have either a professional qualification, educational qualification or professional experience): these will be beneficial to address the projected skills shortages of highly skilled workers in the EU. However, the predicted growing supply shortages of low skilled labour is not comprehensively accommodated by the current provisions of the EU legal migration acquis. The SWD covers low skilled seasonal workers, facilitating their seasonal employment in the EU while regulating the terms of their entry and stay and providing

²⁴³ Employment refers to the number of people in work (headcount) or the number of occupied jobs in the economy. As employed is considered the one who worked at least one hour in reference period for financial or nonfinancial reward. Employment trends present the development of the employed persons in different sector, occupations and qualification. (Cedefop).

²⁴⁴ Where 0 = an absolute inability to find appropriate skills for job demands, and 1 = no shortage.

them with a set of rights. However, the Directive intends to encourage circular migration, through which the TCN is prohibited from becoming more permanent EU residents. While the provisions of the SWD are not themselves contrary to the purpose they are meant to serve, there will be a need for further robust supranational regulation that facilitates the permanent legal migration of a wider category of low skilled workers to the EU, in order to remedy this skills shortage.

4.5.1.3 Demographic factors

Population ageing is a global trend whose growth is projected to be slow, but this growth is anticipated to peak within 20 years, at which point the global population will be around 8.3 billion people²⁴⁵. It is anticipated that high fertility rates in Sub-Saharan Africa and India will be off-set by a decline in the fertility rates of many emerging countries²⁴⁶.

The impact of an ageing global population will have profound effects that manifest themselves across regions, and particularly in the context of migration to the EU. In 2030 Europe will be the region with the oldest average age (44 years), while 23 % of the EU population will be over 65. Projections for the Sub-Saharan African average age in 2030 stand to be 21.3 years and in Asia the figure is 35.4 years; the world average will be 33.2 years²⁴⁷. **For migrant receiving, destination EU Member States**, the implications of this within the context of migration are significant. A younger population is more mobile, while an ageing European population will attract low-skilled migrants to fill employment opportunities in the primary care sector²⁴⁸. In conjunction with this, the 'youth bulge' experienced across many developing countries will further represent a demographic pull factor for which EU Member States might expect to receive slightly increased migration flows from sub-Saharan Africa and the MENA region^{249,250}. However, despite obvious demographic trends, some countries do demonstrate migration flows contrary to typical demographic trajectories: these include Eastern European countries, within which out-migration is high and birth rate is low²⁵¹. It is expected that in regions where fertility is already below a level of replacement – in particular Europe – international migration at current levels will be unable to offset the projected decline in population. It is estimated that between 2015 and 2050, the net inflow of migration will be approximately 32 million, while excess deaths over births will stand at 57 million²⁵².

Migrant sending regions are projected to undergo similarly significant demographic change which could affect migration flows from them to the EU. Of all major regions, **Africa** currently has the youngest age distribution. However, it is expected to age profoundly: by 2050 it is expected that its population aged 60 years or over will grow from 5% in 2015 to 9%²⁵³. However, estimates do vary in relation to African demographic change and growth. The Wittgenstein Centre²⁵⁴ projects a decline in fertility rates across Africa in ways which are not radically different from the decline in fertility rates occurring in other parts of the world. The region experiences diversity when it comes to higher education attainment, with countries in Southern and

²⁴⁵ '2030: Global Trends to 2030: Can the EU meet the challenges ahead?' European Strategy and Policy Analysis System, 2015.

²⁴⁶ Ibid.

²⁴⁷ '2030: Global Trends to 2030: Can the EU meet the challenges ahead?', 2015.

²⁴⁸ Kobzar, S., Hellgren, T., Hoorens, S., Khodyakov, D., Yaqub, O., 'Evolving patterns and impacts of migration: Global societal trends to 2030: Thematic Report 4', Rand Europe, 2015.

²⁴⁹ Population Facts', United Nations, 2015.

http://www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts_2015-1.pdf

²⁵⁰ Education in the Middle East and North Africa, The World Bank, 2014

<http://www.worldbank.org/en/region/mena/brief/education-in-mena>

²⁵¹ 'Evolving patterns and impacts of migration: Global societal trends to 2030: Thematic Report 4', 2015.

²⁵² 'World Population Prospects: Key findings and advance tables', United Nations, 2017.

²⁵³ 'The World Population Prospects: 2015 Revision', United Nations, 2015.

²⁵⁴ KC Samir, 'Population: How Many People Will Live in Africa in 2100?' The Globalist <https://www.theglobalist.com/africa-population-fertility-rate/>

Western Africa amounting for higher shares of higher educated people than Eastern and Middle Africa²⁵⁵. With projections of the average age in Sub-Saharan Africa standing at 21.3 years in 2050, the potential for increasing educational attainment is huge. The IMF has recognised that the brain drain phenomenon in sub-Saharan Africa is 'particularly acute'²⁵⁶. Remittance inflows to the region represent a significant source of income for certain countries. During the global financial crisis, the IMF noted that remittance inflows helped to compensate for declines in foreign investment, help facilitate access to financial services, and alleviate poverty²⁵⁷.

By 2030, although **Asia** will be the most populous region, it will not be the oldest (with an average age of 34.5); the relative population increase projected for the region stands at 12%, though its accounting for approximately 60% of the world's population contributes to significant 'global population projection uncertainty'²⁵⁸. Although by 2030 it is expected that Asia will account for 55.5% of those between the ages of 15-24, this represents a decline from 2015, where the figure was approximately 60%. The expansion of the middle class in developing regions is expected to occur particularly in Asia, which will account for 66% of the total world population²⁵⁹. However, demographic change across the Asia-Pacific region is disparate. Singapore, Japan and the Republic of Korea have ageing populations, low fertility rates and stable or shrinking native labour force populations, while wage differences between nearby Asia-Pacific countries can make migration between Asian countries an attractive option for potential Asian migrants, rather than migrating to Europe and North America²⁶⁰.

The majority of **MENA countries** are experiencing (or have experienced) the third stage of demographic transition²⁶¹, meaning that while mortality has declined, fertility rates are only now beginning to reflect a similar trajectory²⁶². It is estimated that by 2030, the population share of the 0-19 age group in the MENA region will be 31.9 %, compared with an EU average of 20.6²⁶³. However, this represents a significant downturn from the percentage share for 2010 (which was 39.5).

It is anticipated that global projections on regional demographic change and transition might affect future migration flows to the EU and consequently how EU legal migration acquis is implemented in the future. Europe's aging population will result in a greater demand for care services, and thus an obvious opportunity for low-skilled migrants from developing regions. However, demographic factors, such as the EU's ageing population, should be understood alongside a comprehensive array of pull factors which stimulate and direct migration flows, such as: labour demand; migrant labour supply; the impact of free movement within the EU; migration policies in migrant receiving Member States; wage levels and geographical proximity and the types of skills required by receiving Member States. As such, future projection of migration flows to the EU based on projected demographic trends alone is unsound. Additionally, the EU might have to compete with developing regions, such as Asia, for young labour recruitment. However, demographic change to sub-Saharan Africa and the MENA

²⁵⁵ Goujon, A., 'What you probably don't know about higher education in sub-Saharan Africa' IIASA, 2017. <http://blog.iiasa.ac.at/2017/01/27/what-you-probably-dont-know-about-higher-education-in-sub-saharan-africa/>.

²⁵⁶ 'World Economic Outlook: October 2016. Subdued Demand: Symptoms and Remedies.' International Monetary Fund, 2016.

²⁵⁷ Ibid.

²⁵⁸ 'Population 2030: Demographic challenges and opportunities for sustainable development planning'. United Nations, 2015.

²⁵⁹ '2030: Global Trends to 2030: Can the EU meet the challenges ahead?' 2015.

²⁶⁰ 'Asia-Pacific Migration Report 2015. Migrants Contributions to Development', UNESCAP, 2015. P.50.

²⁶¹ In the context of the demographic transition model, representing the transition of demographic equilibrium from high fertility and high mortality to low fertility and low mortality (Munz & Ulrich 2007).

²⁶² Bommess, Fassmann, Sievers, 'Migration from the Middle East and North Africa to Europe: Past Developments, Current Status and Future Potentials' 2014.

²⁶³ Ibid.

region, in particular with regard to relative surges in their respective shares of youth population, will represent demographical push factors and which must be considered in the context of future implementation of the EU legal migration acquis. Therefore, in order to accommodate potential young legal migrants from these regions, the EU legal migration Directives must be made accessible and comprehensive in order that the EU labour market is deemed an attractive destination in which to find employment. How the current provisions of the Directives, in addition to their methods of implementation across Member States, can facilitate these global demographic projections in the future, is addressed in the section 4.5.2.

4.5.1.4 Security factors

It is widely considered²⁶⁴ that although internal conflicts will tend to decline in most regions up to 2030, the risk of conflict in Sub-Saharan Africa and in parts of the MENA region and South Asia will remain high. The MENA region and South Asia are expected to continue to experience international and domestic conflict as immediate solutions to them are not broadly foreseen, with political, economic and social conditions in these region likely to remain the source of new conflicts. With regard to the future implementation of the EU legal migration acquis, it is reasonable to assume that the number of applications for residence permits in recent years has been affected by major conflict (in particular the Syrian conflict, which is the reason for the stark increase in permits for family reasons for Syrian nationals in 2016²⁶⁵); for this reason, applications made under the legal migration acquis for the FRD can be expected to be commensurate with conflict protraction and displacement due to conflict. However, as outlined below, actual projected figures for refugee movement to the EU as a component of migration flows are not expected to be significant enough to fundamentally impact the current provisions outlined in the EU legal migration acquis.

In the **MENA region**, conflict over resources (between neighbouring countries), the threat of Islamist extremism and authoritarian political systems represent factors influencing the likelihood of maintaining current international and transnational conflict in the region, or fuelling new ones²⁶⁶. Domestic conflict in the MENA region can be triggered, or maintained, by new political regimes, resource allocation and poor socio-economic conditions (e.g. high youth unemployment and unfair distribution of wealth and resources). It is known that such conflicts do, and are currently, triggering refugee and migration movements²⁶⁷. Undoubtedly conflict in the MENA region presents a significant future pressure to EU migration flows which is unlikely to abate while no end to current conflicts are in sight. Similarly, continued domestic conflict and international terrorist activity occurring in the **Horn of Africa** and other parts of **sub-Saharan Africa**²⁶⁸ and state fragility in **Central Asia** present continual pressures for the continued relevance and implementation of the EU legal migration acquis, as refugee movement to Europe will continue.

However, in actuality the refugee presence in the EU, and in particular as a proportion of TCN applicants, is relatively small. Furthermore, it takes beneficiaries of international protection a long time to integrate into the labour market, when

²⁶⁴ Migration from the Middle East and North Africa to Europe: Past Developments, Current Status and Future Potentials, 2014; Burrows, Mathew. Global Trends 2030: Alternative Worlds. US National Intelligence Council, 2012.

²⁶⁵ http://ec.europa.eu/eurostat/statistics-explained/index.php/Residence_permits_statistics#First_residence_permits_by_reasonp

²⁶⁶ Ibid.

²⁶⁷ Between 2015 and 2016, Syria was the country of origin of the majority of asylum seekers in the EU, followed by Afghanistan, and then Iraq. The number of asylum seekers in the EU (from non-EU countries of origin) has greatly spiked since 2012: 431, 000 applied in 2013; 627, 00 in 2014 and 1.3 million in both 2015 and 2016. Eurostat. Ec.europa.eu/Eurostat/statistics-explained/index.php/Asylum_statistics.

²⁶⁸ Examples include, among others, ongoing civil war and Islamist terrorism in Somalia, Islamist terrorism in north eastern Nigeria and violence in Cameroon between the government and minority language speakers (Crisis Group 2017).

compared to migrants in the EU for employment or study opportunities (such as those under the relevant legal migration Directives).²⁶⁹ This suggests that an influx of refugees to the EU, in the context of continued global insecurity, will not have a significant impact on the demand in the labour market for other Third-country nationals, and consequently, on the future implementation of the EU legal migration Directives.

4.5.1.5 Environmental factors²⁷⁰

Displacement of people as a consequence of adverse environmental conditions and/ or climate change is anticipated to become a more profound primary and secondary driver of migration flow, as increasingly, environmental phenomena is manifesting itself more prominently and more frequently than before. Environmental disasters can force the immediate major displacement of people, or engender gradual degradation processes which have negative effects on people's living conditions and economic prospects, which consequently can precipitate voluntary migration as domestic socio-economic or health conditions deteriorate²⁷¹.

Climate change can be conceptualised within different thematic priorities that include, amongst others: mitigation (such as measures to reduce greenhouse gas emissions) and adaptation (measures to reduce vulnerability and increase resilience to potential environmental disasters). Within the context of migration policies, both priorities are significant. Of particular importance from the perspective of migrant receiving EU Member States is climate change adaptation measures, as disaster risk reduction activities, infrastructure improvements, urban planning, land reform and other development measures to strengthen the resilience of vulnerable persons and groups are all potential ways to enable people to remain within their communities when facing climate change related natural hazards. The obvious consequence of this is a subsequent significant reduction in the number of displaced people due to natural disasters that would contribute to migration flows.

Vulnerability in the context of climate change phenomena can be largely broken down into two broad risk categories: global warming, resulting in rise in sea levels and subsequent coastal flooding; and changes in weather patterns (droughts or increased rainfall or other extreme weather) which can result in desertification, deforestation and land degradation. The earth's surface temperature is expected to rise under all assumed emission scenarios (on a global average by 0.3 to 0.7°C); correspondingly, it is likely that heat waves will occur more frequently and last for longer periods of time.

With regard to precipitation levels, some estimates predict increased fall (by up to 200mm) in tropical areas, and decreased fall (by up to 200mm) in Latin America and South Asia²⁷². However, with regard to drought predictions, increases in droughts and temperature contribute to desertification that may put 135 million people at risk of being displaced²⁷³. Furthermore, these factors may also contribute to deforestation²⁷⁴ (notably in the Sahel and Central America) and reduced drinking water availability. Increased rainfall on the other hand, is associated with flooding. While the overall amount of rainfall is expected to only increase moderately, the expectation is that this precipitation will fall more irregularly, increasing the potential of flash floods. About

²⁶⁹ Labour market integration of refugees: strategies and good practices, March 2016.

²⁷⁰ Based on Missirian, A. and Schlenker, W. (2017). Asylum applications respond to temperature fluctuations, *Science* 1610-1614

²⁷¹ Warner, K., Hamza, M., Oliver-Smith, A., Renaud, F., & Julca, A. 'Climate change, environmental degradation and migration' in *Natural Hazards*, 55 (3) 2010.

²⁷² 'OECD Environmental Outlook to 2050', OECD, 2012.

²⁷³ United Nations Convention to Combat Desertification, 2014.

²⁷⁴ Warner, K., Erhardt, C., de Sherbinin, A., Adamo, S., Chai-Onn, T. 'In Search of Shelter', Centre of International Earth Science Information Network, 2009.

1.2 billion people are at risk from floods today, and this number is expected to rise to 1.6 billion in 2050, i.e. one-fifth of the world's population²⁷⁵.

The impact of environmental factors appears to be felt primarily through their impact on economic livelihoods and political tensions, which can in turn induce displacements. Existing evidence from rural areas suggests that environmental degradation can have an impact on existing patterns of internal migration, for example short-distance circulatory migration in order to diversify income and sustain livelihoods.²⁷⁶ Similarly, environmental change in the MENA region, such as drought and desertification, has exacerbated poverty and played a part in population movement²⁷⁷. In the case of external migration from areas experiencing environmental degradation to Europe, a direct linkage has at times been difficult to define or determine. One main reason for this is that environmental change directly and indirectly increases poverty, which can in turn limit the possibility for migration due to economic factors²⁷⁸. Similarly, environmental change can be expected to combine with other factors, such as economic inequality, to engender migration within regions, especially to urban coastal areas where economic opportunities are greater (which can be counter-intuitive in the context of migration away from environmental risk). This inter-regional migration to urban areas (linked to environmental factors) is especially forecast for Africa and Asia²⁷⁹, and could suggest that migration to Europe due to economic drivers is not fully determined.

However, although the relationship between environmental degradation/climate change and external migration is not always wholly deterministic, recent research suggests that a non-reduction of carbon emissions and increased temperatures will propel the future flow of asylum seekers to the European Union²⁸⁰. One study found that the greater the level of deviation from 28 degrees Celsius in an origin country's agricultural region during the growing season, the more likely it was that people would seek asylum abroad. In the European context, the researchers forecasted that an average global increase in temperature by 1.8 degrees Celsius would increase asylum applications in the European Union by 28% by 2100. This rate represents 98,000 asylum applications each year, and is calculated on the assumption that carbon emissions flatten globally over the next few decades and then decline. A less conservative assumption, in which global temperatures are imagined to rise by 2.6 degrees Celsius to 4.8 degrees Celsius by 2100, and carbon emissions assumed to continue at their present trajectory, would precipitate an increase in asylum applications in the European Union by 188%, translating to 660,000 more applications per year²⁸¹.

Climate change (as a driver of migration) can be difficult to forecast but importantly, it cannot be isolated from other factors, such as socio-economic, security and political. Additionally, climate change itself can be both a primary and secondary driver of migration flow. For this reason, while climate change forced migration is currently fairly rare in Europe²⁸², projections regarding increases in the earth's temperature, the

²⁷⁵ 'OECD Environmental Outlook to 2050', OECD 2012.

²⁷⁶ 'Commission staff working document on climate change, environmental degradation, and migration, accompanying the document 'communication from the Commission...An EU Strategy on adaptation to climate change', European Commission, 2013.

²⁷⁷ Ibid.

²⁷⁸ Geddes, A., Somerville, W. 'Migration and environmental change: Assessing the developing European approach.' Migration Policy Institute, May 2013.

²⁷⁹ Ibid.

²⁸⁰ Missiriana, A. and Wofram, S., 'Asylum Applications and Migration Flows', American Economic Review, 2017 107 (5): 436-40.

²⁸¹ Martineau, K, 'Hotter Temperatures Will Accelerate Migration of Asylum-Seekers to Europe, Says Study', 2017. Available at: <http://blogs.ei.columbia.edu/2017/12/21/hotter-temperatures-will-accelerate-migration-europe-says-study/>

²⁸² 'Science for Environment Policy: Migration in response to environmental change.' European Commission, 2015.

destabilisation of societies and the fleeing of people from their homes due to weather shocks²⁸³, it is expected that environmental change will contribute to human movement and asylum flows to the European Union in the future. It is important to note that climate change-driven migration, or displacement due to natural disasters, are not currently eligible grounds for legal migration under the Acquis. However, a significant increase in the flow of asylum seekers to Europe due to environmental factors would have a direct effect on the implementation of the Acquis, in terms of the need to redefine and recalibrate their scope to accommodate projected population changes and the future needs and conditions of migrant-receiving Member States, which could be affected by increased numbers of climate refugees.

4.5.2 Future challenges in the context of the provisions of the EU Directives acquis and their methods of implementation

4.5.2.1 Key points

The following section examines whether the EU legal migration Directives, as they are implemented currently, are able to respond to future challenges.

The key issues affecting the relevance of the Directives are firstly the accessibility (with regard to cost and user-friendliness) and the application procedure.

Further, national equivalent schemes can offer more favourable alternatives for which potential TCN applicants might seek to apply, in order to bypass some of the deficits identified in the EU legal migration acquis.

Intra-EU mobility requirements outlined in the BCD, ICTD, S&RD and RD are considered to be relevant factors which might affect the attractiveness of the EU labour market for high skilled workers when compared with other geographical regions such as the US or Canada.

Social security protection in the context of intra-EU mobility is outlined but considered not to be relevant in the context of the future implementation of the EU legal migration acquis.

Finally, the potential for TCN exploitation is considered to be a future challenge that as yet, the provisions outlined in both EU legal migration Directives (and other Directives concerning exploitation more specifically) are not able to sufficiently account for.

4.5.2.2 General issues across the application process

In order to meet the demand for a younger, more skilled working population in Europe²⁸⁴ (and as a way of addressing an anticipated ageing population, skills shortages and mismatches in the labour market and sectoral transition²⁸⁵), it is important that EU Directives, and especially those focussing on highly skilled (BCD, ICT, S&RD), improve the accessibility (with regard to application costs and user-friendliness) of application procedures in order to encourage applications from high skilled third-country nationals that are already eligible to apply.

A main issue in the current application procedures across the Directives concerning highly skilled applicants (in light of future challenges) are difficulties inherent to the application process itself (mostly in terms of cost and user-friendliness). Another issue is found in the complicated, non-unified procedure through which diplomas are recognised which might present a deterrent to high skilled/ educated third-country

http://ec.europa.eu/environment/integration/research/newsalert/pdf/migration_in_response_to_environmental_change_51si_en.pdf

²⁸³ Martineau, K, 'Hotter Temperatures Will Accelerate Migration of Asylum-Seekers to Europe, Says Study', 2017.

²⁸⁴ 2030: Global Trends to 2030: Can the EU meet the challenges ahead?' European Strategy and Policy Analysis Team 2015.

²⁸⁵ 'Labour market shortages in the European Union: Study for the EMPL Committee', Policy Department A: Economic and Scientific Policy, 2015.

nationals. An additional issue in light of the future job market precariousness and reliance on a service-sector workforce is the reliance on resource evidence for LTR applications. These issues with regard to the EU Directives application processes are outlined below.

Application procedures

High application costs have been observed in several Member States. In Bulgaria, the highest application fee represents more than 50% of national mean monthly gross earnings. In another four Member States, application fees represents 25-50% of monthly gross earnings, while the 'lowest' fees still represented between 10 and 24% in five Member States. In addition to potentially going against the provisions of the SPD, SWD, ICT and S&RD (which state that fees 'shall not be disproportionate or excessive') and the relevant ECJ case law, high application costs can deter highly skilled migrants from applying for positions in EU Member States. It is anticipated that the EU will have to compete for a young and (/or) skilled labour force with other regions - such as Asia - that may offer competitive opportunities with less expensive application procedure costs²⁸⁶. Similarly, **complicated application procedures** have been identified in certain Member States. For example, when multiple authorities and/or multiple steps are involved in the application process, the necessary steps and authorities which need to be contacted are not very well explained and not easy to follow by third-country nationals in terms of what concrete steps to take. Complicated application procedures might further deter a variety of skilled migrants whose contribution to the EU labour work force will be in demand.

Recognition of diplomas

Problems identified in recognising the diplomas of third-country nationals during the application process might both deter potential applicants from applying to positions in the EU, while also delaying the recruitment process and invigoration of the European labour work force. During the application process for a first permit, several Member States have the recognition of diplomas is a widely posed requirement, especially for work-related permits, which vary depending on the Member State. However, its existence and the related guidance are relatively difficult to find. Additionally, it is onerous and difficult for TCN to start such a procedure. As an example, doctors and nurses in Poland reported difficulties in having their diplomas recognised. The recognition procedure can be costly and is considered by third-country nationals to be a long process. In this example, recognition is managed by medical universities, which each determine different rules and conditions; this lack of a unified, standardised recognition process across EU Member States might lead to discrepancies between which institutions - and as a consequence, which Member States - are more readily able to process the permits of foreigners whose work will be desired in years to come. Consequently, gaps exist in the context of how diplomas and qualifications of third-country nationals applying to enter the EU are recognised; depending on the destination country, third-country nationals may face recognition procedures of varying onerousness than EU citizens holding a similar EU or non-EU qualification.

4.5.2.3 The potential favourability of national equivalent schemes over the EU legal migration acquis

In addition to the potential problems identified with the provisions of the Directives and their current implementation across Member States (in the context of future trends projected for the EU), further consideration might be paid to the apparent favourability of national equivalent schemes over the Directives themselves, which might go against the wider objectives of the acquis to create an equal level playing field to manage migration flows in the EU as well as to ensure equal treatment of

²⁸⁶ 'Asia-Pacific Migration Report 2015. Migrants Contributions to Development', UNESCAP, 2015.

third-country nationals across the EU and transparency, simplification and legal certainty for third-country nationals in the EU.

For example, in comparison with the conditions stipulated by the **BCD**, certain Member States **require lower minimum incomes** for national schemes (e. g in Sweden, income requirements are far lower under the national equivalent scheme). Specifically in the case **of LTR national equivalent schemes**, there are further potential reasons for which they might be preferred over the actual LTR. In some Member States, LTR national equivalent schemes offer more favourable conditions for potential applicants. The national equivalent schemes in Croatia, Germany and Spain specifically offer a broader scope of person specification with regard to the categories of persons able to lodge an application than are included in the EU LTR. The Portuguese LTR equivalent features a much shorter deadline to decide on a permit request (90 working days compared to 6 months for the EU LTR), while application fees are approximately 25% lower than those stipulated for the LTR. These conditions obviously contribute to the LTR national equivalents being notably more favourable in certain cases. In the context of increased future migration to the EU, these more attractive components of national equivalent schemes should be noted in order to increase applications under the EU legal migration acquis.

4.5.2.4 Intra-EU mobility for the BCD, ICTD, S&RD and RD

It has been observed that intra EU mobility provisions are provided through the BCD, ICT, S&RD and RD. While presented as a 'right', mobile TCN still have to go through an application procedure, which indeed is in terms of burden not much different from first-time applicants. Additionally, in comparison to EU citizens, who may be subject only to a "registration regime", procedures and application supporting documents required by mobile third-country nationals comprise part of a "permit regime", i.e. the Member State has the discretion to decline an application.

In the context of the EU's desire for highly skilled workers, stipulations enshrined with the EU legal migration acquis that concern intra-EU mobility will undoubtedly affect the extent to which such workers find the EU an attractive destination. While intra-EU mobility may seem very attractive to TCN, indeed the complexity of the provisions and requirements may make them opt for other geographic areas, such as the US or Canada. Consequently, If the EU wants to attract such migration of key workers in order to meet the demand for highly educated and skilled workers, free movement between Member States must be enabled and made applicable for TCN applicants, in order that all third-country nationals will be able to exercise and enjoy the right to intra-EU mobility.

4.5.2.5 Future protection from exploitation of third-country nationals

Third-country nationals are vulnerable to particular forms of labour exploitation that include the non-payment or under payment of a salary (below minimum wage), lack of social security payments, few or no days of leave, the differing of working conditions from contractually those agreed, amongst others²⁸⁷. Legally residing third-country nationals, without authorisation to work, might engage in legitimate work without the explicit right to do so. Most vulnerable to labour exploitation are third-country nationals who might engage in undeclared or illicit or prohibited work.

However, the legal migration Directives, as they currently are comprised, only partially address the issue of exploitation. While all Directives include equal treatment provisions which can help prevent situations in which the working conditions of third-country nationals might deviate from those standardised working conditions defined by legislation, the Directives do not themselves cover all third-country nationals in employment in the EU, such as self-employed workers. In many cases, the provisions

²⁸⁷ 'Severe labour exploitation: workers moving within or into the European Union. States' obligations and victim's rights.' European Agency for Fundamental Rights, 2015.

regarding equal treatment themselves are subject to limitations. All Directives, with the exception of the SWD, do not require Member States to establish monitoring mechanisms, nor enforce sanctions against employers that do not comply with equal treatment provisions. Other EU legislation can cover third-country nationals in a situation of exploitation. The EU Anti-Trafficking Directive (2011) does cover legally residing third-country nationals but does not cover situations that do not amount to the criminal offence of trafficking of human beings. Consequently, other forms of labour exploitation of third-country nationals are not covered and thus must be accounted for at the Member State level. While other EU instruments, such as the Employer Sanctions Directive and Facilitation Package do cover other forms of labour exploitation, third-country nationals are only covered in irregular situations. Gaps therefore are revealed with regard to how legally residing third-country nationals are protected from labour exploitation at the EU legislative level. By virtue of not being comprehensively accounted for through the current provisions of the EU legal migration acquis, the potential exploitation of third-country nationals residing in the EU under the Directives will present a future challenge.

5 Coherence

This evaluation criterion relates to a number of evaluation questions examining the coherence of the legal migration Directives, specifically looking at the following main aspects:

- **Internal coherence**, which examines the extent to which the objectives of the legal migration Directives produce complementarities and synergies or on the contrary – result in overlaps, inconsistencies or gaps. This is addressed in the following question:
 - **EQ2: To what extent are the objectives of the legal migration Directives coherent and consistent and to what extent are there inconsistencies, gaps and overlaps? Is there any scope for simplification?**
- **External coherence**, which captures how the legal migration Directives are complementary or overlapping with national level migration legislative frameworks (national policy coherence) and other EU policies (EU policy coherence). This is addressed in the two following two main questions:
 - **EQ3: To what extent are there inconsistencies, gaps, overlaps and synergies between the existing EU legislative framework and national level migration legislative frameworks? Is there any scope for simplification?**
 - **EQ4: To what extent are the Legal migration Directives coherent with other EU policies and to what extent are there inconsistencies, gaps, overlaps and synergies with such policies?**

The information on coherence was mainly collected via desk research and stakeholders consultation, which includes OPC, interviews, focus groups and workshops.

The following sub-sections are divided according to the sub-questions as listed in the evaluation framework.

5.1 EQ2 (Internal coherence): To what extent are the objectives of the legal migration Directives coherent and consistent and to what extent are there inconsistencies, gaps and overlaps? Is there any scope for simplification?

Based on a comparative legal analysis of the EU Directives in force²⁸⁸, this section identifies and analyses the main gaps, overlaps and inconsistencies in the current acquis, as well as explores synergies and cumulative impacts. It examines the effects of the issues identified as well as explores possible ways to address these.

The table below gives an overview of the main sources of information utilised and the key conclusions of EQ2A and B.

²⁸⁸ See the Internal coherence assessment, Task IC.

Research question	Sources of information	Key conclusions
<p>EQ2.A (Internal coherence). Based on a comparative legal analysis of the EU Directives in force, identify gaps, overlaps and inconsistencies (if any). Are the legal acts coordinated and complementary? Identify synergies and cumulative impacts.</p> <p>EQ2B. To what extent does the scope of the legislation match current needs in terms of the categories of third-country migrants initially intended to be covered by the legislation? Are certain relevant categories of third-country migrants (in terms of migration flows, labour market needs, etc.) not covered by the legislation? If so, what is the impact of such exclusion?</p>	<p>1Ci Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives</p> <p>2A Evidence base for practical implementation of the legal migration Directives: Synthesis report</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC</p>	<p>Two different types of gaps have been identified in the EU legal migration acquis, namely a) certain migrant categories covered by the Directives do not benefit from the same rights and b) certain categories are not covered at all or only partially.</p> <p>The above lack of common minimum standards, safeguards and rights may lead to substantial differences in the treatment of these third-country nationals and legal uncertainty, especially for those categories which do not fall under the SPD. This in turn can make the EU less attractive as a migration destination overall (thus indirectly impacting on trade and other economic development), or make some Member States much less attractive than others with more 'interesting' schemes in place.</p> <p>The comparative legal analysis of the eight Directives has identified different types of inconsistencies, which can be broadly categorised as follows:</p> <ol style="list-style-type: none"> 1. Inconsistencies in terminology used in the Directives for the same concepts 2. Inconsistencies in provisions which cannot be (fully) justified by the nature of the Directive / migrant category covered (e.g. differences in time limits for decision-making, for notification, etc.). 3. Differences which can be justified by the nature of the Directives and/or the categories of migrants covered (and which are therefore not considered as an internal coherence 'problem' as such). <p>While there are historical and contextual developments which explain the inconsistencies between the Directives, there is scope and stakeholder consensus to address in particular those listed under point 1., as well as room to explore possible improvements to those listed under point 2., through a combination of</p> <ul style="list-style-type: none"> Harmonisation of terminology; Clarifying / further specifying certain concepts Providing indications how certain provisions are to be applied in practice Streamlining rules and standards which are different for no substantive reasons Incorporating ECJ case law in the text of the Directives. <p>The inconsistencies have led to inefficiencies in the way in which Member States manage the migration flows in the different migration phases. They are also, albeit to a limited extent, hampering the extent to which some of the overarching objectives can be achieved.</p>

5.1.1 Gaps and overlaps in the personal scope of the legal migration Directives

Two different types of gaps have been identified in the EU legal migration acquis, namely a) certain migrant categories covered by the Directives do not benefit from the same rights and b) certain categories are not covered at all or only partially.

With regard to a):

- 'Inactive' family members falling under the FRD are not granted the right to equal treatment under the SPD.
- The SWD does not apply to seasonal workers who are already in the EU.
- The SPD allows Member States to not apply the single application procedure to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months.

With regard to b), different categories of migrants are today not covered, or only partially covered, by the EU Directives on legal migration. These include:

- In the field of economic migration: low and medium skilled workers who are not seasonal workers, although covered by the SPD, do not benefit from EU harmonised admission conditions. Other categories partially covered are self-employed third-country nationals (including entrepreneurs and start-ups), investors, service providers which fall outside the scope of the ICT, highly mobile workers (e.g. transporters) and job seekers. Whilst many of these categories are covered by national schemes, the lack of common minimum standards, safeguards and rights may lead to substantial differences in the treatment of these third-country nationals and legal uncertainty, especially for those categories which do not fall under the SPD (which explicitly excludes, for example, posted workers and the self-employed). This in turn can make the EU less attractive as a migration destination overall (thus indirectly impacting on trade and other economic development), or make some Member States much less attractive than others with more 'interesting' schemes in place.
- In the field of family reunification: there are different legal regimes applying to family reunification of sponsors of third-country nationals under the FRD, of mobile EU-citizens under free movement rules and of non-mobile EU citizens which is regulated by national migration laws. In addition, the FRD does not apply to family members of beneficiaries of subsidiary protection, as this category is usually granted shorter residence permits (initially 12 months) than those falling under the Refugee Convention. However, given the approximation of both statuses in the re-cast Qualification Directive, the difference in treatment no longer seems fully justified, in particular since subsidiary protection beneficiaries are now entitled to renewals of their permits for two-year periods, and are (like refugees) eligible to obtain long-term residence status (pursuant to Directive 2011/51), thus prima facie falling within the scope of the FRD.
- In the field of humanitarian permits and protection: the situation of non-removable returnees is not addressed in EU law and regulated very differently in the Member States, with some receiving a (temporary) status and others having to live in a legal limbo (even though the Returns Directive in principle precludes this). Other issues not covered include the category of beneficiaries of national protection status and specifically the admission to the EU for protection purposes, which is not addressed neither in the asylum acquis, nor the visa or legal migration acquis, although the Commission's 2016 proposal for a Resettlement Framework sought to ensure orderly and safe pathways to Europe of persons in need of international protection.

Finally, there are also some overlaps in the EU Directives. Researchers, for example, can be covered under the SD (or S&RD), the BCD and in some cases possibly even the ICT. There are also a few cases in which the same or very similar terminology is used for different concepts, such as for example trainees under the ICT and the S&RD, which may lead to confusion as these concern two distinct categories / situations.

Stakeholder consultation shows that non-EU citizens looking to migrate and those already residing in the EU agree that additional categories should be included and in particular third-country nationals planning to launch a start-up and self-employed workers. They also agree that additional family members should be entitled to family reunification. Civil society organisations suggested that medium and low-skilled workers should be considered, while some Member States suggested to include domestic workers, entrepreneurs and start-ups, highly qualified international service providers and non-removable irregular migrants – although the appetite to add additional categories was significantly lower among Member States in the discussions of the contact group on legal migration, although a few considered that highly mobile workers and certain family members could be covered.

Finally, stakeholders consulted²⁸⁹ suggested to include international service providers, certain categories of third-country transport workers (notably in aviation and road transport), medium and low-skilled workers (e.g. domestic workers), self-employed workers, investors, third-country family members of non-mobile EU citizens and short term business visits. In a situation where the rights and conditions of different categories of economic migrants are fragmented and not aligned, there would be a need for an EU instrument which would cover additional forms of labour migration (e.g. an “SPD plus” with different statuses in separate annexes) to ensure a wider EU-level playing field.

The gaps in the legal migration acquis, as discussed under Relevance above, are having an impact on the extent to which the Directives meet the needs of third-country nationals, given that especially those who are currently excluded completely from the acquis may be treated differently, for example, by being granted less rights and procedural guarantees. This in turn could also have an impact on the extent to which these categories can realise their economic potential and contribute to the economic growth. The EU could also become a less interesting destination for both migrants and investments, which could impact on trade and wider economic development. In addition, third-country nationals may be more attracted to Member States which have more favourable schemes in place, thus effecting the level playing field that the EU sought to create.

As discussed in detail under Effectiveness, the exclusion of certain categories of third-country nationals from the legal migration acquis is also hampering the achievement of in particular the specific objectives. For example, the gaps hamper the extent to which Member States can effectively manage economic migration flows and address shortages of in particular medium skilled labour, not covered by the acquis today.

5.1.2 Different categories of inconsistencies have been identified in the legal migration acquis, as well as different options to address these

A comparative legal analysis of the eight Directives (see Annex 1Ci: Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives) has identified different types of inconsistencies, which can be broadly categorised as follows:

1. Inconsistencies in terminology used in the Directives for the same concepts

²⁸⁹ Experts in the ICF expert workshop in November 2017 and the European Migration Forum

2. Inconsistencies in provisions which cannot be (fully) justified by the nature of the Directive / migrant category covered (e.g. differences in time limits for decision-making, for notification, etc.).
3. Differences which can be justified by the nature of the Directives and/or the categories of migrants covered (and which are therefore not considered as an internal coherence 'problem' as such).

The inconsistencies described under points 1 and 2 are further discussed below. The differences in the third point are not discussed in this evaluation but analysed in detail in the full Internal coherence assessment²⁹⁰. For many of the inconsistencies, there are historical and contextual developments which can in part explain why these were introduced. These often relate to the specific situation at the time with regard to migration, the compromises made during the negotiation phase of the different legal proposals as well as the failure of some legal proposals (e.g. the single migration Directive). However, now that the EU legal migration acquis has been nearly fully implemented (S&RD is due to be transposed at the latest on 23 May 2018), the process of reviewing how the existing acquis can best be consolidated, started already as part of this Fitness check, should be continued.

It is also worth noting that at a practical level, some national legislations have already streamlined some of the inconsistencies, in particular those which relate to the terminology used, for example by adopting a single Aliens Act (e.g. in Estonia, Finland, Netherlands and Sweden). However, in many cases the inconsistencies identified may also lead to problems in practice, for example due to the very long waiting times allowed for the processing of certain applications as well the long duration between the notification of the decision and the issuing of the permit. In other cases again, the inconsistencies are further exacerbated because of the existence of national equivalent schemes.

For each inconsistency identified, the internal coherence assessment also reviewed the extent to which there was scope for addressing the coherence issues identified. These can be broken down in the following types of options:

- Harmonising / introducing the same terminology for the same concepts in all Directives (e.g. introducing harmonised definitions of "employer" and "employment" in the relevant Directives).
- Clarifying / further specifying certain concepts, also by transferring the 'good provisions' already present in some Directives to others. This also includes adding provisions to certain Directives which were absent before (e.g. adding to the FRD certain obligations on the right to appeal which are present in all other Directives).
- Related to the above, adding more indications as to *how* certain provisions are to be applied in practice (e.g. with regard to the provision of information, notifying rejections, etc.).
- Streamlining rules and standards which are different for no apparent substantive reasons (e.g. removing certain differences in who can submit the application, reducing the rather long maximum timeframes for processing applications in some Directives).
- Incorporating the results of ECJ jurisprudence expressly into the text of the Directives (e.g. with regard to the obligation of Member States, upon fulfilment of all admission conditions, to grant an authorisation to enter and stay to applicants).

²⁹⁰ Idem.

The different improvement options identified would not only improve coherence from a 'legal-comparative' viewpoint, but they would also improve the clarity of the legislation, ensure further harmonisation and improve overall legal certainty for applicants and permit holders.

Stakeholder consultations confirmed inconsistencies in the legal migration provisions on equal treatment, wage thresholds and labour standards, deadlines and processing time, duration of short term mobility, access to information, access to work for family members and admission conditions and rules. Rules vary significantly across the Directives, creating different standards for different categories of migrants. Stakeholders have also identified overlaps which originate from the same category and/or target group being regulated by different pieces of legislation, including the national schemes, which exacerbate the uncertainty deriving from an already complicated legal framework.

Consultation also showed that Member State authorities would be somewhat interested in simplification, i.e. addressing inconsistencies in terminology and those which do not appear to be justified. However, it was emphasised that any alignments or further streamlining which would give more rights or more favourable conditions to certain categories of third-country nationals than they have at present should be very carefully reviewed. It was also suggested that the simplification of procedures for admission of foreigners in the legal migration Directives should be optional so that the Member States may decide which simplifications are justified, taking into account, inter alia, the migration situation in a specific country.

Finally, as discussed under Efficiency, the inconsistencies are also giving rise to problems in practice. In particular, the lack of streamlining of the current is negatively impacting on the administrative burden of Member States and leads to inefficiencies in the management of the migration flows. Across the migration phases, a number of areas have been identified where there is scope for Member States to transpose and apply the legal migration acquis in ways that can make migration process much more efficient (see EQ10 and in particular EQ10C below). Equally, the inconsistencies have given rise to differences in the practical application of the Directives, which as discussed under Effectiveness, has hampered the extent to which the Directives could ensure the overarching objective of transparency, legal certainty and simplification as well as create an EU level playing field across the various categories covered by the legal migration acquis, where there would be no justification for maintaining certain differences.

5.1.2.1 Admission conditions

Several internal inconsistencies have been identified in the admission conditions as set out across the applicable Directives²⁹¹ (the SPD does not include admission conditions). Three of these are mostly related to differences in terminology used for the same or similar concept. The first one relates to the definition of sickness insurance as a requirement for entry. The second concerns the condition that an applicant does not pose a threat to public policy, public security or public health, which leaves a margin of discretion and is only further specified in the FRD and LTR. The third is linked to the way in which employers' and "employment" are defined (or not) in the Directives. In both cases, there is scope for further harmonisation. For the first issue, ECJ case law could be taken on board.

The remainder of the inconsistencies concern differences which cannot be fully justified by the nature of the Directive / migrant category covered. These include the requirements for applicants to show that they have sufficient resources and that they are in compliance with integration conditions. Inconsistencies were also found in how the Directives specify the right to admission and in the references to labour market

²⁹¹ FRD, LTR, SD, RD, BCD, SWD, ICT, S&RD

tests and regulated provisions. For example, all Directives require proof of resources, but the way in which this has to be proven varies greatly across the Directives. A more harmonised and concrete definition could help to enhance legal certainty for applicants.

Table 16. Main inconsistencies encountered in admission conditions

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Admission conditions			
Sufficient resources		All applicable Directives are consistent in requiring proof of respectively "sufficient" or "stable and regular" resources from the applicant, but the way in which this has to be proven differs greatly, which can only be partly justified by the nature of the Directives.	A more harmonised and concrete definition could enhance legal certainty. This could include ECJ rulings on the interpretation of this concept.
Sickness insurance	All Directives (including the LTR) require the third-country national to have a 'sickness insurance in respect of all risks normally covered for nationals in the Member State concerned, but slightly different descriptions are included as to what this would entail, which can only in part be explained by the category of migrant covered (e.g. those who work will be covered normally by sickness insurance related to employment).		There would be scope for simplification by using the same terminology and explanations in all Directives.
Public policy, public security and public health	All Directives stipulate that third-country nationals who are considered to pose a threat to public policy, public security or public health shall not be admitted, but the		Some concrete indications, such as those in the FRD and LTR, could be included in all legal migration Directives. The relevant ECJ

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
	FRD and LTR provide further specifications of these grounds.		ruling (<i>Fahimian</i>) could be incorporated.
Integration conditions		Two Directives (FRD and LTR) stipulate that Member States may require compliance with integration 'measures' (FRD) and 'conditions' (LTR)	A more detailed harmonised approach to integration conditions could be considered, taking account of ECJ case law.
Right to admission		Right to admission: Some Directives do not specify clearly whether Member States are obliged, upon fulfilment of all admission conditions, to grant an authorisation, while the most recently adopted ones are clear (SWD, ICT, S&RD). This regulatory gap was filled by ECJ jurisprudence.	Legal certainty could be enhanced by incorporating the results of ECJ jurisprudence expressly into the text of the Directives
Labour market tests		Access to the labour market under the SWD, BCD, SPD, S&RD (those that are considered workers) and mobile LTR is subject to an optional labour market test. Details of the conduct of these optional tests at national level are not regulated and applicants are faced with a variety of differing national procedures, which may also have an impact on the length of the overall procedure – within the limits set by the Directives.	A more harmonised approach on necessity and conduct of labour market tests could enhance coherence. This would not impinge unduly upon national competences, since a labour market test would necessarily take account of differences between national labour markets.

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Regulated professions		Some inconsistencies identified between the definition of professional qualifications between BCD and ICT, with the former putting more stringent conditions on the level of qualifications, with a risk that third-country nationals who do not have higher education being excluded from the status if the national law of a Member State does not provide for the option to recognise professional experience of at least five years.	There would be scope in making the BCD less stringent and harmonising it with the ICT
Definition of employer and employment	The definitions of 'employer' and 'employment' vary in the Directives or are not specified.		There may be scope in harmonising the basic definitions of employers and employment across the relevant Directives

5.1.2.2 Admission procedures

Several inconsistencies were also found in the Directives' provisions on admission procedures. Two of these primarily relate to inconsistent use of terminology, namely with regard to the definition of a "decision" on an application, which is interpreted in different ways in Member States and the provision of rejection notifications, both of which could be further specified in the Directives.

The remainder of the inconsistencies concern differences which cannot be fully justified by the nature of the Directive / migrant category covered. These include inconsistencies with regard to information to be provided to applicants; differences as to who can submit an application, and where; substantial differences in timeframes available to Member States to take a decision on an application; two Directives not including an obligation to inform applicants of the need to submit additional information to support their application; the lack of provisions concerning application fees (and the need for these to be proportionate and commensurate with processing costs). Another issue that merits further elaboration and is inconsistently discussed in the Directives concerns administrative silence. This means that Member States have interpreted this differently and that the effects of administrative silence may also be different. However, as this concept may be regulated in general legislation (e.g. applying to all situations in a Member State), it may be difficult to change.

Table 17. Main inconsistencies encountered in admission procedures

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Admission procedures			
Access to information		Three of the Directives (LTR, FRD and BCD) lack an explicit obligation on Member States to provide information, while this is a specific requirement in the four more recent ones (SPD, SWD, ICT and S&RD). Three Directives (SWD, ICT and S&RD) specify that information should be “easily” accessible. The type of information to be provided is not specified in the SPD, while in the other Directives there are minimum requirements in this regard.	Coherence could be enhanced by ensuring that each Directive includes the same obligations as to providing information and by setting out what information should be provided.
Submission of application (who can submit the application?)		There appears to be no clear rationale for the differences in scenarios between the ICT and S&RD, which allow for Member States to also let either the third-country national or the employer/host, and the FRD, RD, BCD and SWD, which require Member States to either choose the one or the other.	The option left to Member States to require applications from both in the case of the BCD and SWD could also be applied to the other Directives, as documentary evidence is usually required from both.
Submission of application (where to submit application?)		Some differences have been identified with regard to applications made in the territory of the Member States, but these mostly seem to relate to the ‘logic’ of the Directives.	There may be scope to always allow applications in Member States when a third-country national is already legally residing or in the possession of a long-term visa.

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Deadlines for processing applications		The timeframes for national authorities to process the application vary significantly across the Directives and show an overall reduction of time allowed for processing for more recent Directives.	There may be a case for aligning the 9 months of the FRD, the 6 months of the LTR and the 4 months threshold of the SPD to the 90 days in the BCD, SWD, ICT and S&RD
Deadlines for processing applications	The timeframe set in the Directives obliges Member States to take a 'decision'. In some Member States, this could be (and de facto is, in practice) interpreted as delivering the residence permit, whilst in others it could be interpreted as a 'temporary authorisation' before receipt of the permit, which would already allow for travel.		The Directives could clarify what is meant by the "decision"
Requesting further information when the application is incomplete		All Directives except LTR and FRD contain a clause which obliges Member States to inform the applicant of the need to submit additional information.	LTR and FRD could be aligned with the other Directives on this issue.

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Administrative silence		The current situation as regards the administrative silence in the context of application for admission to the EU by third-country nationals for migration purposes is ambiguous, with the ICT and SWD not containing any explicit provision on the issue.	The same clarification could be added to all Directives as to the meaning of administrative silence and its effects.
Providing reasons for rejection and right to appeal	The Directives require – albeit with different wording - a written notification of the decision, the provision of reasons for rejection (not in SD and RD), information on the right to redress (not in FRD) and the right to mount a legal challenge.		There would be scope for the FRD to be aligned with the other Directives. There may also be benefit in requiring that all rejection notifications include information on the authority/court where appeals can be lodged and the time limit (using language of SWD, ICT and S&RD).
Application fees		The FRD, LTR and BCD do not contain any provisions on payment of application fees (although the BCD in this sense is covered by the SPD).	There would be scope in all Directives including provisions which allow for the charging of fees which are proportionate and reflective on the costs of processing the applications, confirming the ECJ case law on this point.

5.1.2.3 Equal treatment

All Directives with the exception of the SD and FRD include equal treatment provisions (see also section on the personal scope of the Directives). In two cases, the inconsistencies identified related to issues of terminology, namely with regard to references to social security and the export of long-term benefits, both of which are defined slightly differently in the Directives.

Overall, while many of the differences, including the restrictions to accessing equal treatment, reflect a differentiation between the category of migrants and the duration of their stay, there are some instances which do not appear to be justified, as further summarised in Table 18 below. These include missing provisions in some Directives, as well as the existence of provisions in some Directives which could very well be transferred to other Directive

s too (e.g. the right to strike and take industrial action and the specification of working conditions both found in the SWD) and restrictions to equal treatment which do not appear to be justified (e.g. restrictions related to language proficiency and the fulfilment of specific educational prerequisites in the LTR and the SPD, the different periods of short-term employment / stay to restrict access to social benefits in the SPD, the S&RD and the ICT).

Table 18. Main inconsistencies encountered in equal treatment provisions

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Equal treatment			
Overall equal treatment provisions – personal scope		The inclusion of specific equal treatment provisions in each Directive, as well as specific restrictions, reflects a differentiation between the different categories of third-country nationals covered by the Directives, as well as the length of stay in the territory of a Member State. However, this differentiation does not always seem justified and may sometimes seem to have been rather the result of negotiations with Member States. The FRD and the SD do not grant equal treatment although those covered by this status and who are allowed to work benefit from the SPD.	There is scope for some further harmonisation and coverage (i.e. non-active family members under the FRD)

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Freedom of association and affiliation		The provision is missing in the FRD, but family members who are allowed to work in accordance with Article 14 of the Directive are covered by the SPD. The SWD adds to this the right to strike and take industrial action which could be added to the other Directives too for the sake of consistency	Further harmonising these provisions could enhance the coherence of the legal framework
Access to education and vocational training		The provision is missing in the SD, RD and ICTs. In the FRD, it is dependent on the entitlement granted to the sponsor. Different restrictions are allowed in the five Directives. While some appear 'logical', the reason why others have been introduced in one or more Directives (but not in others) cannot be easily explained, such as the restrictions related to language proficiency and the fulfilment of specific educational prerequisites.	Further harmonising these provisions could enhance the coherence of the legal framework
Access to social security, social assistance and social protection	The references to social security are different in the Directives.		There would be scope for reviewing and aligning the terminology used
		Restrictions are in place for short-term employment / short-term stay in the SPD, the S&RD and ICT,	While such restrictions may be justified, the differences in the period of stay could

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
		with different periods of stay included (ranging from 6-9 months).	be aligned.
	With regard to the export of long-term benefits, the ICT refers to payment of old age, invalidity and death statutory pensions, the BCD to statutory pensions in respect of old age and the SWD to statutory pensions (based on previous employment).		These terms could be further aligned for achieving coherence
Working conditions		The SPD, S&RD and SWD include health and safety at the workplace while SWD gives an indication as to what is included in the term "working conditions" and provides for equal treatment as regards "terms of employment" as well. The ICT Directive refers to the conditions fixed by the Posted Workers Directive 96/71/EC, except for remuneration, where equal treatment with nationals is an admission condition.	There would be scope in harmonising and specifying working conditions across the Directives. Access to employment services could also be included in the LTR.

5.1.2.4 Intra-EU mobility

Provisions on intra EU-mobility of third country nationals from one Member State to a second one for the purpose of taking up short or long-term residence and work can be found in the LTR, BCD, ICT, SD, RD and S&RD. The inconsistencies identified, as presented in Table 19 below, exclusively relate to differences which cannot be fully justified by the nature of the Directives and the categories of migrants they address. They relate to differences in time periods for short-term mobility between the Directives and differences in mandatory requirements to apply for or to notify mobility, as well as a lack of facilitation of the (long-term) mobility processes in the LTR, BCD

and S&RD) and of derogations from the FRD for accompanying family members (as such are provided for the other applicable Directives).

Table 19. Main inconsistencies encountered in intra-EU mobility

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Intra-EU mobility			
Length of residence in second Member State (short-term mobility)		<p>The RD, ICT and S&RD (for researchers) provide for two types of mobility provisions: for short-term mobility and long-term mobility. The BCD does not include provisions on short-term mobility for work purposes, nor do the SD and the S&RD for students.</p> <p>The time periods for short term mobility, as well as when short-term mobility becomes long-term mobility vary between the Directives.</p>	For the sake of legal certainty those Directives that cover comparable situations of mobility would benefit from a more coherent wording.
Procedural requirements for mobility (long-term mobility)		The different Directives provide for different mandatory requirements to apply for or to notify mobility. The point in time when an application or notification must be submitted also differs. These different rules can be challenging and confusing for third-country nationals.	For the sake of legal clarity and coherence the Directives would benefit from a more consistent approach towards procedural requirements.
Substantive requirements for exercising mobility (long-term mobility)		Only the ICT and the S&RD for students provide for a real simplification of the mobility process with regards to long-term mobility. The three other Directives providing for long-term mobility (LTR, BCD, S&RD for researchers) have broadly speaking the same requirements for applications for mobility as the main application in the first EU Member State (not notification).	A more consistent approach may contribute to legal clarity and coherence
Accompanying family members		The ICT, the S&RD for researchers and the BCD foresee derogations from the FRD, while the LTR does not. Depending on the Directive, additional requirements also exist.	A more consistent approach may contribute to legal clarity and coherence

5.1.2.5 Grounds for rejection, loss and withdrawal of status

The inconsistencies identified with regard to the grounds for rejection, loss and withdrawal of status, as presented in Table 20 below, exclusively relate to differences which cannot be fully justified by the nature of the Directives and the categories of migrants they address. As a general point, and as assessed in the first row, from a systematic viewpoint, admission conditions and grounds for rejection mirror the same reality and should therefore ideally be congruent. In addition, the fact that the grounds are differently phrased across the Directives means that they may be inconsistently interpreted whilst they refer to the same concepts, thus leading to legal uncertainty for third-country nationals. With regard to rules on withdrawal and a few rejection grounds related to the employer / host entity, there is also room for simplification and alignment across the Directives, with regard to the differences in the binding value of the respective provisions, which range from “shall” and “shall, if appropriate”, to “may” clauses, which again may lead to legal uncertainty.

Other inconsistencies include the lack of safeguards in all Directives but the BCD and LTR against withdrawal, non-renewal and loss of status, if the conditions for admission are no longer satisfied and the lack of a ‘mirroring’ provision related to the employer or host entity in the BCD between those listed as grounds for rejection of the application and those listed as grounds for withdrawal of the authorisation or refusal to renew the latter.

Table 20. Main inconsistencies encountered with regard to grounds for rejection, loss and withdrawal of the status

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Grounds for rejection, loss and withdrawal of status			
Rejection grounds		Six Directives (FRD, LTR, BCD, SWD, ICT and S&RD) include sometimes lengthy provisions on grounds for rejection. Seven Directives (FRD, LTR, RD, BCD, SWD, ICT and S&RD) include provisions on grounds for withdrawal or loss of status ranging from general clauses to casuistic lists.	From a systematic point of view, admission conditions and reasons for rejection mirror the same reality and should ideally be congruent.
Grounds for withdrawal		The provisions show a differing binding value due to a mix of "shall clauses", "may clauses" and "shall, if appropriate" clauses across the Directives with regard to withdrawal.	The provisions offer scope for simplification and alignment, also with regard to the use of legally binding clauses.
Rejection grounds related to employer/ host entity		The relevant Directives allow for different rejection grounds related to the employer / host entities. While some of the differences, including the use of 'may' clauses, can be explained by the 'nature' of the status, it is not clear why some other grounds do not apply to all statuses, such as the business not having any economic activity taking place, or being established for the purpose of	A more consistent approach may contribute to legal clarity and coherence

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
		facilitating the entry of third-country nationals	
Admission conditions no longer satisfied and lapse/expiration of document or status		All Directives provide that if the conditions for admission are no longer satisfied this can result in withdrawal or loss of status, but only BCD and LTR include safeguards against withdrawal and non/renewal.	Safeguards inspired from the clauses in the LTR and the recent Directives could also be included in the other Directives so as to make sure that minor irregularities or issues outside the permit holders' control will not lead to disproportionate consequences.
Withdrawal or non-renewal related to employer/ host entity		Three Directives (SWD, ICT, S&RD) include provisions which allow for a withdrawal of the authorisation or refusal to renew the authorisation on the basis of grounds related to the employer or host entity respectively. These grounds are very similar to those listed for the rejection of the application, but the BCD does not include this as a ground for withdrawal or refusal.	While some of the differences between the four employment-related Directives, including the use of 'may' clauses, can be explained by the 'nature' of the status, it is not clear why some other grounds would not apply to all statuses.

5.1.2.6 Other inconsistencies identified

A few other inconsistencies, again all concerning differences in provisions which cannot be (fully) justified by the nature of the Directive and/or the migrant categories covered, have also been identified in several other areas, concerning:

- The right to family reunification: with regard to the processing of applications, the FRD allows competent authorities a maximum of 9 months whilst under the BCD this is 6 months and under the ICT and S&RD 90 days, which cannot be fully justified. In addition, Member States can restrict access to employment of family members under the S&RD "under exceptional circumstances" which leaves too much room for interpretation.
- The format and type of authorisations: the FRD and SPD do not include a reference to the type of permit which is to be mentioned on the permit, although it is specified in the SPD that the permit shall feature "information related to the permission to work".
- Also, some issues have been identified with regard to the practice to first issue a visa and then a residence permit, as this may contribute to legal uncertainty (by circumventing the application procedure and guarantees in SPD) and efficiency losses (in the need to request a permit after one year, compared to receiving a multi-annual permit immediately).
- The mechanisms of cooperation: the Directives inconsistently include references to Member States having to establish a national contact point and provide statistics, while there is no clear reason to not have the same or similar requirements across all.

Table 21. Other inconsistencies identified in relation to: the right to family reunification; the format and type of authorisations, and; mechanisms of cooperation

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Right to family reunification			
Deadlines for processing applications		Under the FRD, the competent authorities of the Member State shall give the person, who has submitted the application, as soon as possible a written notification of the decision and in any event no later than after nine months. This time limit is six months under the BCD and 90 days under the ICT and the S&RD.	The difference between the 9 months in the FRD, the 6 months of the BCD and the 90 days in the ICT cannot be justified and could be aligned.
Family members' access to the labour market		Under the FRD, Member States may for the first 12 months of residence restrict the family members' access to the labour market. By way of derogation, the BCD, the ICT and the S&RD do not foresee any time limit in respect of access to the labour market, although under the S&RD access can be restricted in "exceptional circumstances" such as particularly high levels of unemployment.	It is not clear why only the S&RD allows Member States to restrict access in exceptional circumstances, which in addition offer a margin of discretion as to their definition
Format and type of authorisations			
Residence permit vs (long-stay) visa		The S&RD and SWD allow for long-stay visas instead of a residence permit, whilst the other Directives require Member States to always issue residence permits. National practices of issuing first a visa and only as a second step a residence permit risk prolonging in practice the procedures leading to the issuing of the actual	There may be scope to addressing this issue.

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
		<p>residence permit and may contribute to legal uncertainty, when it comes to applying the procedural safeguards by circumventing the application procedure and guarantees in SPD (deadlines, right to appeal, fees etc.) contained in the legal migration Directives.</p> <p>Issuing a visa first (cannot be longer than 12 months) can also entail efficiency losses (the third-country national will need to request a permit after one year, compared to receiving a multi-annual permit immediately).</p>	
Format of the permit		<p>Seven out of nine Directives include provisions with regard to the format of the permit (FRD, LTR, BCD, SPD, SWD, ICT and S&RD) which provide that Member States shall issue a residence permit using the uniform format as laid down in Regulation (EC) No 1030/2002. Five Directives (LTR, BCD, SWD, ICT and S&RD) provide that the type of permit (e.g. long-term residence, Blue Card, etc.) shall be written on the permit.</p>	<p>The FRD and SPD could also include a reference to the type of permit being mentioned on the permit</p>
Mechanisms of cooperation			

Issue	Inconsistencies in terminology used in the Directives for the same concepts	Differences in provisions which cannot be (fully) justified by their nature / migrant category covered	Options to address the inconsistencies
Mechanisms of cooperation		Four Directives (LTR, BCD, ICT and S&RD) contain provisions regarding the establishment of contact points in the Member States responsible for information sharing, in particular on issues linked to intra-EU mobility. Five Directives (SPD, BCD, SWD, ICT and S&RD) include the obligation to report statistics to the Commission on the volumes of third-country nationals who have been granted an authorisation under those Directives, but the type of statistics vary between the Directives.	There would be scope for aligning all Directives and including both the obligation to establish a contact point, where relevant, and to report statistics.

Categories covered by the Directive - volunteers, trainees and pupils

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 harmonised at EU level.

At the time of transposition, 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. With regard to 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. Transposition studies show that nine Member States³ have transposed the provisions only relating to students.

Bulgaria introduced legislation on unremunerated trainees and school pupils, Greece on volunteers, France on unremunerated trainees, Hungary on school pupils and volunteers, and Latvia on school pupils. The remaining ten transposed all three categories of migrant, but made no fundamental changes to the conditions governing these categories under prior legislation.

Right to work

The Directive allowed students allowed to work at least ten hours per week, although Member States are entitled to require labour market tests and restrict access to work during the first year of study. Prior to the Directive, most Member States allowed employment of students outside their studies. For example, in Italy and Belgium, students were allowed to work for maximum of 20 hours work per week. In a few countries, however, students were not allowed to work at all until the Directive was transposed. 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 and third-country national students were therefore not entitled to carry out employment activities. One example was Lithuania, which now allows them to work 20 hours per week. Spain still requires international students to have a work permit if they want to work outside their studies, although it seized the opportunity during implementation of the Directive to eliminate the labour market test for students (even if this was allowed by the Directive). The Czech Republic requires students who work more than 30 days per annum to hold a work permit, as it did prior to transposition. Poland only allowed students to work during the summer months until 2014, when it moved to allow all-year-round employment, although the change was not linked to implementation of the Directive. Only a few countries keep the working hours at the minimum stipulated by the Directive – Austria, Luxembourg, the Netherlands and the Slovak Republic. Few Member States restricted employment in the first year of study, even before they transposed the Directive. Lithuania did and does, however. It has maintained its ban on students working during the first year of the first-cycle, or integrated, studies.

5.2 EQ3: To what extent are there inconsistencies, gaps, overlaps and synergies between the existing EU legislative framework and national level migration legislative frameworks? Is there any scope for simplification?

The evaluation of Question EQ3 of the coherence assessment includes two sub-questions, as listed in the Fitness check / REFIT evaluation: Evaluation Framework (Annex 4A). For each, the respective tables provide an overview of the main sources of information utilised and the main findings of each sub-question.

5.2.1 EQ3.A: (National policy coherence) Which national policy choices have played a key role in the management of migration flows?

Research question	Sources of information	Key conclusions
(National policy coherence) Which national policy choices have played a key role in the management of migration flows?	2A: Evidence base for practical implementation of the EU legal migration Directives: Synthesis Report 3Ai Public and stakeholder consultations: EU Synthesis Report 3Aii Public and	The existence of different national policy choices has caused inconsistencies throughout the EU. The adoption of more restrictive or more permissive may clauses in the Member States impacts on the coherence of the legal migration Directives across the EU. Specifically, the possibility for the Member States to opt for more stringent or favourable regimes, although in accordance with the Directives, creates de facto substantial differences in the Member States' practices

<p>stakeholder consultations: OPC Summary Report</p>	<p>and frameworks, which in turn can lead to inconsistencies in the implementation of the EU acquis throughout the EU.</p> <p>The way in which Member States have 'operationalised' the legal migration acquis in practice have also caused several divergences in practice.</p> <p>In addition, national parallel schemes have led to further overlaps / incoherencies and synergies.</p>
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EQ3.A: (National policy coherence) which national policy choices have played a key role in the management of migration flows?

This section focusses on the national policy choices taken by the Member States with regard to the implementation of the legal migration Directives, and seeks to evaluate the extent to which these different choices have caused inconsistencies throughout the EU. This includes in addition an analysis of the extent to which national parallel schemes have led to further overlaps / incoherencies or possibly to synergies.

Building on the findings of EQ1E under Relevance, this evaluation question specifically focusses on the extent to which there are any inconsistencies caused by the 'operationalisation' of some provisions of the Directives and the adoption or not of 'may' clauses by the Member States.

The evaluation especially builds on the in-depth analysis carried out under Task 2, which includes an Evidence base for practical implementation of the EU legal migration Directives: Synthesis Report, as well as on the outcomes of the Public and stakeholder consultations conducted under Task 3 and the Contextual analysis: overview and analysis of legal migration statistics carried out under Task 1.

The national policy choices taken into account for the evaluation, play a key role in the management of migration flows and concern in particular the elements below, which will be further analysed in the following sub-sections. Examples of national policy choices considered for this evaluation include *the types of admission conditions (e.g. integration requirements, salary thresholds, 'sufficient resources' requirements), the types of application procedures (standard application forms, maximum processing times, fees, etc.), etc.*

5.2.1.1 National policy choices as to a) the adoption of more restrictive 'may clauses', b) the 'operationalisation' of some of the provisions in the Directives and c) the existence of national parallel schemes have led to further divergences in practice

The adoption of more restrictive or more permissive may clauses in the Member States might impact on the coherence of the legal migration Directives across the EU. Specifically, the possibility for the Member States to opt for more stringent or favourable regimes, although in accordance with the Directives, might create de facto substantial differences in the Member States' practices and frameworks, which in turn can led to inconsistencies in the implementation of the EU acquis throughout the EU.

As analysed as part of Task 2, almost all Member States have implemented restrictive may clauses. As mentioned under Relevance above, the Member States collectively transposed the 40 more restrictive may clauses analysed as part of the Task 2 application study 508 times. The six Member States which, on this basis, have adopted the 'most' restrictive approach are Estonia, Malta, Netherlands, Finland, Luxembourg and Germany, while 5 EU countries, namely Greece, Croatia, Lithuania, Latvia and Portugal, have transposed the more permissive may clauses.

In addition to the use of “may clauses”, also the “operationalisation” of the provisions of the Directives might create significant differences between Member States, which could lead to further inconsistencies in practice. This section will focus on these two particular issues for each of the migration phases.

The existence of national parallel schemes also has led to further divergences in practice: this particular aspect is considered briefly in the analysis below, but developed more extensively under EQ3B.

National policy choices as to a) the adoption of more restrictive ‘may clauses’, b) the ‘operationalisation’ of some of the provisions in the Directives

Pre-application (information) phase

In the first ‘preparatory’ phase during which the third-country nationals and their family members seek information on the application procedure, no may clauses have been identified.

Also, the implementation choices of Member States seem to be quite consistent in spite of minor differences as regards to the following aspects:

Member States generally provide information on all aspects of the application procedure and the information availability, comprehensiveness and accessibility of information is generally good. They use different information channels, with some Member States offering several at the same time (e.g. websites, hotlines, information desks, leaflets, etc.) whilst others only using one or two such channels. Member States have also put in place different modalities for providing tailored information upon request. However, overall this information is easily obtained in the majority of Member States and provided in a format with a relative degree of comprehensiveness and user-friendliness.

- With regard to the *content of the information*, some Member States provide more comprehensive information than others, for example in relation to covering all statuses (e.g. Sweden provides information on how to apply as an LTR moving from another EU Member States, but it is difficult to find information on how to apply for LTR status for those residing in Sweden), the fees associated with the application (not provided by Belgium, Cyprus, Greece, Croatia and Malta for the BCD), the applicable deadlines and the rights upon admission (not provided by Cyprus, France, Latvia, Malta).

These differences do not seem to have led to any major inconsistencies between the Member States although, as recommended under EQ2 above, there would be scope in further defining how and what kind of information should be made available to applicants.

Pre- application (documentation) phase

With regard to the transposition of may clauses, based on the analysis under Relevance (see section 2.4.3 above), of the ‘may clauses’ identified as part of the structured legal analysis for Task 2, the majority of the Member States took the most restrictive approach, i.e. transposing all or nearly all may clauses in the FRD, whilst only a few took the most restrictive approach in the SD.

More specifically, most Member States have transposed the may clauses in Art.7(1) of the FRD requiring the applicant to prove evidence on accommodation (15 Member States), sickness insurance (13 Member States) and stable and regular resources, sufficient to maintain him/herself and the family (19 Member States). Only a limited number of Member States transposed the may clause in Art.7 (2), focussing on complying with integration measures (5 Member States). In all other Member States which have not transposed these more restrictive may clauses, national choices obviously pose less burden to applicants, creating de facto divergences between EU countries.

In addition, 12 Member States have restricted the scope of the FRD through may clauses in Art.15(1), which state that the issuance of an autonomous residence permit may be limited to spouses or unmarried partners in cases of breakdown of the family relationship. These different choices create de facto divergences in the way Member States protect family life and unity, especially for couples with children.

Only 4 Member States (RO, SE, SI, SK) transposed the most restrictive may clause in Art 9 of the SD which provides for specific conditions for school pupils participating in an exchange scheme and in particular that admission of school pupils may be confined to nationals of third countries which offer the same possibility for their own nationals.

When looking at the way in which Member States have 'operationalised' the legal migration acquis in practice, the following main divergences have been identified:

With regard to the *type of application*, a single application is most often offered under the LTR, as well as by the RD, SPD and SD which can still however cover different elements to be filled in by different actors (e.g. a part for the sponsor, a part for the third-country national wishing to migrate and a visa application).

16 Member States use different *application forms* depending on the migration status, while in 8 Member States a standardised application form exists. The way in which application forms can be obtained also varies, with some Member States offering a wider range of channels (e.g. online, downloadable, in person, via post) and offering a more limited choice. Finally, some Member States provide application forms in many different languages whereas in others, the forms are only available in the national language and English.

The *recognition of diplomas* is a condition for obtaining a permit in 16 Member States for the BCD, in five for the SD, in six for the RD, whilst in the other Member State this is not a requirement. As there are no admission conditions in the SPD, in four Member States the recognition of diplomas will depend on the type of position the TCN applies for rather than the Member State. On top of this, most Member States provide inadequate guidance on the procedures for obtaining recognition of diplomas. This applies specifically for the Czech Republic (information only provided upon request), Italy, Lithuania, Portugal, Romania and Slovakia.

Pre-integration measures are required in Austria and Cyprus, and not in any of the other Member States.

Proof of *adequate accommodation* is required in all but four Member States (Austria, Germany, Italy, and the Netherlands). In addition, Member States have adopted different approaches to verifying this and determining 'adequateness', ranging from rental contracts, utility bills to declarations of hospitality.

By far the most significant divergences between Member States have been observed with regard to the documentation that has to be provided as part of the application. Some examples of this include:

- With regard to the FRD, of the 10 admission conditions for which documentary evidence may be required by the Member States, a few Member States require this for nearly all conditions (e.g. Austria, Spain, Czech Republic) whereas others only require evidence for a few conditions (e.g. three or four in Bulgaria, Finland, Hungary, Portugal, Sweden, Slovenia and Slovakia). In addition, 19 Member States require additional documentary evidence beyond the conditions, while six do not require additional evidence.
- Along the same lines, of the 10 admission conditions listed under the BCD, Member State which require documentary evidence supporting all or most are Belgium, Czech Republic, France, Croatia, Lithuania, Luxembourg, Poland and Portugal, whereas Spain, Finland and Italy only require this for up to five conditions. In addition, in this case also the extent to which Member States require the documentation to be translated and certified varies substantially.

Under the BCD, 16 Member States require additional evidence beyond the admission conditions, while nine do not.

- The other Directives show similar differences between Member States, with some thus taking a more stringent approach versus others which appear to have put less admission conditions in place in practice, as can be read in the Task 2 synthesis report developed through this study.

The divergences in terms of transposition and practical application have thus led to a different admission conditions and related requirements across the EU which in addition are further exacerbated by practical application issues identified in this migration step, as further detailed under Relevance and effectiveness, leading to an overall inconsistent approach.

Application phase

With regard to the transposition of may clauses, based on the analysis under Relevance, of the 'may' clauses identified as part of the structured legal analysis for Task 2, 17 Member States (AT, BE, BG, CY, CZ, EE, ES, FI, FR, HU, LU, LV, PL, PT, RO, SE, SI, SK) took the most restrictive approach, i.e. transposing the may clause in the SD, whilst 4 Member States did not transpose it (IT, LT, MT, NL). More specifically, these Member States have transposed the more restrictive may clauses in Art.20 of the SD, which enables Member States to require applicants to pay fees for the processing of applications in accordance with this Directive, which might create serious inconsistencies amongst Member States if the fees charged are very high in most countries and lower in others.

When looking at the way in which Member States have 'operationalised' the legal migration acquis in practice, the following main divergences have been identified:

Although in 25 Member States third-country nationals can lodge an application in person, differences exist in practice with regard to the accessibility to the application procedure: while in some countries the applicant has to appear in person only once, in other countries such as Austria, s/he has to appear more than once as part of the application process in third countries where this can only be done centrally, or where consulates are far away. Other divergences between Member States include cases when short deadlines for personal appearance are involved. Moreover, other differences concern the other modalities for lodging an application, with only 7 Member States including via post and 6 Member States online submission.

Important differences between Member States exist depending on whether multiple authorities are involved in processing the applications or just one authority is involved. Especially when multiple authorities and/or multiple steps are involved in the application process, the necessary steps and authorities which need to be contacted are not very well explained and not easy to follow by third-country nationals in terms of what concrete steps to take (e.g. Bulgaria, Italy and Spain), creating serious discrepancies with Member States adopting a single step, less complex procedure.. Especially when multiple authorities and/or multiple steps are involved in the application process, it seems that the necessary steps and authorities which need to be contacted are not very well explained and not easy to follow by third-country nationals in terms of what concrete steps to take. Fees vary greatly between the Member States, also proportionally, when considering the fees as a share of the main monthly gross earnings in each Member State. Several cases of excessive fees have been observed (and might constitute on the one hand an application issue and on the other hand a deterrent) and around one fifth of the Member States charge even other obligatory fees (although generally minor). In particular, in Bulgaria, the highest application fee charged corresponds to more than 50% of the monthly gross earnings, while in four more Member States these represent between 25-50% of the monthly earnings. The lowest fees charged still, in Romania represent between 25-50% of the monthly earnings and in another five between 10-24%.

Divergences have been observed regarding the time to process the application. The majority of the Member States have put in place legally applicable deadlines within which to process applications, for all Directives or only certain Directives. Germany does not have any deadline. In several countries, these deadlines may exceed those set in the Directives. Only one Member States, Luxemburg, imposes financial sanctions if an applicant does not meet a given deadline.

The divergences in terms of transposition and implementation choices with regard to the application process have especially led to serious discrepancies between Member States which adopted a single application procedure, which is notably less complex, and those using multiple procedures managed by different authorities. Related differences in application fees and the time to process the application, are further exacerbated by practical application issues identified in this migration step, as further detailed under Relevance and Effectiveness leading to an overall inconsistent approach.

Entry and travel phase:

In the entry and travel phase no restrictive may clauses have been identified.

The implementation choices of Member States seem to be somewhat inconsistent as regards to the following aspects:

Most Member States (11 Member States) have set timeframes for granting entry visas to applicants who do not yet hold a valid permit to enter the Member State.

Divergences have been observed when there are no such timeframes (in 8 Member States), or where they are regulated by general administrative law (Germany). If timeframes are too long or missing, Member States may be held in violation of their obligation to facilitate the issuing of visas to legal migration applicants. In Member States with different timeframes for the different statuses, SD/RD applicants benefit from shorter deadlines.

Only a few Member States (IT, MT, PT) impose specific entry requirements to third-country nationals of a visa free country

Other (although minor) inconsistencies have been observed when it comes to transiting: only in a few Member States practical difficulties are encountered by third-country nationals. In Spain, the long and complicated process for acquiring an airport transit visa is seen as an impediment.

These differences do not seem to have led to any major inconsistencies between the Member States except regarding the existence or not of timeframes for granting entry visas to applicants who do not yet hold a valid permit to enter the Member State.

Post-application phase:

With regard to the transposition of may clauses, based on the analysis under Relevance (see section 2.4.3 above), of the 'may' clauses identified as part of the structured legal analysis for Task 2, 13 Member States have transposed Art.13 of LTR, which allows national parallel schemes and thus enables Member States to issue residence permits of permanent or unlimited validity on terms which are often more favourable than those in the Directive. The different transposition choices (13 Member States have transposed this provision at least partially) have created divergences between Member States with regard to the intra-EU mobility rights enjoyed by third-country nationals, as the permits resulting from transposing of this may clause do not confer the right of residence in other Member States provided by Chapter III of the LTR.

When looking at the way in which Member States have 'operationalised' the legal migration acquis in practice, the following main divergences have been identified:

Inconsistencies have been identified with regards to the timeframe to deliver the permit, following the notification of the positive decision on the application (the latter

being regulated by the Directives), with the majority of Member States having a timeframe while a few others do not. The Member States which require the lowest number of days for the delivery of the permit are Lithuania (10 days) and the Netherlands (14 days), while Latvia has the longest with 65 days. Where there is a set timeframe, the deadlines are generally respected, and, in some cases, the real average number of days to deliver the permit is even lower than the timeframe allowed, except in Italy, where the timeframe is not too long (up to 290 days).

Around half of the Member States apply additional charges in addition to the application fee for the issuing of the permit. These are generally minor, except in Portugal where they are very high (200 euro).

With regards to the application and permit issuing procedure, usually, different authorities are involved and multiple steps (14 Member States), which creates significant discrepancies between Member States, in terms of complexity, timing, clarity (not to mention the concerns regarding the single procedure/application/decision underlying the SPD). In only two countries (PL and CZ), the entire post-application phase, including the issuance of the decision, is conducted in the national language, which contributes to creating further divergences between EU countries.

In the majority of the Member States (17), there is a difference between (static and mobile) non-EU family members of EU citizens and non-EU family members of third-country nationals, the former group receiving more favourable treatment. 7 Member States make no distinction between the two situations. The differences in this phase, mainly concern conditions, procedures, duration of the permit, application fees and documents in support of the application. For instance, in Croatia, the non-EU family members of TCN have to prove the purpose of the temporary residence, that they have sufficient resources to support themselves and that they have a health insurance, whereas non-EU family members of EU citizens do not have to prove this. In the Czech Republic, non-EU family members of third country nationals have to obtain biometrical residency permits, whereas non-EU family members of EU citizens only need "a national type of permit in a form of a passport book". In other countries, such as in Hungary and Cyprus, procedures and fees are different, whilst in Finland, non-EU family members of third country nationals do not need to apply for a residence permit; instead they need to register their residence and apply for an EU residence card, while they keep their rights to employment. In Austria the main difference is related to the exemption from the quota requirement for non-EU family members of EU citizens. Rules are very different, contributing to increase the divergences between Member States in the way they have implemented the FRD.

The duration of the first permit delivered to third-country nationals varies significantly across Member States ranging from 3 months in CY to 60 in ES.

Another divergence consists in the fact that when the main applicant is the employer, only Croatia requires in the case of the SPD his/her involvement in the delivery of the permit, as the decision will be submitted to the employer directly.

The divergences in terms of transposition and implementation choices, as well as the existence of diverse parallel schemes (see also under EQ3B), have thus led to different timeframes to deliver the permit, duration of the permit, and procedures to issue the permit across the EU which in addition are further exacerbated by practical application issues identified in this migration step, as further detailed under Relevance and Effectiveness, leading to an overall inconsistent approach.

Residence phase:

With regard to the transposition of may clauses, based on the analysis under Relevance (see section 2.4.8 above), of the 'may' clauses identified as part of the structured legal analysis for Task 2, the majority Member States took the most

restrictive approach transposing all or nearly all may clauses in the BCD, while 11 Member States have transposed the restrictive may clause in the LTR.

More specifically, 15 Member States have transposed more restrictive may clauses under Art.8(2) of the BCD enabling the Member States to conduct labour market tests for Blue Card applicants and 12 Member States have transposed more restrictive may clauses under Art.9(3) enabling them to withdraw or refused to renew Blue Cards on the basis of public policy, security or health; when the Blue Card holder does not have sufficient resources to main him/herself; when the TCN has not communicated an address; and when the Blue Card holder applies for social assistance.

A smaller number of Member States have restricted equal treatment through may clauses in Art.14(2); nine Member States have restricted access to university; and four Member States have restricted equal treatment of Blue Card holders to those cases where the residence lies within the Member State's territory. Notably, six Directives (LTR, SPD, SWD, ICT, BCD and S&RD) include provisions on access to equal treatment with regard to social security. In addition to 'social security', the LTR gives equal treatment access to 'social assistance' and 'social protection'. In particular, the LTR allows Member States to restrict equal treatment to cases where the registered or usual place of residence of the long-term resident, or that of family members for whom he/she claims benefits, lies within the territory of the Member State concerned. The main inconsistency observed concerns access to social security whereby third-country nationals do not have access to certain social security benefits (in BE, CY, HU, LV, PL, SI): for instance, in Cyprus, despite third-country nationals making monthly contributions into the Social Insurance Fund, they are not entitled to most public benefits, the only exception being sick pay. Moreover, in Hungary, residence permit holders are not always entitled to certain type of social assistance. In some Member States, access to public services is not explicitly granted, for example, in Slovenia, only those with LTR status can apply for non-profit rental housing, rental subsidies and housing loans under public scheme.

Integration requirements: Integration requirements and measures differ significantly across Member States. In 12 Member States (AT, BE, BG, CY, DE, EL, FI, HR, IT, LU, MT, NL), there are mandatory integration requirements, while in the remaining Member States, integration measures (such as language and integration courses) are voluntary. In CY, EL, HR, LU, MT, the mandatory integration requirements only concern applicants for long-term residence, who need to demonstrate integration through knowledge of national language(s) and knowledge about society and culture of the country. For example, in Greece, in order to obtain a long-term residence permit, the applicant need to demonstrate sufficient knowledge of the Greek language, history and civilization.

The divergences in terms of transposition and implementation choices, as well as the existence of parallel schemes, have thus led to substantial differences in the periods of renewal, renewal fees, access to social protection and different integration requirements across the EU, which in addition are further exacerbated by practical application issues identified in this migration step, as further detailed under Relevance and Effectiveness, leading to an overall inconsistent approach. Moreover, additional divergences arise from the fact that national legislations relating to areas not covered but closely linked to the Directives also vary between Member States, for example with regard to social protection, which is at present only covered by the LTR.

Intra-EU mobility phase:

With regard to the transposition of may clauses, based on the analysis under Relevance (see section 2.4.3 above), of the 'may' clauses identified as part of the structured legal analysis for Task 2, 19 Member States took the most restrictive approach transposing the may clause in the RD, while 14 Member States have transposed the restrictive may clause in the BCD and 3 Member States the may clause in the LTR.

More specifically, 19 Member States have transposed more restrictive may clauses under the RD Art.13(3) requiring the TCN to have a new hosting agreement for a researcher staying in another Member State for more than three months, which might restrict the ability of researchers to stay longer in another Member State.

14 Member States have transposed the more restrictive may clause in Art.18 (6) of the BCD holding the applicant and/or the employer responsible for the costs of return, if necessary.

3 Member States have transposed the may clause in Article 15 (2) requiring the persons concerned to provide evidence of stable and regular resources which are sufficient to maintain themselves and the members of their families, without recourse to the social assistance of the Member State concerned; sickness insurance covering all risks in the second Member State normally covered for its own nationals in the Member State concerned.

When looking at the way in which Member States have 'operationalised' the legal migration acquis in practice, the following main divergences have been identified:

Few Member States have provided for additional facilitations to the procedures and documentation requirements for mobile third country nationals – these include, for example, shorter application processing times (CZ, PT), an exemption from need to provide proof of sickness insurance as well as exemptions from integration measures (NL), proof of accommodation (MT) and labour market tests (BE, EE).

Only two Member States require additional documents in addition to residence permit and valid travel documents for short term mobility. In Sweden, regarding the Students Directive a third-country national also needs a certificate from the Swedish university and a certificate from the university in the home country. The other exception is Slovenia, where regarding the Family Reunification Directive if the permits to family members are not issued by the State Party to the Convention implementing the Schengen Agreement, or if the family members are not citizens of a visa-free country, a visa is required, provided that the applicant fulfils requirements for the issuance of a visa.

These differences do not seem to have led to any major inconsistencies between the Member States.

End of stay phase:

With regard to the transposition of may clauses, based on the analysis under Relevance (see section 2.4.9 above), of the 'may' clauses identified as part of the structured legal analysis for Task 2, 19 Member States took the most restrictive approach transposing Art.5(3) of the RD, which state that Member States may require in accordance with national legislation, a written undertaking of the research organisation that in cases where a researcher remains illegally in the territory of the Member State concerned the research organisation is responsible for reimbursing the costs related to his/her stay and return incurred by public funds.

By far the most significant divergences between Member States have been observed with regard to the following:

- 22 Member States (BE, BG, CZ, DE, EE, ES, FI, HR, HU, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK) allow third-country nationals to export certain social security benefits when leaving for a third country while the remaining do not.
- With the exception of a few Member States (FI, NL, RO, SI and SK), information on exportability of social security benefits is in practice not easily accessible to third-country nationals nor made available by national authorities in a clear manner. Furthermore, the content of the information published may not be sufficient. Not all Member States publish the bilateral agreements signed with third countries.

- Periods of absences allowed in other Member States vary from Member State to Member State: for instance, for the FRD, 30 days in Croatia and Greece to up to two years in Finland; for the SD from 30 days in Croatia to up to one year in the Netherlands; for RD one month in Croatia, to up to two years in Finland.
- The situation of third-country nationals who cannot be removed following a return decision is not addressed in a harmonised manner across Member States. Whilst certain Member States provide for a specific residence permit in such situations, in other Member States, this category of third-country nationals is tolerated with unclear rights as to access to basic healthcare, education or access to the labour market.

These differences have led to inconsistencies between the Member States especially with regard to the information on exportability of social security benefits, periods of absences allowed and the situation of third-country nationals who cannot be removed following a return decision, exacerbated also by the compliance issues in the transposition and implementation of Article 9(7) of the LTR in certain Member States, as indicated under Relevance and Effectiveness.

National policy choices as to c) the existence of national parallel schemes

To complete the analysis, besides the may clauses and the implementation choices by the Member States, the third aspect to be considered is the existence of diverse **national schemes** in the Member States. These also contribute to incoherence between EU countries with regard to admission, entry and stay of third-country nationals. As can be seen from the Table 22 below, the vast majority of Member States (with the exception of Cyprus, Greece, Luxembourg, Poland, Romania and Slovakia) have one or more national statuses in place which are considered as an equivalent to the EU Directive(s). As indicated in the table below, most of the national equivalent schemes in place concern the BCD and LTR, while a few additional ones have been found under the SD, FRD and RD.

Table 22. Member States with national equivalent schemes in place

	Blue Card Directive (2009/50/EC)	Family Reunification Directive (2003/86/EC) ²⁹²	Students Directive (2004/114/EC)	Researchers Directive (2005/71/EC)	Long-term residents Directive (2003/109/EC)
AT	Yes	No	Yes	Yes ²⁹³	No
BE	Yes	No	Yes	No	Yes
BG	No	No	No	No	Yes
CY	No	No	No	No	No
CZ	No	Yes	Yes	No	No
DE	Yes	No	No	No	Yes
EE	Yes	No	No	No	No

²⁹² CZ and FI are the only Member States with equivalent national schemes, although they are very similar to the EU schemes

²⁹³ In Austria, one of the requirements is that applicants have to be internationally recognised researchers

	Blue Card Directive (2009/50/EC)	Family Reunification Directive (2003/86/EC) ²⁹²	Students Directive (2004/114/EC)	Researchers Directive (2005/71/EC)	Long-term residents Directive (2003/109/EC)
EL	No	No	No	No	No
ES	Yes	No	Yes	Yes ²⁹⁴	No
FI	Yes	Yes	No	Yes ²⁹⁵	Yes
FR	Yes	No	No	No	Yes
HR	No	No	No	No	Yes
HU	No	No	No	No	Yes
IT	Yes	No	No	Yes ²⁹⁶	No
LT	Yes	No	No	No	Yes
LU	No	No	No	No	No
LV	No	No	No	No	Yes
MT	Yes	No	No	No	No
NL	Yes	No	No	No	Yes
PL	No	No	No	No	No
PT	Yes	No	No	No	Yes
RO	No	No	No	No	No
SE	Yes	No	No	No	Yes
SI	No	No	No	No	Yes
SK	No	No	No	No	No

National schemes overlap with the provisions of the legal migration Directives – some offer more favourable conditions than the EU equivalent, others a mix of favourable and less favourable treatment.

BCD

Blue card permits are notably available only from 2011 onwards, whereas 13 Member States currently have equivalent national schemes. As indicated in the statistical

²⁹⁴ Spain indicates as one of the main differences “easier conditions to be met”

²⁹⁵ Finland mentions higher benefits as one of the main differences

²⁹⁶ In Italy the national scheme does not set a salary threshold and is based on a system of recognised employers

analysis in section 3.2, the number of Blue card permits grew from 156 in 2011 to 5,825 in 2014 and finally to 8907 in 2016, with 21 out of 25 Member States reporting the issuance of such permits. It is noted though that in 2016, 69.5% of all Blue Card permits, were reported by Germany (6,189).

The 13 Member States (CZ, DE, EL, ES, FR, IT, CY, LV, NL, AU, PL, FI, SE) that had national “highly skilled workers” schemes in place, and which were already reporting in 2008 on the number of permits issued under such schemes, continued to issue their national scheme, and none of them shows an increase the number of Blue Card permits issued. Only Germany stopped its national equivalent scheme with the introduction of the BCD. In 2016, the 12 Member States with national schemes issued 24,645 high skilled workers permits compared to only 2,005 Blue Card permits.

The main differences between the permit granted pursuant to the respective Directive and the national scheme, e.g. in terms categories of third-country nationals covered, conditions, etc. include:

- The right to move to another EU Member State, which is easier for Blue Card holders. Blue Card holders may acquire the status of a long term resident earlier (AT)
- The gross salary criteria (BE, EE, FI, MT)
- Differences in the documentation of the application phase (LT)
- Only applies for specific categories: for researchers with special technical knowledge or teaching personnel in prominent positions or scientific personnel in prominent positions (DE).

The fact that these parallel schemes can be more or less favourable might impact on their practical use: as indicated in analysis carried out under Task 2, these schemes are often preferred by both Member States and TCN as they can offer simplified procedures and/or more favourable conditions and rules to third-country nationals.

LTR

12 Member States have national schemes which are equivalent to the LTR. As indicated in section 2.3 of Annex 1Bii (Contextual analysis: overview and analysis of legal migration statistics), during 2010-2016, long-term resident status under EU law was provided to an average 2.4 million TCN per year in EU-25. In 2016 over 2.7 million TCN held long-term resident status under EU Directives. The 12 Member States with national schemes in place together issued a higher number of national permits, namely on average 4.4 million over the years 2010 and 2016, with over 6.7 million TCN receiving this status in 2016 under national laws which was a considerable increase compared to 2010 (1.3 million).²⁹⁷

In 2016, across the EU-25, the majority of EU statuses were issued in just two Member States, Italy (2.1 million) and Austria (259,000). The majority of residence permits under the national status were issued by Germany (2.2 million), France (1.9 million) and Spain (1.2 million). The lowest number of permits was issued by Lithuania (2,015) and Slovenia (5,611).

Overall, the national schemes are similar or even nearly identical to the EU status. The main differences between the LTR permit and those granted under national schemes, include:

- The minimum length of stay in order to be eligible for the status, which is shorter under several national schemes

²⁹⁷ The drop in the stock of third-country nationals holding long-term status under the EU Directive in Germany and Sweden at the end of the period can in part be explained by the fact that these countries started to report on the size of the stock of TCNs holding long-term status under national legislation only recently.

- The residency conditions (HR, FI). For instance, in Finland these are more lenient in the sense that the person needs to have resided in the country only half of the four years the permit was valid
- It does not allow long-term residence in other EU Member States (HU, PT)
- The residence permit of indefinite duration does not grant intra-EU mobility rights to third-country nationals in the Netherlands. These rights are only granted to third-country nationals with an EU long-term residence permit.

SD

Differences between the EU Directives and the national schemes can also be noted with regard to the SD. They concern diverse aspects as indicated below:

In the Czech Republic, the national scheme refers to studies which are not covered by the EU Directive, for example a non-accredited study programme, language schools and language courses.

In Austria, alternatively to the permit issued based on the SD, students who intend to stay between three and six months may obtain a visa category C or category D. A travel visa C (Schengen-visa) allows stays in Austria and all other Schengen States for a maximum of 90 days within 180 days. A residence visa D allows stays in Austria for 91 days up to a maximum of 6 months. Persons who hold a valid visa category C or D are allowed to study in Austria.

Belgium indicates that there is a national scheme for third-country nationals coming to Belgium for the purpose of a traineeship: trainees need to obtain a work permit.

5.2.2 EQ3B. To what extent are there synergies, gaps, inconsistencies, incoherencies, overlaps with national policies that are either going further than what is required by the EU legal migration directives or exist in parallel (parallel schemes)? Are there excessive burdens as a result of national implementation choices?

Research question

Sources of information Key conclusions

<p>EQ3.B: To what extent are there synergies, gaps, inconsistencies, incoherencies, overlaps with national policies that are either going further than what is required by the EU legal migration directives or exist in parallel (parallel schemes)?</p>	<p>1Bii Contextual analysis: overview and analysis of legal migration statistics.</p> <p>2A Evidence base for practical implementation of the legal migration Directives: Synthesis report</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC Summary Report</p> <p>4B Fitness check / REFIT evaluation: Analysis of gaps and horizontal issues</p>	<p>Significant synergies and overlaps exist between the EU legal migration acquis and the national schemes, which might lead to a preference towards those national schemes which have more favourable provisions and simplified procedures.</p> <p>The main differences have been observed in the documentation phase, application phase, entry and travel phase and the post-application phase.</p> <p>Moreover, the accumulation of national implementation choices contributes to divergences between Member States.</p>
<p>Are there excessive burdens as a result of national implementation choices?</p>		

The evaluation of Question EQ3B includes two sub-sections which mainly focus on national parallel schemes and the accumulation of a number of national policy choices.

5.2.2.1 To what extent do the national policy choices made by Member States: help to enhance the ability of the legal migration Directives to reach their original objectives; create overlaps with the provisions of the legal migration Directives; result in gaps in legal coverage / protection for certain categories of migrants; and/or contradict any of the provisions in the legal migration Directives?

As indicated in the other sections under Coherence and Relevance, some Member States have made policy choices which have enhanced the ability of the legal migration Directives to reach the original objectives. However, in others, the national choices may have hampered the extent to which the objectives can be achieved – especially when a particularly restrictive approach has been chosen through ‘may’ clauses and strict interpretation of clauses.

To complete the evaluation of these national choices, this section will focus on the main differences between the EU legal migration acquis and the national parallel schemes, when these overlap with the provision of the legal migration Directives, and on the specific consequences/effects of having also national equivalent statuses, especially (but not only) when Member States have put in place more stringent rules which do not favour the applicant.

More specifically, the main differences between these parallel schemes and the EU Directives concern the following migration phases:

Pre- application (documentation) phase

The main difference between the requirements of the BCD and the equivalent national statuses concerns the lack of or reduced minimum income requirements, applied in Italy, the Netherlands, Portugal and Sweden, which seems to result in a higher use of the national equivalent status.

In Sweden for example, income requirements under the national status are much lower and make no difference between low- and high-skilled workers. The rights enjoyed under the national status are the same than those offered under the BCD, which means that few labour migrants choose to use the BC given that the national legislation is more favourable. There are, however, a few cases where national equivalent statuses have introduced higher salary requirements (e.g. top specialists in Estonia).

Another important difference seems to be that application forms for the national equivalent statuses are considered to be more difficult and less user friendly to fill in. This may be a result of the relative harmonisation of documentation introduced by the EU legal migration acquis.

Finally, and in notable difference to the EU status, LTR national equivalents seem to require continuous residence in a relatively small number of Member States.

Application phase

With regard to the application procedure, in 13 Member States some important differences exist in relation to the following:

- Less favourable conditions and rights with regard to the admission procedure. For example, in Hungary, in order to be granted the national settlement permit, which is the national equivalent of the LTR, the applicant needs to provide proof of a clear criminal record from the country of origin. This can pose a significant challenge depending on the third country. No such requirement is in place for applications under the LTR.
- More favourable conditions with the regards to the personal scope in Croatia, Estonia, Germany, the Netherlands, Portugal, Spain and Sweden. For instance, in Spain these categories include foreigners who are of Spanish origin and have lost their Spanish nationality; foreigners who have contributed markedly to the economic, scientific and cultural progress of Spain,
- More favourable national equivalent of the LTR, including a much shorter deadline to decide on a permit request. For instance in Portugal, 90 working days compared to six months for the EU status.

Entry and travel phase

The entry and travel phase is usually the same for all kinds of permits and national statuses offer the same rights and conditions as the EU Directives. There are only slight differences observed in the Netherlands and Portugal. In the Netherlands, for instance, the maximum decision period for long stay visa applications required for the EU BC is 90 days whereas for the national permits this period can be extended with another 90 days. The EU BC Directive thus offers more favourable conditions and rights.

Post-application phase

No significant differences nor inconsistencies between the EU Directives and their national equivalents were observed in this phase.

The main differences that have emerged at the level of legislation as well as in terms of practical application concern the duration of residence permits and the fees:

- In Austria and Italy, the duration of the residence permit for the BCD is shorter in national equivalent statuses.
- In Portugal, the fees for issuing LTR and BCD permit documents are higher (about 20%) than in the case of their national equivalents.

Intra-EU mobility phase:

The only relevant main difference identified concern one country which differentiates between the family members of mobile third-country nationals and first time applicants under equivalent national status.

In particular, in the Netherlands family members of mobile LTR third-country nationals or of mobile EU Blue Card holders do not need the long-stay visa to travel to the Netherlands on the condition that they have lived together with the sponsor in the first Member State, and can travel to the Netherlands directly.

5.2.2.1 Policy choices in general and/or the accumulation of national implementation choices contributes to divergences between Member States

For third-country nationals, it is mostly the accumulation of Member States implementation choices that they find most problematic. For instance, in the pre-application phase, the extent of information on the application procedure provided by hotlines and information desks is limited in some countries, affected by understaffing and the overall low administrative capacity of responsible authorities. Moreover, the quality and availability of information provided to third-country nationals by embassies and consulates in their countries of origin also vary substantially from country to country, depending on the number of representations, their capacity and their powers by law. The difficulties encountered by applicants might be further exacerbated by other national choices, for instance regarding the content of the information, which also significantly varies from Member State to Member State. Cypriot embassies, for example, only provide information about short-term visas and nothing on legal migration, Polish representations only provide visa information, while in Portugal the content depends on the embassy / consular authority contacted. For other Member States, websites are either lacking, are out of date or do not function properly. For employers, for whom time and speed are of essence, there are specific aspects which they find particularly difficult, e.g. the different approaches towards birth certificates, diplomas and other documents to be submitted as part of the application, including the requirement for originals and/or certified copies. The acquisition and authentication of specific documentary evidence can be very difficult to obtain (for example in India and several countries in Africa) and thus lead to significant delays in the processing of an application.

5.3 EQ4: To what extent are the Legal migration Directives coherent with other EU policies and to what extent are there inconsistencies, gaps, overlaps and synergies with such policies?

5.3.1 EQ4A. Building on the analysis of EQ2, which other EU interventions (policies and legislation) have a role in the management of migration flows? Are there synergies, gaps and incoherencies, overlaps?

The table below gives an overview of the main sources of information utilised and the key conclusions of EQ4A.

Research question	Sources of information	Key conclusions
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<p>EQ4.A (EU Policy coherence): Building on the analysis of EQ2, which other EU interventions (policies and legislation) have a role in the management of migration flows?</p> <p>Are there synergies, gaps and incoherencies, overlaps?</p>	<p>1Cii Contextual analysis: Intervention logics: External Coherence of the EU legal migration Directives</p> <p>1Ci Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC Summary Report</p> <p>4B Fitness check / REFIT evaluation: Analysis of gaps and horizontal issues</p>	<p>A number of EU policies and legislation have played a key role in the management of migration flows (i.e. education and research, legislation on the recognition of foreign qualifications, visa policy, asylum policy, etc.)</p> <p>There are severe (and less severe) synergies, gaps, overlaps and incoherence between these instruments and the legal migration acquis, which advocate for a better coherence between these policies and the legal migration Directives.</p> <p>The most serious coherence issues identified include the areas of and education and the recognition of qualifications, asylum acquis, the employer sanctions, social security and human trafficking.</p> <p>The analysis also found several synergies and complementarities between the EU legal migration acquis and other EU policies and legislation. These include the EU skills agenda and external education policy, recognition of professional qualifications, temporary agency workers, and free movement.</p> <p>Taking both the gaps and inconsistencies, as well as the synergies and complementarities into account, overall the EU legal migration Directives are well embedded in wider EU policies and legislation and well linked to key policy priorities around jobs and growth, justice and fundamental rights.</p>
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This part of question 4 focuses on those EU policies and legislation which play a key role in the management of migration flows, and explores synergies, gaps, overlaps and incoherence between these instruments and the legal migration acquis.

The evaluation especially builds on the in-depth analysis carried out under Task 1, which includes a number of EU policies and gap analysis factsheets, the internal coherence analysis, as well as on the outcomes of the extensive stakeholders consultation conducted under Task 3. Although stakeholders' contributions on external coherence were limited, they provided valuable views on the EU interventions which played an important role in the management of the migration flows. In particular, Member States' representatives referred to education and research (including funding programmes such as Erasmus+, (former) Erasmus Mundus and Marie Skłodowska Curie Actions), legislation on the recognition of foreign qualifications, visa policy, asylum policy, and (wider) equal treatment policy and legislation, advocating for a better coherence between these policies and the legal migration acquis.

The evaluation has identified several **external coherence issues** in a number of **policy areas**, which have been linked to the different phases of the migration process and assessed by their severity (severe/not so severe). The most serious coherence issues identified include the areas of and education and the recognition of qualifications, asylum acquis, the employer sanctions, social security and human trafficking. As indicated in more detail below, these issues were found in the

application, residency and intra-EU mobility phases, and in particular in the areas of equal treatment, intra-EU mobility, labour exploitation, asylum and family reunification. No coherence issues were found in the other steps of the migration process, namely the preparation and post-application phases. The analysis also found several **synergies and complementarities** between the EU legal migration acquis and other EU policies and legislation, which is also analysed in the following sub-sections.

Taking both the gaps and inconsistencies, as well as the synergies and complementarities into account, overall the EU legal migration Directives are well embedded in wider EU policies and legislation and well linked to key policy priorities around jobs and growth, justice and fundamental rights.

5.3.1.1 Education

During the application phase, the legal migration Directives provide **synergies** in respect of the **EU skills agenda and external education policy**, since they aim to simplify and harmonise admission conditions and procedures for third country nationals with different key skill sets. In particular, the EU's skills policy should help EU Member States to identify better the skills and labour shortages that can be addressed through migrant labour, by strengthening mechanisms for identifying skills gaps and for conducting skills profiling of migrants. The provisions of the Directives on access to employment, on equal treatment (in terms of access to education and training) and on intra-EU mobility should also facilitate the objective of job-matching and up-skilling for third-country nationals resident in the EU. However, several potential inconsistencies were identified including the variety of admission conditions and procedures permitted by the Directives, which may discourage skilled third-country nationals from coming to the EU.

During the residence phase, some (not severe) **coherence** issues were identified:

- Legally permitted restrictions (due to derogations and may-clauses) to access to the labour market of third-country nationals covered by the S&RD.
- Legal restrictions (due to derogations and may-clauses) to equal treatment in respect of the right of third-country nationals covered by the Directives to access the labour market. In most of the legal migration Directives (SWD, BCD, S&RD, and ICT), access to employment is tied to the specific employment activity authorised under the permits. Only in the FRD and LTR this is not the case. The right to work for researchers is tied to the specific employment activity authorised under the permit (and in the case of students to the maximum number of hours they are allowed to work while conducting their studies). The right to self-employment is only provided as an optional clause for students (not for researchers).
- Restrictions to equal treatment as regards access to education and vocational training may apply in the LTR, SPD, BCD, SWD, ICT and S&RD. In the S&RD, access to education can be restricted to exclude study and maintenance grants or other grants and loans in the case of researchers (Article 22 (2) (a)). Under the SPD and FRD Member States may have specific prerequisites including language proficiency and the payment of tuition fees, in accordance with national law, with respect to access to university and post-secondary education and to vocational training which is not directly linked to the specific employment activity. Under the LTR, Member States may require proof of language proficiency for access to education and training. Restrictions to equal treatment as regards access to education and vocational training, if not applied in a proportionate manner, may be inconsistent with the objective to support the upskilling of third-country nationals.

During the intra-EU mobility phase, serious coherence issues were observed as legally permitted restrictions to intra-EU mobility may apply to students and researchers. The

SD enabled intra EU-mobility for students only under certain conditions, while under the RD a new hosting agreement was required for researchers in order to undertake long-term mobility. While intra-EU mobility was strengthened under the S&RD, several restrictions continue to apply. The mobility for students is only foreseen for those that are covered by programmes, those that are not covered by programmes have to submit a separate application.

5.3.1.2 Recognition of qualifications

There are positive **synergies** between Directive 2005/36 on the **recognition of professional qualifications**, and its amendment (Directive 2013/55) and the functioning of the EU legal migration Directives at two stages of the migration process.

During the residence phase, the Directive 2005/36 (Recital 10) and its amendment outline the right to equal treatment with regard to recognition of professional qualifications. Further, seven EU legal migration Directives (LTR, RD, BCD, SPD, SWD, ICT, S&RD) enable equal treatment of third-country nationals as regards "recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures". In addition, the SP covers students and family members of third country nationals who have the right to work, thus providing equal treatment for those third country nationals with regard to recognition of qualifications. During the intra-EU mobility phase, the same equal treatment provisions in the EU legal migration Directives allow for recognition of professional qualifications in accordance with the relevant national procedures.

Regarding the **coherence issues**, the main gap in the recognition of professional qualifications occurs during the application phase, since at this stage no EU legal provisions cover the efforts of TCN applicants to obtain recognition of the professional qualifications they may have obtained in a third country or in another EU Member State (equal treatment with regard to recognition of qualifications is only granted once a permit has been issued and only by some Directives). Depending on the laws of the country of destination, third-country nationals may therefore face more onerous requirements for recognition of their qualifications than EU citizens holding a similar EU or non-EU qualification.

Serious coherence issues also occur during the residence phase: under the S&RD, Member States may limit the right to equal treatment with regard to the recognition of diplomas and professional qualifications for trainees, volunteers, and au pairs, when they are not considered to be in employment. Students and family members without the right to work who want their professional qualifications to be recognised, would also not enjoy the right to equal treatment with Member State nationals with respect to the provisions of Directive 2005/36 (Recital 10) and its amendment (Recital (1) of Directive 2013/55).

Moreover, in the intra-EU mobility phase, serious coherence issues have been identified, similarly to the issues mentioned above, as third-country nationals are not covered by the equal treatment until they have been granted a residency permit in the second Member State, hence there is a potentially serious gap in the preparation phase (often entailing job-seeking) for intra-EU mobility.

5.3.1.3 Fundamental Rights

Important **synergies** and **complementarities** with the legal migration acquis have been identified as regards the promotion, respect and protection of fundamental rights.

Notably, the obligation upon EU institutions and bodies to fundamental rights, in particular as enshrined in the provisions contained in the EU Charter of Fundamental Rights, which is a binding instrument since the entry into force of the Lisbon Treaty, underlies any EU measures related to management of legal migration by informing the scope and content of the rights contained in the EU legal migration directives for third-country nationals on issues such as family reunification and social rights. The

obligations deriving from the Charter, which applies to the Member States when they implement EU law, further relate to the transposition of the provisions of the Directives by the Member States, as well as to the interpretation and application of national provisions transposing the Directive by the national authorities, including the courts, as well as the adoption of any, national authorities including the courts, as well as the adoption of any national measures which may affect any of the rights contained in these Directives.

Many provisions contained in the legal migration directives are declaratory confirmation of fundamental rights, as enshrined in the Charter, which are granted to any persons irrespective of their migrant status or any other status. This concerns for example provisions in the legal migration directives dealing with freedom of association (Article 12 of the Charter), equal working conditions (Article 31 of the Charter) equality before the law Article 20 of the Charter) also applies to all persons.

However, it is to be noted that the scope and extent of a large number of economic and social rights, as articulated in the EU Charter of Fundamental Rights, also read in the light of conditions and limits defined in relevant Treaty provisions, differ as regards third-country nationals as compared to EU citizens, given that the latter enjoy a particular status and additional rights under EU law which stem from Treaty provisions on Union citizenship and free movement. In that respect, CJEU case law confirms, for example, that the EU legislator maintains a broad margin of discretion over access to third-country nationals to the territory of EU Member States for economic reasons as well as circumstances and conditions under which intra-EU mobility can be granted to third country nationals. Accordingly, in this field the principle of non-discrimination on grounds of nationality as referred to in the Treaties cannot be relied upon by third-country nationals, and the general prohibition of discrimination as enshrined in the Charter is made subject to a number of conditions and limits. Such conditions and limits are reflected in the scope and content of non-discrimination rules as provided for in relevant instruments of EU secondary legislation. Case law of the CJEU, as well as jurisprudence of the ECtHR in the light of which provisions of the Charter which correspond to rights guaranteed by the ECHR have to be interpreted (Article 52(3) of the Charter) provide guidance on the way such conditions and limits should be interpreted in accordance with provisions of the Charter, as it has been for example on issues regarding the granting of social benefits or the enjoyment of family reunification.

Against this background, migration law can be characterised, to a large extent, as a "fine-tuning of legitimate difference in treatment": the legal migration directives set out how far third country national enjoy rights similar to those enjoyed by national (or EU) citizens. The equal treatment provisions are in fact characterised by numerous conditions and **limitations** which reflects the discretion recognised to the EU legislator as well as to Member States as to the level of equal treatment to be afforded to third-country nationals compared to national (or EU) citizens. While these differences between third country nationals and national (or EU) citizens can in principle be justified, these provisions may, overall, raise **issues of consistency with the general principle of equal treatment (Article 20 of the Charter) and/or the general prohibition of discrimination (Article 21 of the Charter)** when differences in treatment between different categories of third country nationals, or even differences in treatment between third country nationals and national (or EU) citizens do not appear to be justified by legitimate considerations and/or are not in line with the principles of necessity and proportionality, as required by Article 52(1) of the Charter.

5.3.1.4 Asylum acquis

In the application phase, some (not severe) **coherence** issues were identified with regard to the asylum acquis. In particular, the FRD only refers to refugees as sponsors and not to beneficiaries of subsidiary protection (BSPs), defined in art 2 (f) of the Qualification Directive. BSPs may apply for family reunification under the regime of the

FRD which applies to any third-country nationals, meaning however that, compared to refugees, they cannot benefit from the more favourable family reunification rules. In particular, there is a difference between the two categories regarding the sponsor residence permit's validity, which for BSPs might be only 1 year. The majority of Member States grant family reunification also to BSPs (AT, BE, BG, DE, EE, ES, FI, FR, HR, HU, IE, LT, LU, LV, NL, NO, SE, SK, UK). In many Member States BSPs can apply for family reunification under the same conditions as refugees (BE, BG, EE, ES, FR, HR, HU, IE, LT, LU, NL, NO, SI, SK, UK). However, in some Member States (in particular DE, SE, FI, AT) BSPs might be subject to more stringent conditions than refugees (e.g. income requirements, longer waiting periods, etc.), creating a disparity in their treatment, underlining the effects of the lack of EU harmonisation in this area. In such cases, the gap has been exacerbated by the fact that the statuses of refugees and BSPs have otherwise been more closely aligned in the EU asylum acquis.

Out of all the persons who were granted a protection status in 2016 in the EU, 389,670 persons were granted refugee status (55% of all positive decisions), 263,755 subsidiary protection (37%) and 56,970 authorisation to stay for humanitarian reasons (8%). While both refugee and subsidiary protection status are defined by EU law, humanitarian status is granted on the basis of national legislation. The absence of facilitated family reunification rules in the EU therefore affected in 2016 around 45% of all third country nationals benefitting from protection in the EU.

The scope of application of the right to family life does not always seem coherent and logically consistent, given the approximation of refugee status and subsidiary protection status pursued within the asylum acquis in the last years. However, this difference, as well as some other differences which are still included with regard to the two categories in the asylum acquis, can at least be justified by the presumably more temporary need of protection of BSPs as opposed to refugees.

In the residence phase, serious issues in relation to the change of status were identified. Currently, the BCD explicitly excludes from its scope both beneficiaries of international protection and asylum seekers: they cannot apply for a Blue Card even if they are highly skilled and have an offer for a highly skilled job. Their admission conditions and rights are regulated principally in the EU asylum acquis: beneficiaries of international protection have full access to the labour market as soon as they receive protection status while asylum seekers have the right to work at the latest after nine months from submitting their application for protection. Since the Blue Card is a specific and rather selective scheme, it should not be a tool either to provide alternatives to asylum seeking or to enhance the labour market integration of these migrants. However, applicants and beneficiaries of international protection who would in principle be eligible may risk de-skilling and unemployment.

5.3.1.5 Schengen acquis

A serious **coherence** issue has been identified in the entry, travel and intra-EU mobility phases, in particular concerning the relation between the short term mobility and the Schengen-legislation. The interaction between the Schengen rules and the legal migration Directives seems to be inevitable when third-country nationals have to apply for a visa to enter the territory of Member States. Due to the differences in the geographical scope of the Schengen rules with that of the legal migration Directives, differences between the two legal frameworks appear in particular in cases where short-term stays and mobility to other Member States are foreseen in some Directives. Indeed, some legal migration Directives (ICT, S&RD) establish more generous intra-EU mobility schemes than the mobility rules under the Schengen acquis. A more detailed analysis of the issues at stake is provided below.

Third-country nationals from some non-EU countries are required to hold a visa when travelling to the Schengen Area. The EU has a common list of countries whose citizens must have a visa when crossing the external borders and a list of countries whose citizens are exempt from that requirement. These lists are set out in Regulation No

539/2001 and its successive amendments. While the Schengen legislation gives a third country national with a residence permit the right to stay in another Member State for maximum 90 days, the ICT and the S&RD foresee a different time period. In particular, the short term mobility is allowed for up to 90 days in any 180 days per Member State in the ICT, and 180 in any 360 days per Member State for researchers; students are admitted in the second Member State within a period that does not hamper the pursuit of relevant studies, whilst leaving the authorities sufficient time to process the application. The different rules in place create uncertainty in terms of which legal framework is applicable to the different categories of third-country nationals, given that they always differ from the Schengen mobility rules.

The SWD is the only Directive to cover stays not exceeding 90 days. This particular set-up in the Directive raises questions on the clarity between the rules on admission of seasonal workers for stays less than 90 days and the interaction with the Schengen and visa rules. The Directive provides that for stays not exceeding 90 days in a Member State fully applying the Schengen acquis, the Directive has to be applied in conjunction with the Visa Code, the Schengen Borders Code and Regulation 539/2001.

Additionally, third-country nationals holders of an ICT or student or researcher permit of a Member State not fully implementing the Schengen acquis will not need a Schengen visa to move to another Member State and thus cross the external borders of the Schengen Member States. This creates practical problems for border controls and a number of safeguards were included in these Directives to the effect that if TCN holders of such permits are considered to pose a threat to public security or public order, their entry may not be allowed by a Schengen Member State.

Moreover, almost all the Directives specify that an application for a residence permit by third-country nationals is only possible outside the territory of the Member States, or only from holders of a long-stay visa or a residence permit (for example in the BCD). A few Directives derogate from this rule in order to allow for more flexibility and thus provide Member States with the possibility to allow applications from third-country nationals already 'legally present' on the territory of a Member State but who are not holders of a residence permit or a long-stay visa. This is a possibility for Member States in the S&RD and is foreseen in the proposal for a recast BCD. This concept of "legally present" in a Member State comprises situations where third-country nationals are staying in a Member State under a short-stay visa or as visa exempt. This may create inconsistencies with the Schengen acquis: third-country nationals may enter the territory of a Member State with already a view to apply for such student or researcher permit and this may be incompatible with the Schengen acquis according to which the authorisation for a third-country national to enter the territory of a Member State is dependent on the purpose of stay.

In addition, when considering the overall set-up of admission conditions and residence permits available to third-country nationals under the combined Schengen rules as well as the legal migration Directives, some categories of third-country nationals are not sufficiently covered by EU rules. This is the case of third-country nationals working in the transport industry or touring artists.

5.3.1.6 Posting of workers

Significant **complementarities** and **potential gaps** have been identified in the area of posted work.

A "posted worker" is defined as a worker who, for a limited period, carries out work in the territory of a Member State other than the State in which s/he normally works. The Posted Workers Directive (PWD) 96/71/EC defines a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers. The PWD is nationality-neutral, and therefore third-country nationals employed by a company in an EU Member State who are posted from one Member State to another (other than the one who issued them a permit or visa) are covered as well as EU citizens.

However, due to the nature of the posting, third-country nationals are not covered by the legal migration acquis in the Member State where they are posted, as they do not hold a permit issued by that Member State but are holders of a permit or a visa issued by the sending Member State. In fact the SPD is not applicable in the host Member State and they are therefore not covered by the equal treatment provisions in that Directive.

A Directive which is closely interlinked with the PWD is the ICT. Third-country nationals with an ICT status are in fact "international posted workers", as they are non-EU citizens posted from a company based outside the EU – and their employment contract is with that company – to one or more subsidiaries based in the EU. As in the case of intra-EU posted workers, they do not integrate the labour market of the host Member State. However, the scope of the ICT is much narrower than the PWD as it concerns only the posting of highly-skilled workers (managers, specialists, and graduated trainees) within subsidiaries of multinational companies, while the PWD has a much broader scope.

The analysis has identified the following complementarities, discrepancies and gaps:

- The general concerns raised in relation to the PWD, such as unfair practices, abuses and circumvention of the Directive, risks of social dumping, are also relevant for third-country workers already residing in the EU under the same employment conditions;
- There is a discrepancy between the PWD and the ICT as regards the level of the remuneration (potentially higher for ICTs), which is however aimed at avoiding abuses and at ensuring a better protection for the workers;
- While the PWD may apply also to Blue Card holders (when they provide services within the meaning of the PWD), this is not a problem in itself as the two Directives rather complement each other both under the current Blue Card Directive and under the 2016 Commission proposal to revise the BCD;
- Finally, posting of service providers from outside the EU to EU Member States, in those cases that do not fall under the scope of the ICT, is currently not covered by the EU legal migration acquis (except for the general principle that undertakings in third-countries should not be given more favourable treatment than Member States undertakings set out in Article 1(4) of the PWD).

5.3.1.7 Temporary work agency

There are important **complementarities** between the provisions on equal treatment of the Directive on Temporary Agency Work (TAW) (2008/104/EC) and the EU legal migration Directives in relation to equal treatment and the specific protection for temporary agency workers.

This Directive notably provides a general regulatory framework for the work of temporary agency workers *in the EU* and applies to any person who is protected as a worker under national employment laws in the Member States. It contributes to the management of legal migration in the EU by providing a minimum level of effective protection to third-country nationals temporary agency workers specific to temporary agency work, that complements equal treatment conditions for third-country workers who are covered by the EU legal migration Directives. This includes all third-country nationals who are admitted for the purpose of work, or who otherwise enjoy the right to work (e.g. students in certain cases, LTRs, family members), also on the basis of national schemes (including those covered by the SPD).

As an example of complementarity, the SPD foresees that third-country nationals admitted for the purpose of work, or who enjoy the right to work, and who have a permit that authorises work in a temporary agency (if national rules specific), have access to the minimum level of protection afforded to temporary agency workers by the TAW.

However, there are also potential significant **gaps**. In the residency phase for example, there is a potential gap concerning third-country nationals who are contracted to work in the EU by a temporary work agency based *outside of the EU*, as these are not covered by the provisions contained in the TAW. There are also some gaps in personal scope between the provisions on equal treatment of the TAW and the legal migration Directives. These gaps result from the exclusion of certain categories of third-country nationals from the scope of the SPD (in particular self-employed workers and posted workers).

5.3.1.8 Employer sanctions

Serious external **coherence issues** have been identified with regard to the residence phase.

The exclusion of legally residing third-country nationals from the scope of the Employer Sanctions Directive (ESD) creates two significant gaps in the EU's measures to counter illegal employment and exploitation. Their exclusion means that the equality provisions contained in the EU legal migration Directives, which aim to combat illegal employment by putting legally residing third-country nationals on an equal footing to national workers, are not backed up in the Legal migration Directives by a regime of monitoring and inspections, and reporting thereof, as well as sanctions against employers. Also, the obligation on employers to pay any outstanding remuneration to workers who have been illegally employed only extends to illegally staying third-country nationals (with the exception of seasonal workers, for whom a right to receive back-payments is included in the SWD).

The gap in the functioning of the EU legal migration Directives, as a result of the exclusion of legally residing third-country nationals from the ESD, is only partially addressed by the EU's Anti-Trafficking Directive (ATD), for situations that fall under its scope. The ATD covers all victims of trafficking, regardless of their legal status, therefore also legally residing third-country nationals. While the ATD covers those situations of labour exploitation which amount to the criminal offence of trafficking in human beings, it does not cover other forms of labour exploitation, which are addressed by criminal and labour legislation at Member State level.

The ATD also requires Member States to ensure that the investigation and prosecution of such offences are adequately supported. However, it does not include a requirement for Member States to introduce an effective inspection regime among employers who may be hiring workers that have been victims of trafficking.

5.3.1.9 Human trafficking

While no particular inconsistencies have been identified between the ATD and the EU legal migration Directives, there is a potentially important **gap** in the support which the ATD is able to provide to the EU and Member States in their efforts to address cases of labour exploitation among legally resident third-country nationals. The ATD covers cases of labour exploitation which take place *in the context of trafficking*; however, labour exploitation may also take other forms which do not amount to a trafficking offence, including breaches of labour law (e.g. employers not complying with minimum salary, maximum working hours, etc.) or breaches of migration law (e.g. employer not in reality providing the salary and working conditions set out in the application). These forms of labour exploitation may be particularly relevant to some categories of legally residing third-country nationals. The only EU legal migration instrument that addresses the issue of labour exploitation is the SWD, which provides for sanctions against employers who have breached their obligations (for instance with regard to payment, working conditions and the accommodation) and for labour inspections.

There is a potentially a gap in the interaction between the ATD and the LTR, namely, the fact that it is not clear whether the periods which a third-country national has resided in a Member State on the basis of a residence permit issued under Directive

2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking, can be counted towards the minimum of five years required for a third-country national to be eligible for long-term residence status under the LTR, in view of the temporary nature of the permit.

The general actions to combat trafficking in the ATD on preventing and combatting trafficking in human beings may also benefit third-country victims who are holders of a residence permit covered by one of the EU legal migration Directives. The definition of 'trafficking' in the ATD covers a wide range of offences, including 'severe' forms of labour exploitation ("sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery and servitude"), which can be considered supportive of the wider objective of the EU legal migration Directives to ensure equal treatment of third-country nationals (workers mainly), notably as regards pay and working conditions, social security and other areas, thus avoiding their exploitation and preventing discrimination. The measures in the ATD include common rules on the sanctions to apply on legal persons in the area of trafficking of human beings as well as awareness-raising to reduce the risk of people becoming victims of trafficking, and regular training for officials who are likely to come into contact with victims of trafficking and those who investigate or prosecute cases of trafficking.

5.3.1.10 Free movement

EU policy on freedom of movement interacts in a number of ways with the management of legal migration.

The main **complementarity** between the EU policy on freedom of movement and the legal migration acquis can be found in the provisions of Directive 2004/38/EC on facilitated mobility for the non-EU family members of EU citizens. Family members who are not nationals of a Member State shall only be required to have an entry visa in accordance with Regulation (EC) No 539/2001 or, where appropriate, with national law. Where the family members possess a valid residence card on the basis of Article 10 of Directive 2004/38/EC, they shall be exempt from the visa requirement. In circumstances where an entry visa is required, Member States are obliged to grant the TCN family member facilitated access to the necessary visa: "Such visas shall be issued free of charge as soon as possible and on the basis of an accelerated procedure" (Article 5, paragraph 2).

As mentioned in recital 5 of the Directive, facilitated mobility for non-EU family members of Union citizens is included in Directive 2004/38/EC in order to ensure that the right of all Union citizens to move and reside freely within the territory of the Member States "is to be exercised under objective conditions of freedom and dignity". This is an important complement to the provisions on family reunification in the EU legal migration Directives as these only cover the entry and mobility conditions of third-country national family members joining a third-country national sponsor in an EU Member State.

Another important aspect of the interaction between these two policy areas, concerns the intra-EU mobility rights of third-country nationals compared to the ones of EU citizens. Formally, the differences in treatment between EU citizens and third-country nationals in relation to mobility rights does not give rise to coherence issues, because the freedom of movement of EU citizens is a 'constitutional right' (Art 21 and 45 of the TFEU) whereas the right to intra-EU mobility for third-country nationals is based on secondary legislation and therefore subject to the will of the legislature.

However, a significant **gap** has been identified between the provisions on third-country family members covered by of Directive 2004/38/EC since they join mobile-EU citizens and the third-country family members who join a third-country national, and are therefore covered by legal migration Directives, namely the non-coverage by EU law of third-country national family members of non-mobile EU citizens. This category of third-country national cannot be covered under free movement rules since the application of the Treaty provisions on EU citizenship is conditioned on the existence of

a cross-border element,. Third country nationals who are family members of static EU citizens are not included, as a specific category, by the legal migration Directives as these concern family reunification rules applicable to third country nationals.

However, the judgements of the CJEU on returning nationals confer Union citizens who return to their Member State of origin similar rights to family reunifications than the ones attributed by secondary legislation to Union citizens who reside in another Member State.

5.3.1.11 Social security

There are various situations where the **interactions** between the EU legal migration Directives and the EU rules on social security coordination affect the social security rights of third-country workers. These mainly concern the 'phases' in which 1) third-country nationals arrive to work in a Member State, and 2) when they move 'back' to a third country.

There are strong synergies between the EU's social security coordination rules and the EU's legal migration Directives for third-country workers who arrive to work in a Member State. All of the legal migration Directives (except for students under the SD who are covered by the provisions of the SPD as they are not excluded from its scope), which allow third-country nationals to work, contain provisions on equal treatment with nationals as regards the branches of social security as defined in Regulation 883/2004. The LTR additionally provides equal treatment with nationals as regards social assistance and social protection – benefits which are not coordinated under Regulation 883/2004 – although it allows Member States to limit these to 'core benefits'. However, several legal migration Directives introduce restrictions to these equal treatment provisions which means that there are gaps in the social security coverage of certain third-country nationals who are working in the EU. For instance, the SPD allows Member States to restrict unemployment benefits to those who have been employed in the host Member State for less than six months; the SWD restricts equal treatment for social security by excluding family benefits and unemployment benefits subject to the application of bilateral agreements or the national law of the Member State. The only work-relevant Directives which do not contain restrictions to the right to equal treatment with nationals as regards the branches of social security as defined in Regulation 883/2004 are the BCD and the LTR.

A further set of interactions between the EU's social security coordination rules and the EU legal migration Directives take place if a third-country national 'returns' to a third country. Most of the legal migration Directives (except for the long-term residents Directive, where it is arguably still implicit) provide for equal treatment with respect to the portability of statutory pensions when moving 'back' to a third-country. That is, for the categories of third-country nationals covered by the Directives, Member States are obliged to continue to pay pensions to the third-country nationals when they 'return' to a third country. However, as the portability of pensions is expressed as an equal treatment right, this obligation only exists insofar as the Member State permits their own citizens to transfer their pensions to a third-country.

Another gap in the EU acquis on the portability of pensions concerns the categories of third-country workers who are not covered by the Directives. This includes self-employed workers and workers who are posted by an employer based outside of the EU (third-country nationals who are posted from one EU Member State to another are covered by the social security rules of their home State according to Regulation 883/2004).

There can be inconsistencies stemming from the interaction of the two legal frameworks. Not only the list of benefits covered by the Regulation 883/2004 is applied in the context of the legal migration directives but also the jurisprudence developed by the ECJ as regards definition and scope of the different benefits, in

particular on whether a benefit can be considered social security or social assistance. This may lead to problems in the practical application of legal migration Directives. In the case for example that a national benefit is considered social assistance (such classification may not be in line with Regulation 883/2004 and existing jurisprudence) and therefore a number of categories of third country nationals can be excluded from it.

5.3.1.12 Transition to irregular stay and the Return Directive

In the end of legal stay phase, **synergies** were identified with regards to the transition into illegal stay and the Return Directive.

Notably, overstaying refers to the phase in which migrants remain in a country beyond the approved duration of their stay. Regular migrants are subject to a transition into overstay/ irregular stay if they are unable to renew their residence permit, which is often due to bureaucratic delays beyond their control or other reasons. Most 'overstayers' enter legally on visitor, tourist or student visas. One of the main policy responses to illegal stay is an enhanced EU return and readmission policy: overstayers who make a transition into illegal stay are subject to return and expulsion measures, possibly including detention measures.

The Directives covering legally residing third-country nationals include indeed some clauses in relation to overstaying/ transition into illegal stay (without explicitly referring to the issue in most cases). The SWD is particularly relevant in this respect, as it contains provisions to prevent overstaying and temporary stay from becoming permanent Preamble 7 in particular states the Directive should set out fair and transparent rules for admission and stay and by defining the rights of seasonal workers while at the same time providing for incentives and safeguards to prevent overstaying or temporary stay from becoming permanent.

6 Effectiveness

Effectiveness refers to the extent to which objectives have been (or are likely) to be achieved. Questions addressing the effectiveness of EU interventions also endeavour to determine the extent to which the effects achieved were the result of the EU interventions, or other factors. Four separate evaluation questions are addressed in this section:

EQ 5: To what extent have the objectives of the legal migration Directives been achieved?

EQ 6: What have been the effects of the legal migration Directives, and to what extent can such effects be attributed to the EU intervention?

EQ 7: To what extent do the observed effects of the implementation of the Directives correspond to their objectives?

EQ 8: To what extent did different external factors influence the achievement of the objectives?

The study specifications indicate that these questions should only be addressed in respect of those legal migration Directives that have been implemented for at least 3 years at the start of the study. Nevertheless, this section also refers to more recent Directives where relevant and where sufficient information is available to form an assessment.

Research Questions	Sources of information	Key conclusions
EQ 5: To what extent have the objectives of the legal migration Directives been achieved?	<p>1Bii: Contextual analysis: overview and analysis of legal migration statistics.</p> <p>1Ci: Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives</p> <p>1Cii: Contextual analysis: Intervention logics: External Coherence of the EU legal migration Directives</p> <p>2A Evidence base for practical implementation of the EU legal migration Directives: Synthesis Report</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>4B Fitness check / REFIT evaluation: Analysis of gaps and horizontal issues</p>	<p>Three overarching objectives applicable to all EU legal migration acquis and eleven specific objectives applicable only to some Directives have been identified. Overall, the evaluation showed that the achievement of the objectives is underway. When comparing with the legal baseline and the situation prior to the adoption of the Directives, although similar statuses already existed in most Member States for which data was available, the Directives contributed to a higher degree of legal certainty and approximation by introducing common provisions and uniformity.</p> <p>However, certain factors that may hinder the attainment of objectives include the uneven practical application (partly due to may clauses and partly because shall clauses that leave ample room for interpretation); complexity and fragmentation of the current system and the existence of parallel national schemes for some Directives. Furthermore, a multitude of external factors, some of which examined in EQ8 may impact on the achievement of objectives. For example, the attractiveness of the EU Member States as destinations may be impacted by</p>

Research Questions	Sources of information	Key conclusions
<p>EQ 6: What have been the effects of the legal migration Directives, and to what extent can such effects be attributed to the EU intervention?</p>		<p>available job opportunities, economic climate and social-cultural links.</p> <p>The Directives overall brought uniform statuses and uniform admission conditions. The legal baseline of most of the Directives shows that similar statuses already existed in most Member States at national level pre-adoption of the Directives. Numerical increases in the number of permits granted were more likely attributable to external factors rather than directly to the impact of the Directives.</p>
<p>EQ 7: To what extent do the observed effects of the implementation of the Directives correspond to their objectives?</p>		<p>Across the eight phases of the migration process, practical implementation issues have been identified in each phase, which mostly impacted negatively on the overarching objective of legal certainty, transparency, user-friendliness and simplification of the application procedures.</p>
<p>EQ 8: To what extent did different external factors influence the achievement of the objectives?</p>		<p>Three types of external factors have been examined: demographic changes; socio-economic factors and environmental factors.</p> <p>No evidence was found that demographic trends in the EU – in terms of aging population and expected population decline – have yet significantly influenced the achievement of the objectives (neither in a positive nor a negative way). The European Agenda on Migration has recognised migration as an important tool to help offset the decline and enhance sustainability of the welfare system. Based on the current evidence, the rate of migration has not helped (yet) to counter the decline in the working age population.</p> <p>The changing socio-economic context both at EU level and globally has influenced mostly in a positive way the achievement some of the specific objectives (such as the objectives of attracting and retaining certain categories of TCNs, enhancing the knowledge economy of the European Union, boosting competitiveness and economic growth and addressing labour shortages). Technological</p>

Research Questions	Sources of information	Key conclusions
		<p>change and the development of the knowledge economy has precipitated the demand in certain professions, particularly highly skilled, while at the same time other professions have been outsourced or have disappeared due to automation. The attractiveness of the EU Member States as destinations is impacted by available job opportunities, economic climate and social-cultural links.</p> <p>Security factors, including developments in the European's neighbourhood regions, such as the Middle East and Northern Africa also have to an extent influenced the EU legal migration to date. With the continued conflicts and political upheaval in particular in the Middle East, the total number of refugees peaked at 16.1 million at the end of 2015.</p> <p>While displacement based on environmental degradation and/or climate change is likely to become a strong driver of migration as effects of climate change become more pronounced over the coming decades, it cannot be conclusively deduced whether environmental factors have influenced the achievements of the objectives of the EU legal migration acquis to date.</p>

6.1 EQ 5: To what extent have the objectives of the legal migration Directives been achieved?

This section examines the extent to which the objectives of the EU legal migration acquis as outlined in the Directives and their Recitals have been achieved. The objectives are presented in Section 3.3.1. The achievement of each objective is subsequently analysed in this section below, starting with the overarching objectives applicable to all Directives (Section 6.1.1) and followed by the Directive-specific objectives (Section 6.1.2).

6.1.1 Overarching objectives of EU legal migration acquis applicable to all EU legal migration Directives

6.1.1.1 Overarching objective 1: Creating a level playing field to manage migration flows in the EU through the approximation and harmonisation of Member States' national legislation and establishing common admission criteria and conditions of entry and residence for categories of third-country nationals subject to EU legal migration acquis

As examined in detail in Annex 1Bi Contextual analysis: overview of the evolution of the EU legal migration acquis²⁹⁸, with the entering into force of the Lisbon Treaty, the EU competences in the field of migration were significantly expanded. Art. 79(1) TFEU introduced the objective of developing a "common immigration policy". Analysis of the provisions of Article 79(2) TFEU reveals the extensive competences granted to the EU legislature for core aspects of immigration law. 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. As discussed in detail in Annex 1Bi Contextual analysis: overview of the evolution of the EU legal migration acquis, the European Commission, after some attempts to introduce a horizontal approach, ultimately adopted a **sectoral approach to labour migration**, solely regulating the conditions for entry and residence of distinct categories of migrants.

Following this sectoral approach, although the specific objectives of the legal migration acquis differ depending on the category of migrants (hence objectives differ from Directive to Directive), the underlying rationale for the legal migration Directives is the need to create a level playing field amongst Member States, to avoid distortions on the internal market in terms of how third-country nationals are treated in terms of pay, working conditions, social security and to avoid that different admission rules (for instance for family reunification) creates unwanted distortions in the attractiveness between MS. The regulation of migration from third countries for the purpose of work, living and studying in the EU for each category of third-country nationals in scope of the Directives therefore aim at approximation of laws to ensure equal level playing field in terms of three main aspects: (i) admission conditions; (ii) procedures and procedural safeguards and (iii) rights acquired after obtaining the status/residence permit.

The legal baseline analysis showed that prior to the adoption of the Directives in many cases similar statuses already existed in the Member States²⁹⁹ in the case of FRD, LTR, SD and RD and to a lesser extent with regard to the EU Blue Card and SPD. The Directives brought uniformity across EU Member States in the admission conditions and rights attached to the permit, with some limitations as explained under EQ6.

As shown by the **Task 2 Evidence base for practical implementation of the legal migration directives**³⁰⁰, the provisions of the Directives have been largely transposed into national legislation (with some particular areas across the Directives being more problematic – e.g. equal treatment). It can therefore be concluded that **legal harmonisation has been achieved**, which has ensured **common standards**

²⁹⁸ Under Task 1B of this assignment

²⁹⁹ The FRD, LTR, SD and RD assessment is primarily based on evidence available for the then EU-15 Member States.

³⁰⁰ Task 2 of the assignment

across all Member States. The remainder of the section examines the main factors which have reduced the degree of harmonisation.

Factors impacting harmonisation

Four main factors can be identified which affect the harmonisation objective. Firstly, the existence of many 'may clauses', as well as 'shall clauses' which leave ample room for interpretation in the Directives, allow for different standards across Member States. Secondly, the practical application of the provisions of the Directive varies significantly across Member States and harmonisation across Member States in that respect is still largely lacking. There is a significant variation in terms of application timeframes, fees, provision of information, burden of proof in terms of application documents, etc. (This is examined in detail under EQ3 and EQ7 below). Thirdly, historically Member States have very different migration systems and some countries have 'adapted' and 'fitted' the EU Directives to pre-existing national statuses which have resulted in discrepancies. Finally, the complexity and fragmentation of the current system focusing only on some categories of third-country nationals has been pointed out by some of the consulted stakeholders (including social partners and civil society organisations, stakeholders at the EMF) as an obstacle in achieving harmonisation and a level playing field.

Multiple 'may clauses' and scope for discretion for Member States in applying EU legal migration acquis, leading to significant differences

The existence of numerous 'may' clauses in the EU legal migration acquis allowing discretion of Member States to apply certain provisions impact negatively the harmonisation. Some of the 'may' clauses allow more favourable provisions while others allow certain restrictions to be applied. This results in an uneven, rather than a level, playing field across the EU. A detailed analysis of the multiple use of may clauses is presented under EQ1E.

In addition, many of the 'shall' clauses still leave ample space for interpretation as to the practical application of the provisions.

As analysed under **Task 2 Evidence base for practical implementation of the legal migration directives**, there are significant differences across Member States in their practical application of EU legal migration acquis. This is observed across the different stages of the migration process. There is a significant variation in terms of application timeframes, fees, provision of information, burden of proof in terms of application documents, etc. The wide variation of practical application also impacts in a negative manner the harmonisation. Two examples are provided below for illustrative purposes.

The first example is with regard to access to information. Only four of the Directives, namely the most recent ones, include specific provisions on access to information (SPD, SWD, ICT and S&RD), which however leave ample room for discretion on how and what type of information is to be provided to the general public. In addition, the application of the clauses on provision of information varies across Member States. Non-EU citizens responding to the OPC have complained about the lack of clear and practical information coming from official sources on procedural aspects (i.e. types of visa, expected processing times, mandatory insurance, the types of documents that need to be provided and notarised, etc.). The lack of easily accessible information available on other languages than the national language has also been underlined by representatives of entrepreneurial hubs and ecosystems and migration agencies in some countries, such as Italy. The findings of the practical application study show that identifying relevant information in Greece, Italy, Bulgaria and Malta is complicated.

The second example concerns the documentation required to prove that the applicant meets the admission conditions. The Directives require 'proof' of certain admission conditions; however, Member States are free to choose the documents that can be requested as evidence. The practical application study showed that some Member

States require third-country nationals to provide many different documents, which often have to be provided as originals, translated, certified / legalised, etc. while others Member States have taken a less strict approach. Representatives of migration agencies consider that the requirements for documentation are in some cases excessive and call for simplification. For example, with regard to the salary threshold having to check collective agreements and provide marriage and birth certificates for the work authorisation was seen as too burdensome. Half of the non-EU citizens responding to the OPC also confirmed to have encountered problems when applying for a residence permit in relation to the documents required.

The above shows that although the Directives have brought uniformity by introducing common admission conditions, in practice the burden of proof in terms of documentation required varies significantly across Member States. This ultimately impacts negatively on achieving an equal level playing field.

Historical differences in Member States' migration systems

Historically, national migration systems across the EU differ significantly. This is especially evident when it comes to attracting talent and highly skilled. Research has identified two different approaches when it comes to attracting third-country nationals. One approach is 'demand-driven': it involves granting accelerated or simplified admission to migrants seeking employment in previously identified shortage occupations. In purely demand-driven systems, this decision is delegated to employers. This approach normally requires third-country nationals to have a specific job offer by a national employer before their application for a residence permit will be considered. The second approach is oriented toward a 'human capital' or 'labour supply' models, where admission frameworks are adjusted in order to attract migrants with characteristics that will place them in a favourable position for labour market insertion, and generate spill-over effects on growth and innovation. In the framework of this model, policy tools are needed to attract migrants with transferable skills or other qualities (e.g. investment potential) deemed desirable for the economy; but efforts are not made to link these migrants to pre-defined shortage occupations.

In some Member States admission systems for work are more regulated than others – i.e. for example Austria has a points-based admission system (Red-White-Red card), while in other Member States have a market-based approach (e.g. Sweden). In Sweden, since 2008, labour migration policy has been demand-driven, whereby employers have the right to recruit third-country nationals to fill vacancies if they cannot find suitable Swedish or European Union (EU) workers. The policy stresses flexibility for employers in order to respond to changing realities on the labour market. There are no quotas in place to determine how many labour migrants can enter the labour market. The system is open to labour migrants of all skills levels and nationalities and does not set any priorities as to whether migrants stay for short term periods or permanently.³⁰¹

Complexity and fragmentation of the current system at EU level

The category-specific approach of the current system at EU level has resulted in fragmentation with only some categories of migrants being covered. According to stakeholders consulted under Task 3, the piecemeal approach at EU level and the coexistence of specific schemes for each group of migrant has resulted in a very complex and fragmented system that does not facilitate a uniform implementation across Member States. For example, numerous stakeholders considered that there is a higher level of protection provided for high-skilled migrants as compared to low and medium-skilled TCNs. Furthermore, the differences in implementation at national and local level adds another layer of complexity, for instance when mandates of different authorities overlap. This is aggravated by the lack of policy guidelines for

³⁰¹ EMN Study (2015), Addressing labour shortages and the need for migration labour, Synthesis Report

national authorities as well as of clear and official information for migrants. Parallel national schemes allowed as part of the LTR and the BCD also add to the complexity and fragmentation of the current system.

6.1.1.2 Overarching objective 2: Ensure transparency, simplification and legal certainty for categories of TCNs subject to EU legal migration acquis

A well-functioning, transparent, speedy and user-friendly admission system is an explicit aim of all EU legal migration acquis. Transparency, simplification and legal certainty is not only of importance for the TCNs but also where relevant for their employers and host organisations. As reported by migration agencies, compliance is important for businesses as companies are trying to be compliant with immigration legislation and this is also a reputational issue for them. With regard to legal certainty, the Directives aim to ensure this through various provisions on procedural aspects and guarantees, providing exhaustive grounds for withdrawal and refusal of status and guaranteeing the right to appeal.

The procedural guarantees include a set timeframe for Member States to adopt a decision on application; notifying in a set timeframe the applicant if the application is incomplete; providing a decision in writing; providing reasons for a negative decision; providing information on the right to appeal. The **Task 2 Evidence base for practical implementation of the legal migration directives** shows that although overall Member States are compliant with the provision of the Directives, some problems have been identified, a few illustrative examples of which are provided below.

In terms of a legally applicable deadline to process an application, 17 Member States³⁰² have put in place a legally applicable deadline to process applications under all relevant Directives. Germany has no such deadlines in place, only a stipulation that a remedial legal action can be taken after three months have passed. This could pose an application issue especially in view of the deadlines as stipulated in the Directives. Six others only have deadlines for certain Directives.³⁰³

The second example concerns the right to appeal. All Member States have appeal procedures in place, however practical application issues have been reported in some Member States. For example, in Finland, the majority of rejected applicants do not consider an appeal as a viable option, as the waiting times for a court decision in Finland are long - from several months to years. Lengthy and ineffective appeals are reported also in Belgium.

The Directives have also aimed to ensure legal certainty by introducing the respective statuses and common standards for each Directive in all Member States – i.e. Member States are thus obliged to issue a permit to applicants who meet the criteria spelt out in the Directives and are not allowed to add additional conditions. For example, with regard to students, the European Court of Justice ruled in 2014 that Member States could not deny a student visa if the conditions in the Directive were exhaustively met, even when they were unconvinced that the applicant was a bona fide student.³⁰⁴ Thus,

³⁰² AT, BG, CZ, EE, FR, HR, HU, IT, LT, LU, LV, NL, PL, PT, RO, SI, SK

³⁰³ BE has set time deadline for BCD, FRD and LTR

CY has set time deadline for BCD, FRD, LTR and SPD

EL for all Directives except SPD.

FI has set time deadline for BCD, FRD, LTR and SPD.

MT has set time deadline for BCD, FRD, LTR and SPD.

SE for BCD and SPD.

³⁰⁴ C-491/13 Ben Alaya vs Germany.

the Directives have achieved decreasing the element of discretion and allowing more legal certainty for applicants.

Introducing some statuses that did not previously exist in national legislation has had a positive effect in terms of ensuring legal certainty (see EQ6 for more details below). During the stakeholder consultation, civil society organisations in a selected number of EU Member States have found that the FRD and the LTR have positively contributed to legal certainty and equal treatment, LTR was really important in the Italian legal framework as it allowed legal certainty and a permanent status for TCNs. Similarly, in Italy the FRD has fostered the consolidation of values and the protection of migrants' rights in court. This has also been confirmed by the OPC whereby the experience to obtain long-term residence in the EU seems to be positively assessed by respondents, with 74% of those who applied having obtained the long-term resident status. Among the reasons for rejection, respondents mentioned the difficulty to prove five years of continuous and legal residence, the documents required, the lack of uniformity in the rules applied across Member States, the non-recognition of the years spent in another EU MS, and the lack of clear information about the procedures to follow.

However, when comparing provisions across Directives, it can be observed that provisions in earlier Directives, such as FRD, LTR, SR and RD are much shorter and that some important provisions, such as equal treatment are missing (from e.g. FRD – see sub-section below for more details and also see Internal Coherence for details). Later Directives include much more detailed and explicit provisions which facilitate the legal certainty and leave less room for interpretation and discretion, especially when it comes to procedural safeguards. Furthermore, as highlighted in the previous sub-section, the fragmentation of the system in terms of the sectoral approach have negatively affected simplification and transparency. The outcome of this approach is a system lacking in consistency which is to a large degree due to the many discretionary clauses and references to national law of the Member States in the Directives, in particular in the provisions on the right to equal treatment (see sub-sequent below).

As shown under EQ7 below, various implementation and practical application issues across the Directives and all stages of the legal migration process have had a negative impact on legal certainty, simplification and user-friendliness of the system. In terms of transparency and simplification when applying for a residence permit, **half of the respondents under this profile stated that they encountered problems when applying for a residence permit**. The most common issue identified was the length of the procedure (83%), followed by the high costs of permit and the documents required (57%). Moreover, some respondents complained about the lack of clear and practical information coming from official sources on procedural aspects (i.e. types of visa, expected processing times, mandatory insurance, the types of documents that need to be provided and notarised, etc.) or other relevant aspects such as intra-EU mobility. During the focus group with social partners, it was commented that whereas theoretically the SPD had streamlined procedures between different Ministries, some national organisations held that **national administrative complexity** i.e. many authorities having overlapping mandates, could undermine this aim.

In turn, a large majority of non-EU citizens looking to migrate to the EU (11 out of 14 respondents) believed that the **current conditions for entry/residence/work constituted a disincentive to migrate**. The main obstacles identified concern the visa requirements, finding an employment from outside the EU, the recognition of qualifications and the complexity and length of the procedure.

Furthermore, some NGOs expressed their **concern with regard to the lack of EU intervention concerning low-skilled migrants**. As commented by NGOs consulted under Task 3, only the SWD specifically concerns the admission of that category of migrants. This gap has left loopholes in the national legislation, which are sometimes abused and result in either irregular migration phenomena or low working conditions and rights thereby attached. Some representatives of NGOs suggested that the BCD

could act as an example in terms of rights attached also for a potential future instrument on low-skilled migrants.

6.1.1.3 Overarching objective 3: Ensure fair treatment for categories of TCNs subject to EU legal migration acquis comparable to citizens of the European Union

Ensuring fair treatment is a cross-cutting objective for all EU legal migration Directives. Fair treatment is a broader concept than equal treatment with respect to EU nationals (the specific provisions on equal treatment with EU citizens are examined in Section 6.1.2.5 below). Fair treatment also includes the treatment of third-country nationals in a way that it is considered reasonable and does not disadvantage the third-country nationals with respect to entry conditions and rights attached to the residence permits (For further analysis of the application process see Section 6.3).

Overall, from the stakeholder consultation, stakeholders consider that third-country nationals are treated fairly in the EU Member States. On the positive side, for example, providing explicit procedural safeguards and reducing the scope of discretion by providing clear admission conditions, such as set timeframe for decision on an application and access to appeal procedure facilitates the fair treatment of third-country nationals. National authorities consulted, in particular those responsible for education policies, also did not believe that national procedures to obtain a student visa were complex, nor too expensive. Most of the times, knowledge of the national language is not an eligibility requirement, therefore national systems are considered to be quite open. However, most of the third-country students living in the EU³⁰⁵ who responded to the OPC considered that the procedures to get a visa or residence permit to work were not easy nor fast in the EU. Also according to this group of respondents, accessing information on legal migration channels was not very easy to find, but responses varied depending on the Member State in which they were living / wanted to migrate to. This is also confirmed by the practical application study (Task II).

Still, some challenges also emerged. For instance, embassies in the third countries may be overwhelmed and not able to properly deal with large numbers of applicants. On the other side, applicants from peripheral areas may struggle to reach the capitals to take the necessary steps towards the visa applications. However, certain aspects that may impact the fair treatment of third-country nationals have also been highlighted. With regard to the application process, non-EU citizens have pointed at the lack of clear and practical information coming from official sources on procedural aspects (i.e. types of visa, expected processing times, mandatory insurance, the types of documents that need to be provided and notarised, etc.) or other relevant aspects such as intra-EU mobility.

During the consultation, civil society representatives **criticised the sectoral approach** adopted by the European Union in the field of migration, as they found that the differences in the rights attributed by each Directive has led to a fragmentation of rights according to the level of skills of third-country nationals. More specifically, the need to ensure a **better level of protection of the rights of low-skilled workers** was highlighted. This may impact also on the fair treatment of third-country nationals, especially when comparing across different categories.

6.1.2 Directive-specific objectives

6.1.2.1 Specific objective 1: Managing of economic migration flows

Managing economic migration flows and regulating admission is a specific policy objective. There are a number of instruments at the disposal of Member States for

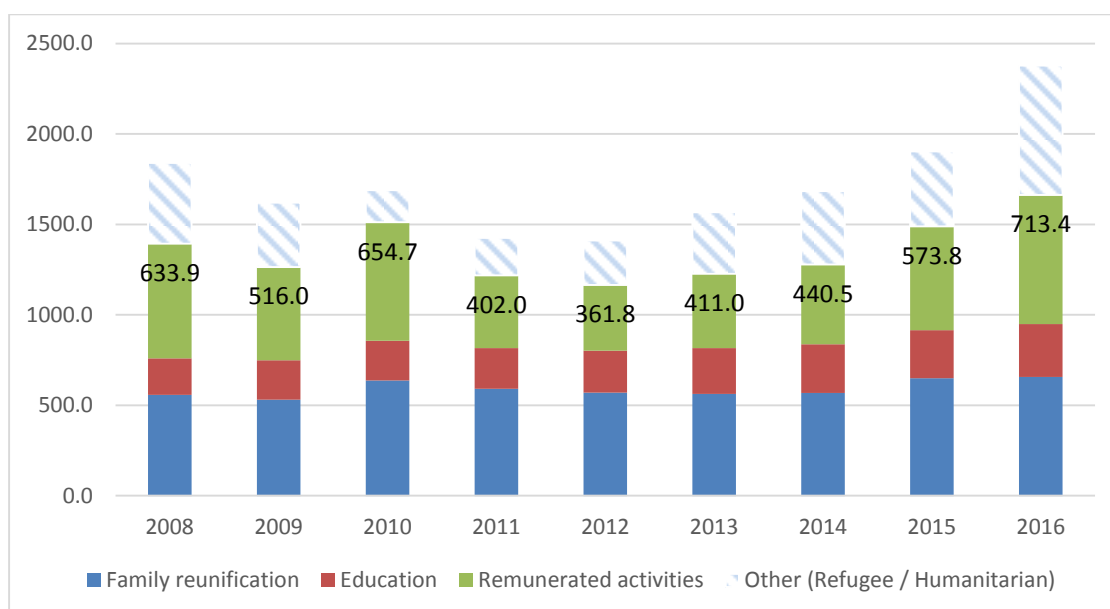
³⁰⁵ A total of 46 respondents of the OPC were TCN students living in the EU

managing economic migration flows, including *inter alia*, through the possibility to apply quotas; regulation of professions, Union preference principle and labour market test (relevant for the Directives regulating admission for the purposes of economic migration). Member States have the competence to manage labour migration and deploy the above-mentioned instruments in line of their national needs.

Indeed, in practice many Member States have imposed specific education, occupation or salary requirements which can be barriers to recruitment, while others manage migration largely through numerical limits or volumes of admission. Still others rely on labour market tests or trust the market to regulate itself as long as conditions are respected. A number of Member States deny entry to less skilled labour migrants, while others only admit them for seasonal activities.

Eurostat statistics since 2008 years show that economic migration is the second most commonly used reason, after family reunification, for granting residence permits to third-country nationals in the EU-25, as shown in Figure 18 below.

Figure 18. Number of first permits issued total and by main reason in EU-25, 2008-2015 (thousands)



Source: Eurostat (*migr_resfirst*)

Member States differ significantly in terms of the share of residence permits for economic reasons on all issued residence permits and the type of economic activities differs quite significantly too, with the EU Directives only covering a relatively small proportion in terms of managing the flows through common admission conditions and residency rights. Table 23 below shows the total number of first residence permits issued for the latest available year (2016) and the share of all permits for economic reasons, with less than 1% point covered by the BCD. However, with the full application of the SWD this share of those admitted for the purpose of remunerated activities that are covered by EU Directives that include admission conditions is expected to increase significantly. In addition, since 2013 all categories (with the exception of the seasonal workers) should be covered by the SPD and thus have access to a single procedure and the right to equal treatment, which was a big step forward with regard to the management of migration flows.

Table 23. Number of first permits issued in EU countries by main reason/category and as a share of all permits issued, 2016

	First permits for remunerated activities	% of remunerated activities from all permits first issued	Single permits issued for remunerated activities as a % of all SP issued	First permits- highly skilled (% of all remunerated)	Seasonal workers (% of all remunerated)	EU Blue Card (% of all remunerated)
Total EU-25	719,589.0	29.8	31	4	63.7	1.2
Belgium	5,181.0	9.8	:	:	0.0	0.0
Bulgaria	276.0	3.5	100	0	0.0	35.9
Czech Rep.	23,097.0	28.8	100	0	0.0	0.9
Germany	39,552.0	7.8	27	0	0.0	15.6
Estonia	1,339.0	31.1	22	0	0.0	0.9
Greece	2,133.0	4.8	0	0	0.0	0.0
Spain	38,154.0	18.0	39	8	7.4	0.0
France	23,275.0	9.8	11	9	7.1	2.1
Croatia	2,634.0	49.6	49	0	0.5	0.8
Italy	9,389.0	4.2	63	8	37.5	2.7
Cyprus	7,385.0	43.5	74	10	0.1	0.0
Latvia	1,736.0	28.8	15	8	0.0	6.5
Lithuania	4,082.0	60.5	100	0	0.0	3.1
Luxembourg	1,340.0	23.8	91	0	0.0	24.9
Hungary	5,851.0	25.6	99	0	0.2	0.1
Malta	3,036.0	33.8	99	0	0.0	0.1
Netherlands	14,621.0	15.3	84	62	0.0	0.3
Austria	3,337.0	6.7	8	34	0.0	4.5
Poland	493,960.0	84.3	59	0	90.4	0.1
Portugal	5,948.0	19.2	26	14	0.0	1.5
Romania	1,766.0	14.9	32	0	0.0	5.2
Slovenia	6,894.0	51.0	99	0	0.9	0.2
Slovakia	3,590.0	35.1	27	0	0.0	0.1
Finland	5,381.0	18.7	29	18	0.0	0.6
Sweden	15,632.0	10.7	14	34	21.2	0.1

Source: Eurostat (migr_resfirst)

6.1.2.2 Specific objective 2: Attracting and retaining certain categories of third-country nationals

Attracting and retaining certain categories of third-country nationals is an objective for three categories of third-country nationals: highly qualified workers (BCD); researchers (RD and SRD) and intra-corporate transferees (ICT). As outlined in Preamble 3, the BCD is seen as a measure to “attract and retain highly qualified third-country workers”. Fostering admission and mobility, including introducing more favourable provisions for Blue Card holders is aimed “to make the Community more attractive to such workers from around the world and sustain its competitiveness and economic growth”. (Preamble 7) Attracting talent is also mentioned as an aim in relation to ICT: “in order to make the specific set of rules established by this Directive more attractive and to allow it to produce all the expected benefits for competitiveness of business in the Union, third-country national intra-corporate transferees should be granted favourable conditions for family reunification..”(Preamble 40) Finally, the RD

and SRD aim “*make the Community more attractive to researchers from around the world and boost its position as an international centre for research*”.

As presented in Section 3, the number of EU Blue Cards issued has increased from 200 permits issued in 2011 to 8,900 issued in 2016 with Germany issuing large share of these permits. Due to the low number of Blue Cards issued, the scheme has not been considered successful as highlighted in the Impact Assessment of the recast BCD.

As regards to students, the valid permits have been on the increase since 2008 reaching a total number of 609,000 in 2016. The vast majority of Member States have experienced progressive increase of the number of all valid residence permits. The Member States which have observed decline include CY, IT and SE, while in BE, LU and SI, with some fluctuations, a similar number has been observed.

With regard to RD, as shown in Section 6.2.4.2 below, the number of residence permits issued to researchers has more than doubled from 2008 to 2016 (from 4220 in 2008 to 9672 in 2016). However, it is difficult to establish whether the increase was due to the attractiveness of the RD permit or due to other factors, such as increased attractiveness of EU Member States for international researchers.

Consulted stakeholders, in particular experts commissioned for this study and interviewed migration agencies have opined that attracting and retaining third-country nationals is primarily linked to economic conditions and climate, business growth and job opportunities as well as cultural ties and socio-economic factors (see Question 8 below) rather than being the result of the statuses based on EU and national legislation. However, admission criteria and rights attached to the permit may still influence both the individual decision as to choice of destination country, as well as the decisions of businesses with a global outreach on where to recruit foreigners.

The attractiveness of EU Member States to migrants from outside Europe varies widely from Member State to Member State and also as to the flows of third-country nationals in terms of their country of origin. With regard to the cultural and language ties as mentioned above, for example, Spain and France appeal to largely non-European migrants, while Austria and Germany have high shares of migrants from European countries that include Russia, southeast Europe and Turkey.³⁰⁶ Attracting talent and highly skilled third-country national should also be seen in the context of the ‘global competition’ for talent – i.e. changes in policies and admission schemes in other world destination countries (these could be more restrictive or more favourable) may also impact the decisions of the third-country national on choice of destination.

According to OECD research³⁰⁷, migrants residing in the EU-15 were generally more poorly educated than those living in other OECD destinations and EU-15 remained persistently below those in other OECD countries, suggesting that the difference is structural and not cyclical. However, a positive trend was observed between 2000 and 2010 as the EU narrowed the gap with the United States in terms of the share of educated migrants which rose from 21% to 34% in the EU and from 21% to 33% in the United States. A larger share of migrants in the United States than in the European Union have medium-education levels, including among recent migrants (36% compared with 27%). The longer-term resident population in the EU (those living there for over ten years) have lower educational composition of past migration, with 44% of long-term residents in 2010 poorly educated.

With regard to retention, EU Member States have been less successful at retaining migrants than the United States, Canada and New Zealand. Having access to the entire EU labour market has been recognised as a potential pull factor for highly skilled TCNs as opposed to having access to labour markets of individual EU member

³⁰⁶ See Statistical Overview paper under Task I

³⁰⁷ REFERENCE PLEASE

States. However, the current intra-EU mobility provisions in the EU Blue Card have not facilitated intra-EU mobility in practice and moving to a second EU Member State (secondary movement) is still subject to various requirements with no substantial difference to those moving to the Member State for the first time. OECD research shows that, individually, EU Member States are at a disadvantage in retaining skilled migrants, as non-European destinations exert a strong pull, even on secondary migration.

According to the Impact Assessment of the recast BCD³⁰⁸, the EU Blue Card has not been effective in its primary objective of attracting and retaining TCNs and “it lacks the ambition to equip the EU sufficiently for the challenges ahead”³⁰⁹. The number of Blue Cards remains relatively low compared to national schemes. Furthermore, the EU attracts a relatively low number of highly skilled TCN compared to other OECD countries. Generally speaking, it has been observed that **EU instruments are less effective** where national instruments prove to be more flexible or more favourable, for instance this has been the case for the LTR.³¹⁰

With regard to ICT, due to its recent adoption, it is not possible to make any assessment.

6.1.2.3 Specific objective 3: Boosting competitiveness and economic growth and enhancing the knowledge economy of the European Union

Boosting competitiveness, economic growth and the knowledge economy is a specific objective for BCD, ICT and SRD. Attracting highly qualified workers is widely believed to lead to boosting economic growth, competitiveness and knowledge economy, not only through the increasing the workforce of highly qualified workers and gaining human capital but also through multiplier effects, as local workforce may learn from the TCN highly qualified.

Numerically, a relatively low number of Blue Cards have been issued (total number of Blue Cards issued in the EU for 2014 – 5,825; 2015 – 4,908 and 2016 – 8,907) with a significant share issued by one Member States – Germany.³¹¹ Given the low number of Blue Cards issued it is unlikely that the BCD has contributed to a significant extent to boosting of competitiveness, economic growth and enhancing the knowledge economy. Furthermore, in some Member States, highly qualified TCNs have been attracted through alternative national schemes which has also diminished the impact of the Blue Card as an instrument to boost competitiveness, economic growth and the knowledge economy.

With regard to ICT and SRD, given the recent adoption of these Directives, it is too early to include them in this analysis. Although too early to assess their effects, the ICT and S&RD are expected to make a positive contribution to this objective (also considering that contrary to the BCD, no parallel schemes are allowed under these Directives).

³⁰⁸ SWD(2016) 193 final – Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment and repealing Directive 2009/50/EC

³⁰⁹ Ibid, page 5

³¹⁰ Member States' Hearing (Contact Group)

³¹¹ Eurostat data on first residence permits issued to highly skilled workers is available, however many Member States do not report such data as they do not disaggregate the skill levels of the residence permits and thus, it is not possible to establish the share of EU Blue Cards of all residence permits issued to highly skilled workers. The following Member States have not issued Blue Cards in the period 2011-2016: BE, EL and CY.

6.1.2.4 Specific objective 4: Addressing labour shortages

Addressing labour shortage is a specific objective of the Directives regulating admission for the purposes of economic migration (BCD, SWD and ICT). In particular, this objective is explicitly mentioned in Preamble 7 of the BCD: “*This Directive is intended to contribute to [...] addressing labour shortages by fostering the admission and mobility...*” The policy rationale for addressing labour shortages through migration is when labour market needs cannot be satisfied by the domestic labour supply in a reasonable timeframe (e.g. by re-training domestic workforce) without adversely affecting the domestic labour market and development prospects in vulnerable origin countries.

Labour shortages have become a major policy challenge affecting European competitiveness in the context of rapid technological change, Europe’s declining population and ageing workforce.³¹² Studies show that the EU also faces structural skills shortages and mismatches in certain sectors that cannot be filled by the existing EU workforce despite high unemployment in some Member States.³¹³ The sectors which have experienced the most labour shortages include healthcare, ICT, and engineering³¹⁴. However, the demand on certain professions and occupations differs significantly across Member States. Highly-skilled occupations are not the only in which labour shortages are experienced – medium-skilled and low-skilled occupations, including home-based personal care workers, cooks, waiters and cleaners are also in demand.³¹⁵

Most Member States view migration as part of a wider strategy to address labour shortages. However, they differ in the relative importance that they give to labour migration in comparison to other measures, such as market activation of the current resident population and reforming education and training opportunities. As shown by a recent EMN study, there are two broad approaches adopted by Member States:

- a supply-centred ‘human capital’ approach³¹⁶, where admission frameworks are adjusted in order to attract migrants with characteristics that will place them in a favourable position for labour market insertion; and
- a demand-centred approach, that involves granting accelerated or simplified admission to migrants seeking employment in previously identified shortage occupations.

Those Member States which have the demand-centred approach, in most cases, the resulting policy adjustments focus on a very specific, narrowly defined list of (shortage) occupations. Furthermore, concerns about competition with local workers are voiced in public and policy debates at national level, and may act as a barrier for Member States to take an active role in managing labour migration on an economic basis.³¹⁷ This indicates that **most Member States continue to admit labour migrants without attempting to link their entry to particular shortage occupations.**

It should be noted further that identifying and addressing labour shortages is a very complex process which involves from one hand identifying well current labour market needs which is a very dynamic process and on the other hand estimating to what extent the admitted TCNs have filled in a labour shortage. This process is analytically

³¹² EMN Study (2015), Addressing labour shortages and the need for migration labour, Synthesis Report

³¹³ SWD(2016) 193 final – Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment and repealing Directive 2009/50/EC

³¹⁴ European Commission (2014), “EU Skills Panorama”, Analytical Highlight. Focus on Skills Challenges in Europe.

³¹⁵ EMN (2015)

³¹⁶ AT, BE, DE, EE, EL, ES, FI, FR, HR, IT, MT, PT

³¹⁷ Ibid

challenging and evidence from the EMN Study has shown that only one EU Member State which is outside of scope of this study – i.e. Ireland – applies this systematically. This is also supported through stakeholder consultation.³¹⁸

Quantitative studies and data on labour matching and satisfying shortages is not readily available. The small number of EU Blue Card issued can serve as an indication that the BCD has had very limited contribution in addressing shortages in highly skilled professions. According to OECD, labour migration in the EU has only been a fraction of total migration, and the share of migrants with high levels of skills and qualifications is smaller than in many other OECD destinations, despite recent improvements. Academic research shows that economies of scale can be in play when creating a larger pool of talent, especially with niche and specialised skills. In Canada, for example, the expression of interest system aims at pre-selecting candidates which would be accessible to employers should a shortage arise.

Finally, with regard to ICT and SRD, given the recent adoption of these Directives, it is too early to include them in this analysis. The S&D now includes the possibility for Member States to allow students to look for work on their territory which may help to address shortages and which was not there under the previous Directives.

In summary, it can be concluded that the relevant EU Directives have not contributed to a significant extent (yet) to address labour shortages but that they do have the potential to make a contribution.

6.1.2.5 Specific objective 5: Ensure equal treatment for categories of TCNs subject to EU legal migration acquis comparable to those of citizens of the European Union (subject to restrictions)

Seven Directives (LTR, RD, BCD, SPD³¹⁹, SWD, ICT, S&RD) include provisions on equal treatment of third-country nationals with respect to nationals of the Member States. The ICT also foresees such equal treatment but with regard to the terms and conditions of employment³²⁰ it guarantees at least equal treatment with posted workers under Directive 96/71/EC. The FRD and SD do not include provisions on equal treatment. However, equality is ensured by the SPD if third-country nationals falling within the scope of the FRD and SD are authorised to work. The SPD also regulates equal treatment for migrant workers under national migration schemes. The material scope of the provisions addressing the right to equal treatment with EU nationals in the legal migration Directives cover the following areas, *inter alia*: working conditions, terms of employment and freedom of association, social security, statutory pensions, goods and services, education and vocational training, tax benefits and the recognition of diplomas and qualifications.³²¹ The Directives allows Member States to derogate from the principle of equal treatment with nationals in certain areas.

³¹⁸ *Advisory committee on Free Movement*: Concerning the matching of skills of TCNs and the needs of the labour market in the EU country of destination, neither of the three Member States has put in place a mechanism to address this issue. In fact, the Portuguese PES pointed out that while they advertise the vacancies on either their or other online portals, they cannot include any sign of direct or indirect discrimination. Furthermore, PES do not support employers wishing to recruit TCNs, but they merely issue decisions on permission of employment

³¹⁹ Under the SPD i) any holder of a residence permit who is allowed to work and (ii) those who have been admitted for the purpose of work, are covered, which can thus also include TCN falling under the FRD and SD.

³²⁰ In accordance with Article 3 of the posted workers directive 96/71/EC.

³²¹ See Task IC for in-depth analysis on internal coherence of equal treatment provisions. The FRD and SD do not include provisions on equal treatment. However, as per Article 12(1) of the SPD, equal treatment applies to all third-country workers, who consist of (i) third-country nationals who have been admitted to a Member State for purposes other than work in accordance with Union or national law, who are allowed to work and who hold a residence permit in accordance with Regulation (EC) No 1030/2002 (Art. 3(1) (b); and (ii) third-country nationals who have been admitted to a Member State for the purpose of work in

The legal baseline analysis presented in Section 3.2 shows that for the LTR, RD, BCD and SPD³²², prior to the adoption of the Directives the right to equal treatment was guaranteed in several areas, however, there were some notable exceptions across the different areas of equal treatment and variations across Member States. Therefore, the Directives brought uniformity across Member States in ensuring the right to equal treatment.

However, the Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives (Annex 1Ci) across all Directives identified several inconsistencies. As a general point, the inclusion of specific equal treatment provisions in each Directive, as well as specific restrictions, has introduced a degree of differentiation in treatment between the different categories of third-country nationals which cannot always be easily justified. Whilst such a differentiation, depending on intended duration of stay was intended³²³, some differentiation seem to have been the results of negotiations with Member States in view of the specificities of their national systems, as well as a general concern that migrants may not contribute sufficiently to the national economy but opt for claiming benefits instead. It has been pointed out³²⁴ that with respect to the employment-related Directives (BCD, SPD, SWD, ICT), equal treatment with EU nationals is granted to third-country nationals to a different degree, depending on the economic and labour market objectives of the EU, favouring the more qualified, the length of the stay and the potential contributions (social security and tax) the third-country national is expected to make. The intention of the Directives seemed however to base the differentiation mainly on the length of stay and consequently on the contributions to be made.

The FRD does not grant equal treatment although those allowed to work (or in employment) will benefit from the SPD. This means that those not who are not allowed to work are not benefiting from equal treatment rights, which may have serious consequences for some (e.g. the children of the sponsor who are studying may not have equal access to social security and education).

Several academic articles have criticised the current equal treatment provisions across the EU legal migration Directives.³²⁵ The different provisions on equal treatment across Directives and the multiple may clauses with possible restrictions result in a preferential treatment for some categories of TCNs. They consider that where such different treatment is not justified, this may lead to violations of the principle of equal treatment based on administrative status as set forth in the EU Charter of Fundamental Rights and in international and European human rights instruments and in international labour law and results in fragmentation of the right to equal treatment.

Furthermore, when looking further into actual implementation of the provisions across all Directives, as examined in Section 3 above, issues have been identified in relation to the legal and also practical application. These results in certain equal treatment rights not being (explicitly) guaranteed which may lead not only to uncertainty for

accordance with Union or national law Art. 3(1) (c). This means that FRD status holders are now covered in as far as they fall within the scope of the SPD based on the provisions above.

³²² No provisions on equal treatment in FRD, SD

³²³ 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>.

³²⁴ Equal treatment rights in EU law on labour migration: a human rights principle applied as a policy tool, Bjarney Fridiksdottir, 2017 in CEPS, Pathways to Legal Migration

³²⁵ See for example Conny Rijken (2014) Academic Association for Contemporary European Studies, 'Preventing exploitation through the seasonal workers directive'; Prof. Dr.E.Guild (eds) (2016) 'What happened to equality? The Construction of the Right to Equal Treatment of Third-Country Nationals in European Union Law on Labour Migration', Printed by: Ipskamp Printing, Enschede

TCNs but also to exclusion in practice of TCNs from certain equal treatment rights that are guaranteed by the EU *acquis*. For example, in some Member States, access to public services is not explicitly granted, such as housing, public load schemes, etc.

Generally, NGOs consulted under Task 3 have shown **disappointment with the sectorial approach undertaken by the EU with regard to legal migration.**

In terms of the experience of TCNs, the majority of TCN respondents to the OPC seem to agree that **TCNs generally receive equal treatment** as compared to nationals of the EU country in which they reside, especially with regard to tax benefits, freedom to join organisations representing workers or employers, advice services provided by employment services, access to education and vocational training, and access to good and services. A lower share of non-EU citizens residing or having resided in the EU reported to never have been treated differently when it comes to social security benefits and working conditions. On the other hand, respondents under the category "Other respondents" seem to believe that non-EU workers are treated differently regarding recognition of qualifications.

6.1.2.6 Specific objective 6: Preventing exploitation of workers and ensuring decent living and working conditions of third-country nationals through equal treatment provisions to serve as a safeguard to reduce unfair competition between a Member State's own nationals and third-country nationals resulting from the possible exploitation of the latter

Preventing exploitation and ensuring decent living standards are explicit aims of the SWD, FRD and ICT. The Directives aim to align the rights of TCNs to those of nationals in order to prevent labour market segmentation, social dumping and 'race to the bottom'. Related to exploitation is also ensuring decent living and working conditions of third-country nationals. This is to be achieved through ensuring equal treatment which is assessed in Section 6.1.2.5 above. The equal treatment provisions are meant to serve as a safeguard to reduce unfair competition between a Member State's own nationals and third-country nationals resulting from the possible exploitation of the latter (all Directives ensuring equal treatment of workers - see section on equal treatment above). In this sense, equal treatment also serves to prevent unfair competition between Member States.

Amongst the categories covered by the EU legal migration *acquis*, a particularly vulnerable group to labour exploitation concerns **seasonal workers**. The effectiveness of this Directive can however not yet be evaluated, due to its recent implementation date. Indeed the SWD, by granting a secure legal status and equal treatment for working conditions and access to appropriate accommodation, specifically aims to prevent TCN from being exploited. In addition, the Directive includes an option for circular migration, facilitating the re-entering for seasonal workers to contribute to fighting illegal migration. The seasonal work sectors, such as agriculture and tourism, are highly susceptible to exploitation. In terms of identified cases of illegal employment and exploitations, sectors which mostly require low and medium skilled workers were predominantly affected. The catering and tourism, construction, agriculture, retail trade, domestic care and social assistance, manufacturing and transport.³²⁶

Abuse and exploitation of TCNs while doing seasonal work have been widely reported. As reported by Europol, human trafficking for the purpose of labour exploitation is increasingly being investigated. The majority of non-EU victims come from countries bordering the EU (i.e. Albania, Moldova, Morocco, Russia, Turkey, and Ukraine) and to a lesser extent from China, India, Iraq, Pakistan, the Philippines, Sri Lanka and

³²⁶ EMN (2017), Synthesis Report – Illegal employment of TCNs in the European Union

Vietnam.³²⁷ Factors which exacerbate the vulnerable position of seasonal workers include absence of social networks and lack of knowledge of the national systems and complaint mechanisms due to their temporary nature of their stay (as they are in the Member State for only a short period of time).³²⁸ Also seasonal workers are often less educated which represents an additional barrier to launch a complaint against their employer. Language barriers have also been reported by some Member States as an obstacle. Furthermore, the third-country national is reliant on the employer, including for provision of accommodation. Also shown that receiving compensation, back payment etc. is very difficult especially for people from abroad. The procedures are often complicated and the process and preparation of a case is time consuming.³²⁹ The non-government sector in the EU has been active in protecting rights of seasonal workers although to a varying degree and often with limited resources. For example, a coalition of the Austrian Trade Union for Production Workers (Pro-GE) and agricultural workers' activists is running in cooperation with non-governmental organisations an information campaign for seasonal migrant workers in the agricultural sector focussing on the prevention of wage and social dumping.³³⁰

The SWD also introduced a set of important safeguards that Member States are obliged to put in place ('shall' clauses') to prevent exploitation, including sanctions against employers (Art. 17); monitoring, assessment and inspections (Art.24) and facilitation of complaints (Art.25). As mentioned above, the Directive has also very recently been transposed and results of its implementation are difficult to observe yet.

Albeit the most vulnerable, seasonal workers are only one category of TCNs that can be subject to exploitation and unfair treatment. Any worker in the EU, regardless of their nationality, can fall victim to one of the many forms of labour exploitation. There is no universally agreed definition of labour exploitation, as a phenomenon it is a continuum which ranges from with slavery and forced labour on one end and sub-standard employment conditions or terms on the other end. Labour exploitation may take a number of specific forms³³¹:

- no salary paid or salary considerably below legal minimum wage;
- parts of remuneration flowing back to employer on various grounds;
- lack of social security payments;
- extremely long working hours for six or seven days a week;
- very few or no days of leave;
- working conditions differ significantly from what was agreed;
- worker lives at the workplace;
- hardly any contact with nationals or persons from outside the company (or the family, in the case of domestic workers);
- passport / id retained, limited freedom of movement.

Estimating the size of the problem of labour exploitation is challenging for a number of reasons. First, as explained above, there is no definition of 'labour exploitation'. Therefore, comparing and aggregating data on the range of practices linked to labour exploitation across the EU would imply availability of comparable: (1) criminal justice data on a range of *reported* crimes (from severe forms of labour exploitation, to forced labour, to trafficking in human beings for the purposes of labour exploitation); (2)

³²⁷ Europol (2016), Situation report Trafficking in human beings

³²⁸ *ibid*

³²⁹ Conny Rijken (2014), Preventing exploitation through the seasonal workers directive

³³⁰ EMN (2017), Synthesis Report – Illegal employment of TCNs in the European Union

³³¹ FRA (2015), p. 36

data from institutions issuing sanctions on administrative violations linked to labour laws and standards. Second, as other categories of crimes, the levels of unreported crime is significant.

For instance, the 2015 Eurostat report *Trafficking in Human beings*, shows that in 2011, there were 1736 registered victims of trafficking for the purpose of labour exploitation in the EU.³³² For the same year, the International Labour Organisation study on forced labour shows that in 2012, in the EU, there were 616 000 victims of labour exploitation.³³³ The ILO study concludes, that the reporting rate is 3.6% or only 1 in 27 cases of forced labour reported.³³⁴ A 2017 updated study estimated 684 000 victims of 'modern slavery' in the EU in 2016³³⁵. These though do not differentiate between different types of exploitation (e.g. sex exploitation vs. forced labour exploitation).

To prevent and counter exploitation, several Legal Migration Directives include provisions on equal treatment with nationals for third-country nationals who have been admitted to a Member State for the purposes of work (or who have a right to work). The SPD is particularly relevant in this respect as it defines a common set of rights for most non-EU migrants working in a Member State. The equal treatment provisions in the EU legal migration acquis cover a number of work-related areas, including (among others) those related to access to social security (and for LTR social assistance and social protection), and those ensuring adequate working conditions, including health and safety at the workplace, working hours, leave and holiday.

However, not all equal treatment provisions are available to all categories of third-country nationals and some can be limited by Member States, as already discussed under section 6.1.2.5. above. Moreover, on their own, equal treatment provisions cannot prevent exploitation. They are a necessary starting point in order for third-country nationals to secure employment and fair working conditions, but the legal migration Directives – except the SWD – do not require Member States to put in place mechanisms to secure their enforcement (i.e. there are no provisions relating to inspections, monitoring nor sanctions against employers).

In practice, all Member States have adopted different measures for the prevention, identification and sanctions of employers for exploitation of third-country national workers. In terms of possibility to receive compensation, in twenty Member States, third-country nationals who are found to be illegally employed (regardless of whether they are residing regularly or irregularly) can make claims against their employer for compensation of unpaid wages for the duration of their employment as under a valid employment contract (including in cases when they have been returned). In most Member States, third parties with legitimate interest (such as trade unions, organisations of migrant workers), may act on behalf or in support of third-country nationals. In addition to employers, direct contractors and other immediate subcontractors can be liable and obliged to pay any outstanding taxes to the state and remuneration due to the third-country national. However, in practice third-country nationals seldom file complaints about their working conditions. In addition to the language barrier, third-country nationals can be reluctant to cooperate with police

³³² Eurostat, Report on Trafficking in human beings (2015 edition); labour exploitation of victims of trafficking covers the following sectors: agriculture, construction, textile industry, horeca (hotel/restaurant/catering), care, fisheries, and others; report available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf, p.91

³³³ ILO (2012) *Forced Labour: an EU Problem*, available at: http://www.ilo.org/brussels/press/press-releases/WCMS_184972/lang--en/index.htm.

³³⁴ Ibid. p.39

³³⁵ ILO (2017), *Global Estimates of Modern Slavery* (available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf); Global Slavery Index Report (available at: <https://www.globallslaveryindex.org/download/>), pp.58-66. The data does not include Malta.

forces or inspectorates, because they face direct risks of outcomes (a return decision, with possible detention and forced removal and entry bans), and due to challenges participating in proceedings (including with legal assistance) and proving their employment. Although statistics are not available, Member States reported that in practice, there are few cases where the worker actually receives due compensation.³³⁶

Consulted stakeholders expressed the need of better protection of vulnerable stakeholders to labour exploitation. Representatives at the 3rd European Migration Forum³³⁷ emphasised the need to ensure a better level of protection of rights of low-skilled workers and recommended that better practices to match the skills of third-country nations with a job available and a better identification of the demand for low and medium-skilled workers be implemented. Similarly, it was suggested that a proper system to assess and monitor exploitation, training, labour inspection and prosecution is needed. Civil society organisations have complained that the conditions under the SPD are too strictly applied by some Member States. For example, some apply the rule that the applicant cannot work for the employer for whom the permit should be issued while the application is ongoing. Moreover, individuals who lose their job are only granted one month to find another one. As a result migrants are locked in their jobs and they become vulnerable to inadequate pay, mobbing or exploitation. Finally, representatives from the Senior Labour Inspectors Committee in both Italy and Portugal considered that the EU provisions on equal treatment have contributed to the prevention of exploitation of third-country nationals. Some consulted NGOs expressed concern that there was a discriminatory approach across categories of economic migration – i.e. highly skilled who have access to fast-track permanent residence versus low skilled workers (seasonal workers are mostly low to medium skilled).

6.1.2.7 Specific objective 7: Monitoring of legality of stay and work, including improving monitoring and control of overstaying and other irregularities

The SPD has the objective of "*better control of the legality of work and residence*", by introducing "single permits" (authorising both work and residency in one permit), the issuance of which thus facilitates controls of both the legality of third-country nationals' residence and his/her right to employment. Given that the SPD also covers third-country workers covered by other EU Directives as defined, the same principle therefore applies to all permits issued under EU laws, whether or not this objective is explicitly stated or not. The evidence of the practical application study finds that almost all Member States have implemented this correctly, by complying with Regulation (EC) No 1030/2002 on the format of permits, and indicating the right to employment thereon (currently indicated on the residence card in 19 Member States³³⁸).

For certain categories of third-country workers, this objective has not been achieved, notably certain categories of highly-mobile workers. The gap analysis carried out (see Relevance and Annex 4B) identified a situation where the requirements of issuing third-country workers staying and working on the EU territory, but not confined to one MS, for longer than the Schengen visa rules apply, shows that the legal migration acquis can not effectively cover this category. Among the consequences of such failure may be increased vulnerability to exploitation.

One situation that these provisions aim to support detecting is when residence and work is no longer legal, that is when the person is overstaying. Such a situation of

³³⁶ EMN (2017), Synthesis Report – Illegal employment of TCNs in the European Union

³³⁷ Report, 3rd European Migration Forum(2017). <https://www.eesc.europa.eu/en/report>

³³⁸ AT, BG, CY, CZ, DE, EE, ES, FI, HU, LU, LV, NL, PL, PT, SE, SI, SK.

overstaying refers to when migrants find themselves in when remaining in a country beyond the approved duration of their stay as determined in their authorisation (permit or visa). Regular migrants may transition into overstay/ irregular stay if they are unable to renew their residence permit for some reason, often not of their own making (for example, due to bureaucratic delays beyond their control). Most overstayers enter the EU legally on visitor, tourist or student visas (rather than through an irregular channel of entry). Therefore, the challenge of them overstaying may be a question of weak internal controls rather than one of efficient entry controls.³³⁹

Overstaying can have serious consequences (see for further details Annex 1D paper on exploitation), including:

- Loss of legal status may lead to destitution and social problems (irregular migrants who have not been apprehended yet by the authorities and therefore cannot benefit from the basic minimum rights set out in Article 14 of the Return Directive don't have access to healthcare, education, or language support)
- Presence of irregular migrants may also lead to exploitation in the grey/black labour market.

Overstayers who transition into illegal stay are subject to return and expulsion measures, possibly including detention measures. This causes expenditure for Member States and human costs for migrants which could be avoided if overstay would have been prevented from the outset by appropriate policy and enforcement measures. In terms of quantitative assessment of the phenomenon, no data on overstaying of seasonal workers is available. According to the European Commission, no reliable statistics are available on over-stayers in the absence of an Entry/Exit System.³⁴⁰ Given the hidden nature of irregular migration, any estimates of its scale are approximate. Globally, the IOM estimated in 2010 that 10-15% of migrants have an irregular status. Within the EU, the share of irregular migrants is thought to be particularly high in southern Member States, such as Spain, Portugal, Italy and Greece not only because of the ease of overstaying, but also due to these countries' history of clandestine entry, as well as the approach of the authorities characterised as 'hands-off' for most of the time. At the same time, since the 1980s, southern Europe has seen a large number of regularisations, resulting in some 5 million migrants having their status regularised.³⁴¹ Another document from the Parliamentary Assembly of the Council of Europe, from 2007, estimates that over 5.5 million irregular migrants live in the EU.³⁴²

In its 6.4.2016 Communication on a reform of the CEAS and enhancing legal avenues to Europe (COM(2016)197) the Commission made the point that smart management of migration – including avoidance of illegal overstay – requires not only a firm policy in addressing irregular flows, but also a proactive policy of sustainable, transparent and accessible legal pathways. The Commission made it clear that more legal channels are needed to enable migrants to arrive in the EU in an orderly, managed, safe and dignified manner. The EU notably needs a more proactive labour migration policy to attract the skills and talents it needs to address demographic challenges and skills shortages, thereby contributing to economic growth and the sustainability of our welfare system. There is, however, no easy trade-off between legal and irregular migration: more legal admissions do not lead automatically to a reduction of irregular migration flows (including overstay). The EU level response on the issue of overstay

³³⁹ Ibid.

³⁴⁰ Communication from the European Commission and the Parliament and the Council on a More Effective Return Policy in the European Union - A RENEWED ACTION PLAN Brussels, 2.3.2017 COM(2017) 200 final

³⁴¹ Ibid.

³⁴² Regularisation programmes for irregular migrants, <http://www.unhcr.org/4b9fac519.pdf>

therefore focused – in essence – on promoting more efficient return and, at the same time, setting up a legal frame (rules on legal migration, visa and borders) which makes sure that those who are admitted will comply with migration rules and return upon expiry of their right to stay.

Preventing and improving the monitoring of overstaying is a specific objective for SWD. The SWD³⁴³ envisages the sanctioning of employers (Art.17 and also the Employer Sanctions Directive 2009/52/EC) and obliges Member States to introduce monitoring, assessment and inspection practices (Art. 24). In summary, by including provisions on monitoring, assessment and inspections, the SWD aims at harmonising this aspect at EU level and ensuring that overstay is systematically tackled across EU Member States. As shown by a recent EMN study, monitoring practices of illegal employment vary across Member States.³⁴⁴ It is too early to assess whether this objective has been achieved.

However, there is some degree of tension between two of the objectives of SWD, which aims to ensure the protection of workers from exploitation (see above), but also to ensure that seasonal workers stay only temporarily. The Directive emphasises the temporary nature of their stay and one of the aims of the Directive as in Recital 7 is *“to prevent [their] temporary stay from becoming permanent.”* discussed previously in this section above, the selective approach across categories of economic migrations – i.e. highly skilled who have access to fast-track permanent residence versus low skilled workers (seasonal workers are mostly low to medium skilled) have been strongly criticised by a range of stakeholders. It is the temporary nature of the stay which also contributes to the vulnerable situation of seasonal workers as described in the section above, including also when TCN overstay and fall into irregularity.

Stakeholders in the transport sector (notably aviation) raise concerns that the EU legal migration is not effectively protecting the EU workforce against undue competition from third-country workers, and one reason for this is the lack of effective EU legislation ensuring such protection.

6.1.2.8 Specific objective 8: Mutual enrichment and promoting better familiarity among cultures

Mutual enrichment and promoting better cultural exchange is a specific objective of the SD and SRD. According to SRD – *“This Directive should also aim at fostering people-to-people contacts and mobility, as important elements of the Union's external policy, notably vis-à-vis the countries of the European Neighbourhood Policy or the Union's strategic partners. It should allow for a better contribution to the Global Approach to Migration and Mobility and its Mobility Partnerships which offer a concrete framework for dialogue and cooperation between the Member States and third countries, including in facilitating and organising legal migration.”*

The attainment of this objective is very difficult to measure and define in quantitative terms as it is mostly an experiential issue in terms of the inter-cultural exchanges, not necessarily linked to economic benefits from international students and benefits for the higher education sector as an industry (in terms of attracting highly skilled and human capital; revenues from tuition fees, etc.). The flows of students in terms of the number of permits issued could be used as proxy; however, there is a limitation to this approach – i.e. if the flows are composed of only limited number of nationalities of third country nationals or the students do not actively engage with many fellow students, there might be a high number of international students but mutual

³⁴³ The effectiveness of the SWD not evaluated as it's implementation is too recent. The transposition deadline of the SWD was 30th September 2016 but a large number of Member States experienced delays with its transposition (and hence its practical application).

³⁴⁴ EMN (2016)

enrichment and cultural exchange may not be so intensive – this is also linked to cultural perceptions. Secondly, mutual enrichment and cultural exchange is not necessarily linked to retention and the length of stay although there might be a correlation– i.e. short-term mobility can also lead to mutual enrichment and also serve to facilitate circular migration and reducing brain drain.

The European Union taken as a whole is a very attractive destination for international students - it has more than doubled the number of international students over the 12 years between 2000 and 2012, overtaking the USA and outstripped only by Australia and New Zealand. In 2016, in absolute numbers the top countries issuing first permits for education purposes are France (72 853), Germany (35 339) and Spain (33 788). In relative terms, France (31%), Hungary (34%), and Romania (33%) are the countries where new student permits represent largest share of all first-time permits. The top nationality of international students is Chinese (approx. 25%) followed by India, Turkey, Russia and Ukraine.³⁴⁵ A positive trend can be observed as students from Asia and Latin America choose the EU as a destination much more frequently than 10 years ago. This mirrors the growing importance of these countries in the global context. The preferred field of study is social sciences, business and law.³⁴⁶

When looking at the flows in individual Member States, OECD research shows that geographical proximity, historical ties and language similarities seem to contribute in a substantial way to international students' country of destination preferences.³⁴⁷ From a language perspective, over the recent years, universities and higher education institutions in the EU have begun to provide academic courses in English as well as in their own national language. By offering courses in English, it is hoped to attract international students and this is particularly the case for those Member States wishing for students to remain on their territory following graduation. Though speaking the national language may not be a prerequisite for studying in the Member State, it is of course considered vital for successful integration in the national workforce and in society.³⁴⁸

An explicit policy objective at EU and national level, is for the EU to become a world centre for excellence in education. Access to educational opportunities for international students is also facilitated by international cooperation, including bilateral and multilateral agreements. EU mobility programmes have been effective in opening up opportunities to students from third countries, not only to study in a single EU Member State, but to move to other Member States to access further programmes of study. Outside of EU mobility programmes, Member States operate a range of national programmes that encourage mobility of international students who wish to continue or complement their studies in different Member States, in line with national objectives.³⁴⁹

In summary, it can be concluded that at both EU and national level, efforts have been undertaken to attract international students and EU is performing well as an attractive destination although this varies across Member States. It is very difficult to establish the extent to which mutual enrichment has been achieved. Numerous programmes and initiatives have been put in place to facilitate cultural exchange, including through bilateral agreements and mobility programmes. Important factors to facilitate cultural exchange include language knowledge, intensity of exchange between the international students and fellow students and local population and to a lesser extent duration of stay.

³⁴⁵ OECD and EU (2016), *Recruiting Immigrant Workers: Europe 2016*, OECD Publishing, Paris.
<http://dx.doi.org/10.1787/9789264257290-en>

³⁴⁶ OECD, Weisser, R. (2016). *Internationally mobile students and their post-graduation migratory behaviour: An analysis of determinants of student mobility and retention rates in the EU*.

³⁴⁷ Weisser (2016)

³⁴⁸ EMN, (2012). *Immigration of International Students to the EU*, Synthesis Report.

³⁴⁹ Ibid

6.1.2.9 Specific objective 9: Promoting integration and socio-economic cohesion

Promoting integration and socio-economic cohesion has been mentioned as an explicit objective in the FRD and LTR (which together represent over 45% of all residence permit holders in the EU in 2016). It is very difficult to establish a cause-effect link between the Directives and the degree of successful integration of TCNs within the EU, nearly 20 million residents (or 4% of total population) are non-EU citizens. Therefore, their integration into the Member States' society is crucial, but Member States face many challenges to make integration policies effective and notwithstanding the efforts made, non-EU citizens are worse off than EU citizens in terms of employment, education, and social inclusion outcomes³⁵⁰ across the EU. Moreover, the integration indicators³⁵¹ above are more positive for the native-born population than for the non-EU (and generally foreign) born population. For example, in 2016, the EU-28 employment rate for the native-born working-age population was 71.8 %, which was more than 10 percentage points higher than the rate recorded for non EU-born migrants (61.2%, lowest: BE – 39%, highest: CZ – 75.6%). Furthermore, during 2008-2016, non-EU-born migrants systematically recorded lower activity rates than the native-born population, with these differences increasing over time. Regarding the education attainment, just over one third of 25-54 year-old migrants born outside the EU had completed at most a lower secondary level of education.

The FRD states that family reunification helps to create sociocultural stability facilitating the integration of third country nationals in the Member State (Recital 4) and further provides that the integration of family members should be promoted (Recital 12). However, the Directive does not elaborate on the ways integration should be achieved. It is only mentioned that in Art. 12, Member States may require third country nationals to comply with integration measures, in accordance with national law. Given that the central aim of the Directive is to protect family unity and integration is a key factor to create sociocultural stability as per Recital 4, the Directive fails to prescribe at least the basic aspects of socio-economic integration and only mentions integration in Art. 12 *as a requirement* that the TCN has to meet rather than ways in which Member States are to provide for integration.

Similarly, the LTR highlights in Recital 4 that the integration of TCNs who are long-term residents in the Member States is a key element in promoting economic and social cohesion. However, Art. 15(3) prescribes that integration can be a requirement and compliance with integration measures may constitute a condition for obtaining long-term resident status.

In summary, the Directives do not prescribe the ways in which integration is to be achieved. The provisions on equal treatment in the LTR may contribute to better integration, however there is overall an indirect link between the legal instruments and the socio-economic outcomes for third-country nationals.

6.1.2.10 Specific objective 10: Protection of family life and unity

The protection of family life and unity is an objective for FRD, LTR, BCD, RD, ICT and S&RD in relation to researchers. The objective is beneficial not only to migrants, but also to the wider societies hosting them and consequently to the Member State. Due to the more temporary nature of the stay of seasonal workers, no family reunification rights are provided for. As per Preamble 46 of the SWD "This Directive does not provide for family reunification."

Definitions of eligible family members are provided under Art.4 of the FRD with a significant margin under the may clauses in Art.4. In practice, many Member States

³⁵⁰ http://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant_integration_statistics

³⁵¹ Eurostat migration integration indicators (mii)

extend the scope of family reunification beyond the nuclear family³⁵², which consist of core members such as spouses and their minor unmarried children. Depending on the national law, the scope of family reunification can include parents, adult children, same-sex partners, non-married partners and/ or foster children. For example, parents (of adult sponsors), as well as adult children may fall under the scope of family reunification in some Member States if they are not capable of taking care of themselves, for example due to health issues. The wider interpretation of family members in some Member States could also be considered positive for the protection of family life and unity.

Whilst the right to family reunification is currently subject to a common framework through the FRD (and its 'shall' clauses), it is simultaneously dependent on a certain degree of discretion provided by the Directive ('may' clauses). This has resulted in both commonalities and differences between Member States' policies and practices on family reunification. A recent EMN study³⁵³ found that the right to reunite with family could be further strengthened in the Member States, for example, by avoiding setting the income requirement at an exceedingly high level, a reality in some Member States, and giving more weight to individual circumstances in the process of examining family reunification applications.

The most common requirement across Member States is accommodation suitable for the size of the family (which may vary from 6-12 m² of living space per family member) and/ or meeting certain health and safety standards. Health insurance is a further condition for family reunification in nearly all Member States. Last but not least, sufficient financial resources, which are assessed against a reference income threshold, are also required for family reunification in most Member States. In most Member States the income threshold is either equivalent to or higher than the basic minimum monthly income or minimum subsistence amount per month of that country, whilst in certain Member States this often (also) depends on the size of the family.³⁵⁴ Thus, in practice, Member States seek to ensure that there is certain minimum standard and quality guaranteed for family life.

Quantitatively, family reunification is one of the main avenues for legal migration to the EU and accounts for approximately a third of all arrivals of Third-Country Nationals (TCNs).³⁵⁵ Eurostat data show that, in 2015, more than 440,000 first permits for family reasons were issued to TCNs (reuniting with a TCN sponsor) in the EU Member States.

In summary, EU *acquis* serves to guarantee family unity and family life through providing a harmonised framework for residence permits based on family reunification in line with the Charter of Fundamental Rights of the EU and with the standards set in international and European human rights instruments. However, the effectiveness of the right to reunite with family could be hampered by Member States' current practices, such as setting the income requirement at an exceedingly high level, and not giving sufficient weight to individual circumstances in the process of examining family reunification applications.

³⁵² Parents – all Member States except BE, HU and NL unless it applies to UAMs
Adult children for exceptional reasons - BE, BG, CZ, EE, ES, HU, IT, LU, SE, SI, SK
Same-sex partners - AT, BE, CY, CZ, DE, ES, FI, FR, HU, LU, NL, SE, SI
Non-married partners - AT, BG, CZ, DE, EE, HU, IT, LV, PL, SE

³⁵³ EMN (2016), Synthesis Report, Family Reunification of Third-Country Nationals in the EU plus Norway: National Practices

³⁵⁴ *ibid*

³⁵⁵ Based on Eurostat data (2011-2015) (extracted on 19-20 January 2017) concerning TCNs who received a residence permit in the EU and EFTA countries, or an EU Blue Card in the EU countries.

6.1.2.11 Specific objective 11: Facilitation and promoting intra-EU mobility

Facilitating and promoting intra-EU mobility is an aim in the FRD, LTR, SD, BCD, RD, ICT and SRD. The Europe 2020 Strategy for growth recognised the role of intra-EU mobility of workers – including EU nationals moving to other Member States – within the EU single market in improving the matching of labour supply and demand.³⁵⁶

Mobility in the EU remains below levels in the United States – annual cross-border mobility in the European Union was 0.2% of the EU population in 2013, compared with 2.3% for interstate mobility in the United States. The lower mobility of EU workers compared to the United States – and within EU Member States is due to factors such as language differences, relocation costs, the recognition of qualifications, differences in regulated professions, complex transfer of social rights.³⁵⁷

It appears from the stakeholder consultation and the practical application study that third-country nationals who are seeking to move to a second country – especially those who wish to move permanently – face a number of challenges in doing so, ranging from the lack of information provided from official sources to the lack of transferability of their social security benefits. For instance, when it comes to students, the non-uniform regulation across the Member States results in different time thresholds as to how much time TCNs can spend abroad for exchange programmes.

A third of non-EU citizens residing or having resided in the EU respondents to the OPC stated that they had encountered problems in getting a residence permit in a second EU country, being the most common issues the number of documents required (85%) and the insecurity brought by the delay in receiving the new permit after the first one had expired (83%), followed by the high costs of the permit (74%), the difficulties getting their qualifications recognised (66%), the challenges to find a job in the second country (66%), and the length of the procedure (58%).

The experience of non-EU citizens wishing to transfer their social security rights when moving from one EU country to another seems to differ between those who seek to move permanently to the second country and those who do not, with the great majority of the former group (6 out of 8 respondents) declaring that they had experienced difficulties in doing so. The main issues mentioned are the lack of information about the procedure to follow as well as the limited knowledge of the administrative personnel responsible for this.

With regard to long-term residents, even though LTRs supposedly should have similar rights to EU citizens, there are a number of obstacles to their mobility. Firstly, stable resources and proof of accommodation as well as sickness insurance may be required. An employment-based permit in the second Member State requires a work contract there, and can be subject to a labour market test. A visa may also be required. The procedure to apply for a permit in the second Member State takes up to 4 months, during which the third-country national may not be allowed to work.

When it comes to the BCD, although the Directive aims to facilitate intra-EU mobility – a main point of attraction for TCNs to access the whole EU market – in reality, the mobility of third-country nationals is also still hampered by legal and practical constraints, including having to face the same burdensome requirements and checks as those applied to TCNs arriving in the Member State for the first time (and the fact that BC holders are obliged to wait for 19 months before exercising this right). The conditions for intra-EU mobility under the current BCD are in general considered not

³⁵⁶ European Commission's Communication COM(2010) 2020 final, *Europe 2020: A strategy for smart, sustainable and inclusive growth*, 3 March 2010. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF>

³⁵⁷ Ibid

substantial and not attractive for potential migrants, as confirmed in the impact assessment study as well as the public consultation on the BCD and the EU's labour migration policies. As shown by an OECD study, the larger EU-wide labour market may be more attractive, but its attractiveness is bound up with the effectiveness of mobility provisions.³⁵⁸ Beyond the principle of equal treatment, the mobility of third-country nationals has been restricted to at least certain minimum periods spent in the initial first Member State (this is due to concerns of some Member States that intra-EU mobility may be misused as a secondary migration channel).

In summary, although intra-EU mobility is mentioned as an explicit objective in a number of Directives, in practice obstacles to intra-EU mobility remain. Challenges for TCNs to exercise intra-EU mobility include lack of information, requirements for documentation same or similar to first applicants and difficulties in transferring social security rights.

6.2 EQ 6: What have been the effects of the legal migration Directives, and to what extent can such effects be attributed to the EU intervention?

This section examines the effects of the adoption of each legal migration Directive and the extent to which effects can be attributed to the EU legal migration acquis. Each Directive is discussed with regard to its legal baseline and quantitative effects on flows as presented in Section 3. As per the Terms of Reference, due to the recent adoption of the following Directives, no assessment of their effectiveness will be carried out: Seasonal Workers (2014/36/EU), Intra-Corporate Transferees (2014/66/EU) and Students and Researchers Directive (2016/801/EU).

6.2.1 Family Reunification Directive (FRD) 2003/86/EC

The FRD was the first Directive regulating the entry and stay conditions of a specific category of third-country nationals. The Directive was proposed in 1999 and adopted in 2003 with a transposition deadline of 3rd October 2005. As presented in Section 3, the Directive served to guarantee the universal right to family reunification and establish an equal playing field in all Member States. By establishing a common set of conditions, the Directive also abolished discretionary interpretation of admission conditions which was in place in some Member States. Prior to the adoption of the Directive, all the (then) EU Member States EU-15³⁵⁹ had recognised the right to family reunification in their national law, or the discretionary possibility of allowing family reunification. With regard to the categories of family members covered, in all Member States, this covered spouses and children, while the eligibility and conditions for additional categories of family members (such as recognised partners, parents or dependent relatives) differed significantly. The Directive did not bring a significant change as it still allowed discretion for Member States to decide which additional categories are covered. The age limit of children was also not regulated at EU level but depended on the national definition of minority age.

When the FRD was introduced, entry conditions were already similar across Member States – i.e. all EU-15 required proof of sufficient resources to cover living costs and the vast majority required proof of adequate housing (with the exception of BE, FI and SE), but the proof required for sufficient resources and accommodation differed significantly. While the Directive does not detail how resources and adequate accommodation should be proven, it does stipulate that Member States shall evaluate the resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members. With regard to accommodation, in practice, the requirements on the size of

³⁵⁸ OECD and EU (2016), Recruiting Immigrant Workers: Europe 2016, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264257290-en>

³⁵⁹ Information for the remaining EU-12 is not available.

accommodation vary significantly from 6 m² of living space per family member in Hungary to 12 m² of living space for each family member aged 6+ years old (or 10 m² otherwise) in Germany and 12 m² for the first occupant and 9 m² per additional occupant in Luxembourg.³⁶⁰ Other Member States (LV, SE) do not appear to have set specific criteria for assessing the suitability of the size of the accommodation for sponsors to exercise the right to family reunification.

Similarly, the threshold on sufficient resources varies significantly across Member States. In many Member States this sum is equivalent to (AT, BG, DE, FR, IE, LT, LU, LV, NL, SI, SK) or (contrary to the Chakroun judgment, paragraph 49) higher than (BE, MT, PL) the basic minimum monthly income or minimum subsistence amount per month of that country. In other (Member) States this is set at a specific amount (FI), albeit the amount may vary depending on the size of the family (CZ, EE, ES, FI, HR, IT).

Family reunification is one of the main reasons for issuing residence permits in the EU. As presented in Section 3, there is scarcity of data for the period 1999 to 2008 when Eurostat began collecting EU-harmonised data. The number of first residence permits has slightly increased by 10% from 2008 (346,000) to 2016 (388,000). Quantitatively, it is very difficult to establish a counter-factual analysis – i.e. whether in the absence of the Directive whether the same level of flows would have been in place – but one could assume that by guaranteeing family reunification as a right (provided certain conditions are met) across the EU, numbers would have been lower without the Directive.

In summary, the Directive has been adopted in the broad framework of protecting family life and family unity. With the transposition of the Directive, Member States today have a specific procedure and residence permits for family reunification in order to observe the universal right to family reunification. Overall, the adoption of the Family Reunification Directive has brought a uniform status for family members and uniform conditions. Nonetheless, the right to family reunification is subject to "may clauses" that result in wide differences between Member States practices since these clauses provide a certain degree of discretion.

6.2.2 Long-term residents Directive (LTR)

The Directive introduced a common status for long-term residents, providing a secure residence status, including a set of uniform rights which are as close as possible to those enjoyed by the citizens of the EU and, under certain conditions, the right to reside in other Member States. However, it 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. Statistics presented in Section 3.2 above shows that the national statuses are still much more widely used: in 2016, whilst almost 7 million total residence permits currently held by national permanent residents, this is more than double than the permits held by EU LTR holders (just below 3 million) in the EU-25³⁶¹.

Overall, although some Member States had some form of similar national permit prior to the adoption of the Directive, the Directive has brought greater legal certainty for third-country nationals as well as harmonisation across the EU³⁶². For example, in LU and SE there was a discretionary element on granting the LTR which has been abolished with the Directive.

³⁶⁰ EMN (2016) Synthesis Report 'Family Reunification of Third-Country Nationals in the EU plus Norway: National practices'

³⁶¹ Eurostat, [migr_reslong], February 2018.

³⁶² Groenendijk, Guild & Barzilay / Legal status of third country nationals / 2000 (study commissioned by COM) <http://cmr.jur.ru.nl/cmr/docs/status.pdf>
The study included analysis of the then-EU Member States (15 MS) – AT, BE, DK, FI, FR, DE, EL, IE, IT, LU, NL, PT, ES, SE, UK

Prior to the adoption of the Directive, the core requirements to obtain the national permits broadly included: the person should normally have been admitted to the State in a capacity, which leads to the status, should have completed a period of residence in the country, have sufficient income or stable employment (though a number of states appear to make the status available also to the economically inactive) and not have recently committed serious offences. These eligibility rules are reflected also in the Directive and thus, the material scope did not change much.

As shown in the practical application study, regarding LTR, in five Member States, equal treatment issues result from non- or partial transposition of equal treatment provisions, which gives rise to uncertainty. For example, in Italy, although reference is made to “*equal treatment between nationals and legally staying foreigners as regards all types of relations with the public administration*”³⁶³, there is no specific reference to equal treatment as regards to the public supply of goods and services made available to the public. In Cyprus, the LTR permit holders are entitled only to ‘basic benefits of social assistance’ which are not defined, resulting in uncertainty as to the eligibility of the exact benefits.

The LTR has in particular brought uniformity across Member States in ensuring the right to equal treatment. As shown in Section 3.2., although most Member States had overall ensured equal treatment on par with nationals, some areas of equal treatment were not covered before the introduction of the Directive.

6.2.3 Students Directive 2004/114/EC

Taking into account when considering the legal baseline as presented in section 3.3, the adoption of the SD did not bring a significant change, as most of the EU Member States already had similar schemes in place, nor did it modify previously existing legislation to a great extent. The Directive however contributed to establishing greater harmonisation and legal certainty – i.e. as per the European Court of Justice ruling³⁶⁴, Member States cannot not deny a student a visa if the conditions in the Directive have been exhaustively met. However, when looking at how students’ right to work has been applied in practice, this still varies across the European Union with regard to the number of hours, work permit requirements, and the application of labour market tests, meaning that the discretion left to MS in certain areas has however hampered full harmonisation. The Impact assessment of the SRD Directive also identified a number of issues with the SD, including insufficiently clear admission procedures including visas, rights (such as equal treatment) and procedural safeguards. The SRD is expected to bring in further legal clarity and certainty, including on the categories which were not mandatory under SD. Furthermore, SD did not include any provisions on equal treatment.

It is very difficult to establish whether the adoption of the SD has contributed to the quantitative increase of students to the EU and whether the numbers would have been the same in the absence of the SD (permits issued based on the national schemes). The increase over time observed above is mostly due to other external factors – such as the image and quality of education in the EU Member States - and is consistent with the increase of number of students studying abroad worldwide. Moreover, given that most Member States had already admission schemes in place which did not significantly differ from the EU status which did not provide any additional substantial benefits attached to it that could have served as an attraction factor, it could be tentatively concluded that the SD permit is unlikely to have contributed much to quantitative spikes in numbers of permits.

³⁶³ Art. 2(5) D. Lgs. 286/1998

³⁶⁴ C-491/13 Ben Alaya vs Germany

6.2.4 Researchers Directive 2005/71/EC³⁶⁵

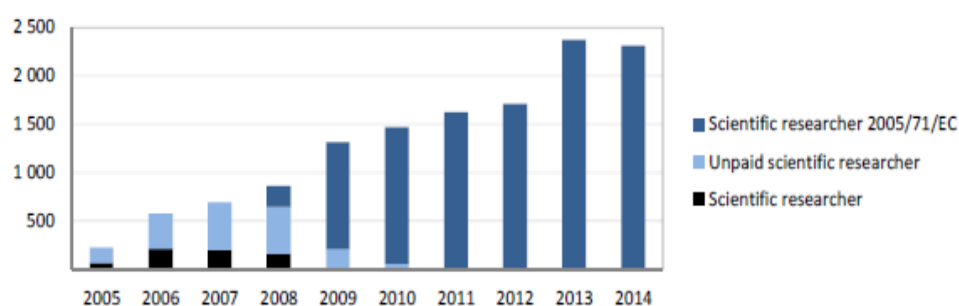
Taking into account the legal baseline, it can be argued that the RD did not bring a significant change to the EU Member States' legislation since Member States hosted researchers even before transposing this Directive. However, not all of them had researcher-specific residence permits and in this way TNC researchers' access to the EU has been improved. An important element of this Directive is the reinforced role of the research organisations to the approval of TCN researchers to the European Union in contrast to the traditional role of the migration authorities in the years prior to the adoption of the Directive.

Table 5 in Section 3.3. presents the number of first permits issued to researchers and share in first permits issued for remunerated activities in the period 2008–2016. While in 2008 the number of first permits issued for researchers was 4 thousand, it was more than the double in 2016, reaching 9 thousand. Despite the fact that identifying causality between the statistical increase of the number of permits issued and the introduction of the permit is not easy for the RD, it is worth examining the Dutch case. Under this Directives, no national parallel schemes are permitted, and the gradual shift towards applying the Directive can be shown with an example based on data from the Netherlands.

On the one hand, in the Netherlands, after the transposition of the researcher permit, higher inflows occurred while at the same time researchers under the EU Directive replaced the unpaid-research permit category.

The Netherlands has seen a sharp increase in the uptake of the researcher permit, especially by non-university bodies. The Dutch list of registered research institutes includes at least 30 private enterprises among the 110 registered sponsors. Universities, foundations and firms can use the researcher permit as an alternative to the national permit scheme for skilled migrants when the work is project-related – even when the salary paid to the researcher is below the requirement for other highly qualified schemes.³⁶⁶

Figure 19. Number of research permits issued in the Netherlands (2005-2014)



Source:

OECD and EU (2016), *Recruiting Immigrant Workers: Europe 2016*, OECD Publishing, Paris

6.2.5 EU Blue Card Directive 2009/50/EC

After the adoption of the BCD, third-country nationals that are entering EU Member States for the purposes of highly qualified employment enjoy some advantages

³⁶⁵ It should be noted that Ireland does implement this Directive and is therefore included in this assessment.

³⁶⁶ OECD (2016), *Recruiting Immigrant Workers: Europe 2016*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264257290-en>

comparing to the standard work permit or prior equivalent national schemes. Based on the following aspects, generally the EU Directive conferred more advantageous conditions than previous national permits where those existed:

- Longer duration of the validity of the permit
- More favourable conditions for accompanying family members
- More favourable access to permanent residence
- Permission to stay in the Member State in the event of unemployment without losing their status

As shown by the recent EU Blue Card evaluation and subsequent recast proposal, due to the numerous 'may' clauses and also the existence of parallel national schemes in many Member States, the effects of the Blue Card as a legal instrument has been weakened. For example, Member States are permitted to apply quotas. In Cyprus, such a quota is set at 0 Blue Cards which de facto means that the instrument is not applied at national level.

As depicted in the Figure 4 and Table 6 in Section 3.3., the number of Blue Card holders steadily increased since 2011.

In those Member States where parallel national schemes were in place, overall, a higher number of the national schemes were issued in comparison to EU Blue Cards. Germany was responsible for issuing the vast majority of Blue Cards. The majority of EU-25 Member States that had a national 'highly skilled workers' schemes and, were already reporting on the number of these first permits issued under these schemes in 2008, continued to issue them, and none of them seemed to increase substantially the number of first Blue Card permits issued. With the exception of Germany, all other national Member States continued to report higher numbers of permits granted to highly skilled workers under their national schemes, not under the Blue Card Directive. In 2016, these 12 MS (CZ, EL, ES, FR, IT, CY, LV, NL, AT, PL, FI, SE) issued over 24 thousand high skilled workers permits compared to only 2011 Blue Card permits. However, the number of Blue Cards issued rose from 8% in 2012 of all highly skilled workers permits, to 27% in 2016.

Furthermore, the business environment, job opportunities and cultural ties – factors are macro-economic and also individual level remains the main factors for attracting third-country nationals rather than the Blue Card permits. The Blue Card brand (i.e. the 'Green card' equivalent of the US) has been weakened by the fact that in practice intra-EU mobility has not been facilitated to a significant extent.

6.2.6 Single Permit 2011/98/EU

The Single Permit Directive (SPD) established a single application procedure for third country nationals to acquire work and residence permits, with the purpose of simplifying the administrative burdens associated with such admission procedures. In addition, it introduced equal treatment provisions not only to holders of a single permit, but to all third-country nationals allowed to work (with some exceptions).

Prior to the adoption of the Directive, a number of Member States already had a range of diverse and relevant legal instruments and domestic procedures applicable to the admission of third-country nationals for the purpose of paid employment. Of 21 Member States for which information is available³⁶⁷, 10 countries already had in place a form of single application procedure for a joint resident and work permit³⁶⁸. 11 other Member States had in place two separate titles and procedures for both work and

³⁶⁷ The Impact Assessment looked at 21 Member States for the context of the document, though there were at the time 27 EU Member States.

³⁶⁸ CY, DE, EE, EL, ES, FI, FR, IT, NL, PT.

residence permits³⁶⁹. Thus, the Directive introduced an important simplification for third-country nationals that was not in place in most of the Member States.

For example in Romania the practical application of the SPD, pre-authorisation of the right to work is required and in Bulgaria the employer first has to apply to the Employment Agency.

With regard to the equal treatment provisions, prior to the adoption of the SPD, third-country workers could be excluded from a range of social security rights for different eligibility criteria. For example, in the context of unemployment benefits in the Czech Republic, third-country workers were eligible for unemployment benefits only if they had acquired long-term residence status or if a bilateral agreement with the country of origin was in place.

6.3 EQ 7: To what extent do the observed effects of the implementation of the Directives correspond to their objectives?

The implementation of the EU legal migration acquis has been examined in detail under Task 2 – Legal and practical application study. Furthermore, EQ1C and EQ3A have examined the main application issues from the perspective of relevance and coherence. This section aims to highlight the *main effects* of the implementation of the Directives per migration phase and how this corresponds to relevant objectives. To avoid repetition with Task 2 and EQ1C and EQ3A a high level analysis of the main aspects per implementation phase is provided under this section.

6.3.1 Pre-application (information) phase

The four more recent Directives (SPD, SWD, ICT and S&RD) contain provisions obliging Member States to provide access to information to third-country nationals and where relevant to their employers (i.e. SPD) and host entity (i.e. ICT). As shown by the Task 2 application study, although Member States practices in providing information differ significantly, there is an array of issues with the provision of information, including that information is often only available in national languages; information is scarce or scattered across multiple web-sites, insufficient hotlines or information desks, the information provided upon request is not always satisfactory or is too general, and the information is overly legalistic or difficult to understand etc.

One of the overarching objectives of the legal migration acquis is to ensure transparency, legal certainty and simplification for applicants and their employers/host organisations. Provision of user-friendly information is an important aspect of it. However, only four Directives explicitly provide for it and Directives such as FRD and LTR which concern a large number of people do not contain any provisions on access to information. Only in the case of the SWD, ICT and S&RD it is specified that such information should be “easily” accessible. Looking at the array of application issues with provision of information, it can be concluded that the practical application of the first phase does not correspond in a satisfactory manner to the relevant objective of transparency, legal certainty and simplification. Most of the Directives fail to explicitly provide for provision of information and also there is a wide variation across Member States.

Stakeholders have also drawn attention to issues with regard to information. Non-EU citizens respondents to the OPC complained about the lack of clear and practical information coming from official sources on procedural aspects (i.e. types of visa, expected processing times, mandatory insurance, the types of documents that need to be provided and notarised, etc.) or other relevant aspects such as intra-EU mobility. Consulted participants of the European Migration Forum and members of the European Economic and Social Committee raised issues related to the provision of information, such as lack of clarity and insufficient availability, including of information in English.

³⁶⁹ AT, BG, BE, CZ, IE, LT, LV, RO, SI, SK, UK.

This creates difficulties in accessing information. The lack of relevant information was found to have significant cost implications related to the amount of time that applicants have to spend on finding the information which they need, as well as restricting their rights to have access to such information.

As pointed out by consulted stakeholders from migration agencies, having a one stop-shop platform for access to comparative information on admission conditions across Member States could resolve some of the issues highlighted above. The EU immigration portal³⁷⁰ which aims at serving as a one-stop-shop for third-country nationals for information has several limitations. For example, it does not provide the most up-to-date information and for some categories information is patchy. Also, there are also indications from the stakeholder consultation that the portal is not known enough and more promotional efforts are needed to promote the tool. The portal has been under-utilised due to the poor quality of information and lack of promotional efforts.

6.3.2 Pre- application (documentation) phase

Phase 2 concerns the format, content, supporting documents and user-friendliness of the application forms third-country nationals have to submit in order to obtain statuses under EU directives.

As shown by Task 2 Evidence base for practical implementation of the legal migration Directives and interviews with migration agencies, a number of practical application issues have been identified under this phase, including application forms which are considered difficult to fill in and insufficiently user-friendly; application forms available only in national languages³⁷¹ (in six Member States) and 'document-heavy' application process. Migration agencies reported that applicants are commonly required to present numerous documents, including originals of birth certificates and diplomas (incl. apostilles). In some cases, the document-heavy application can slow down the application process or present a real obstacle for the applicant.

Considering the practical application issues in phase 2, the overarching objective of transparency, legal certainty and simplification has not been fully achieved. Although some provisions refer to format, content, supporting documents and user-friendliness of the application forms in passing, the Directives do not include explicit provisions on documentation and format and this is left at the discretion of Member States. This has resulted in a wide variation of practices on documentation across Member States. The 'document-heavy' application requirements highlighted by migration agencies and other stakeholder groups have impacted negatively the achievement of the objective of transparency, legal certainty and simplification.

6.3.3 Application phase

The application phase includes a number of aspects related to submitting the application, such as easiness of lodging an application, application fees, time to process applications, administrative and financial sanctions, delivery of permit, appeal procedures. As presented in detail in the Task 2 Evidence base for practical implementation of the legal migration Directives and also highlighted by respondents of the OPC as well as consulted NGOs and diaspora groups, some application issues have been identified with regard to the accessibility to the application procedure, for example when the applicant has to appear more than once in person as part of the application process in third countries where this can only be done centrally, or where consulates are far away. Problems arise also when short deadlines for personal appearance are involved. Furthermore, especially when multiple authorities and/or multiple steps are involved in the application process, around half of Member States, the necessary steps and authorities which need to be contacted are not very well

³⁷⁰ <http://ec.europa.eu/immigration/>

³⁷¹ AT, BG, ES, IT, LU, MT

explained and not easy to follow by third-country nationals in terms of what concrete steps to take.

In terms of fees charged, these vary greatly between the Member States, also proportionally, when considering the fees as a share of the mean monthly gross earnings each Member State. In some Member States, the excessive fees could constitute an application issue.

Similarly to the pre-application phase, the implementation issues of the Directives as highlighted in the Task 2 Evidence base for practical implementation of the legal migration Directives contravene the objective of legal certainty, user-friendliness of the procedure and simplification. In some Member States, there are fast-track procedures for some statuses (such as highly qualified workers as allowed by the BCD) which entails a preferential treatment of some categories of applicants. Some MS also have differentiated charging structure, where a higher fee is charged for a more rapid processing of the applications³⁷².

6.3.4 Entry and travel phase

The entry and travel phase addresses the requirements that third-country nationals need to fulfil in order to enter and re-enter the country of destination, as well as to travel to other Member States, including when a permit is issued in a Schengen state. Practical difficulties encountered by TCNs relate to complex procedures for airport transit visas (e.g. having to be requested and picked up in person), long processing times for transit visas, border guards in transit countries not always easily accepting the fact that the person is travelling to a visa free country. Similarly to the previous phases, all the implementation issues of the Directives as highlighted in the application study contravene the objective of legal certainty, user-friendliness of the procedure and simplification. In this phase, the main needs for prospective applicants include legal certainty and swift administration as part of the procedures and conditions to enter and travel across the EU Member States, as well as the procedures that apply upon arrival in the country of destination.

6.3.5 Post-application phase

The post-application phase includes a number of aspects related to timeframe for delivering the residence permit and any corresponding charges, authorities involved in delivering the permit, charges and duration of first permits.

With regard to the timeframe to deliver permits, most Member States do not have a set timeframe. Where there is a set timeframe, the deadlines are generally respected, and, in some cases, the real average number of days to deliver the permit is even lower than the timeframe allowed. The only exception is Italy, for which the time needed to deliver the permit after the notification can range between 90 and 290 days. This is potentially a practical issue as the residence permit is often needed for accessing other essential public services.

Usually, different authorities are involved in the application and permit issuing procedure, however, in many cases the number of authorities depends on the type of status applied for. In several cases, the number and type of authorities involved in the issuing of permit are different from those involved in the application procedures. This can lead to issues in the practical application.

Similarly to the previous phases, the implementation issues of the Directives as highlighted in the Task 2 contravene the objective of legal certainty, user-friendliness of the procedure and simplification. The very large number of days that may take to obtain the permit impacts negatively on the swiftness and user-friendliness of the

³⁷² For example BG, LV

process. Having multiple authorities be involved in the permit procedure also impacts negatively on the objective of simplification.

6.3.6 Residence phase

The residence phase includes a number of aspects, such as use and renewal of residence permits, changes of status, access to employment, equal treatment and integration requirements.

With regard to **residence permits**, the periods of renewal and the renewal fees differ significantly across Member States and across statuses. Third-country nationals are required to renew their residence documents within a specified timeframe prior to expiry of the permit, ranging from 3-6 months prior to expiry to 60 days after the expiration of permit. In some Member States, failure to renew and/or provide information and documents on time or after a request by the authorities will result in refusal for the permit to be renewed and the applicant will be obliged to leave the Member State. A possible application issue has been identified in Malta in particular with SPD holders who are not allowed to apply for a new permit in case they change employer.

Most commonly, failure to comply with renewal deadline results in illegal stay. In five Member States³⁷³, there is an administrative sanction and in five others States³⁷⁴, failure to renew the permit leads, in addition to the situation of irregularity which may lead to a return decision, also to financial sanctions. Furthermore, the Task 2: Evidence base for practical implementation of the legal migration Directives shows that there are important practical issues in some Member States, especially when it comes to FRD and LTR, including refusals based on public policy, security and health; sickness and disability and financial resources.

All of the above-mentioned application aspects impact very negatively on the objective of legal certainty. Robust safeguards should be in place for third-country national permit holders to protect them from falling into irregularity. Refusals to renew residence permits should only be based on justifiable and reasonable reasons and only where the conditions are no longer met beyond reasonable control of the third-country national.

With regard to **change of status**, a practical obstacle reported by the majority of Member States is that it is difficult to find publically available information and understand the conditions and requirements for status change. This impacts on the objective of legal certainty, user-friendliness and simplification as third-country nationals often struggle to find guidance on how to change their status. Absence of common procedures may also result in the applicants being given different advice by desks in the Member States. Further, the harmonisation objective is also impacted as there are indications that procedures differ across Member States.

The majority of non-EU citizens respondents to the OPC were aware of the possibility of changing their status, and 64% of the respondents agreed that obtaining a change of status was easy. However, **60% of the respondents said that they encountered problems in the procedures when applying for a change of status**. The five most common issues identified when renewing or replacing a residence permit as well as applying for a change of status were: the length of the procedure, insecurity due to delay in receiving the new permit after the first one had expired, the number of documents required, the high costs of the permit, and difficulties getting their qualifications recognised.

The **experience to obtain long-term residence** in the EU seems to be **positively assessed** by respondents, with 74% of those who applied having obtained the long-

³⁷³ AT, DE, HU, NL, MT

³⁷⁴ FI, LT, PL, PT, SI

term resident status. Among the reasons for rejection, respondents mentioned the difficulty to prove five years of continuous and legal residence, the documents required, the lack of uniformity in the rules applied across Member States, the non-recognition of the years spent in another EU MS, and the lack of clear information about the procedures to follow.

With regard to **equal treatment**, firstly there are Directives which do not include any equal treatment provisions, such as the FRD and SD³⁷⁵. Secondly, the Task 2 Evidence base for practical implementation of the legal migration Directives found that some Member States did not comply with equal treatment provisions of the Directive, even though the equal treatment provisions were already 'watered down' by the 'may' clauses. This results in certain equal treatment rights not being (explicitly) guaranteed which may lead not only to uncertainty for TCNs but also to exclusion of TCNs from certain equal treatment rights that are guaranteed by the EU acquis. This is most often the case with regard to social security benefits and access to public goods and services. In some Member States, access to public services is not explicitly granted. Some Member States furthermore do not grant full equal treatment in the first year, due to other legislation than that specifically transposing the Directive, such as the rules on inclusion in the population register only if the intended stay is more than 12 months³⁷⁶.

Two profiles of respondents were asked their views on the extent to which TCNs are treated differently to nationals of the EU country in which they reside: non-EU citizens residing or having resided in the EU, and other respondents.³⁷⁷

The majority of respondents of both categories seem to agree that **TCNs generally receive equal treatment** as compared to nationals of the EU country in which they reside, especially with regard to tax benefits, freedom to join organisations representing workers or employers, advice services provided by employment services, access to education and vocational training, and access to good and services. A lower share of non-EU citizens residing or having resided in the EU reported to never have been treated differently when it comes to social security benefits and working conditions. On the other hand, respondents under the category "Other respondents" seem to believe that non-EU workers are treated differently regarding recognition of qualifications.

6.3.7 Intra-EU mobility phase

As shown by the application study, mobile third-country nationals and their families overall are facilitated if they wish to exercise their right to intra-EU mobility, without needing to acquire entry visa and with the possibility to submit their residence or work (Blue card) applications without having to leave the European Union (either inside the first or second Member State). In comparison, applications by first time applicant under EU directives or equivalent national schemes in most cases need to be lodged outside the EU at the time of the application.

In practice, few Member States have provided for additional facilitations to the procedures and documentation requirements for mobile third country nationals – these include, for example, shorter application processing times, an exemption from need to provide proof of sickness insurance, as well as exemptions from integration measures, proof of accommodation and labour market tests. Compared to EU citizens, who may be only to a "registration regime", procedures and application supporting documents required by mobile third country nationals are part of a "permit regime", i.e. the

³⁷⁵ The FRD and SD do not include provisions on equal treatment. However, equality is ensured by the SPD in certain circumstances, for example if third-country nationals, falling within the scope of the FRD and SD, are authorised to work.

³⁷⁶ SE, Task II report.

³⁷⁷ The category "Other Stakeholders" represents members of academia, NGOs, individuals with personal interest, immigration lawyers, EU-level organisations, and associations.

Member State has the discretion to decline an application. In terms of rights for family members of mobile third country nationals: these are subject to national legislation, and very few Member States make any connection with rights in first Member States.

Short-term mobility, as far as regulated by the current directives is facilitated by the fact only five member states apply any regime for notification and only two for authorisation; only two Member States require additional documents in addition to residence permit and valid travel documents for short term mobility.

- According to consulted TCNs through the OPC and also confirmed by interviews with migration agencies, it appears that third-country nationals who are seeking to move to a second Member State – especially those who wish to move permanently – face a number of challenges in doing so, ranging from the lack of information provided from official sources to the lack of transferability of their social security benefits. For instance, when it comes to students, the non-uniform regulation across the Member States results in different time thresholds as to how much time TCNs can spend abroad for exchange programmes.

6.3.8 End of stay phase

A main challenge for third-country nationals in this phase is having access to and obtaining clear information on the exportability of social security benefits earned during their stay in a Member State. While most Member States do have arrangements in place and concluded bilateral agreements with third countries on this topic, finding information on the scope and modalities of transferring certain social security benefits is a challenge.

Compliance issues were flagged in the transposition and implementation of Article 9(7) of the LTR in certain Member States. This Article provides that a third-country national who loses the long-term status, or the status is withdrawn but does not lead to a removal, should be able to remain in the territory of the Member State concerned if s/he fulfils the conditions provided for in national legislation and/or if s/he does not constitute a threat to public policy or public security. It would appear that five Member States did not transpose this Article and three other Member States partially transposed it which may lead to legal uncertainty for third-country nationals concerned and potentially to removals which are not allowed by EU law.

The situation of third-country nationals who cannot be removed following a return decision is not addressed in a harmonised manner across Member States. Whilst certain Member States provide for a specific residence permit in such situations, in other Member States, this category of third-country nationals is tolerated with unclear rights as to access to basic healthcare, education or access to the labour market.

6.4 EQ 8: To what extent did different external factors influence the achievement of the objectives?

This section explores four categories of external factors and their influence on the achievement of the objectives of the EU legal migration acquis: (i) demographic changes; (ii) socio-economic changes; (iii) security and (iv) environment and climate.

6.4.1 Demographic changes

Demographic changes in the EU and in the countries of origin are directly relevant for the achievement of the objectives of attracting and retaining certain categories of TCNs and addressing labour shortages. The remaining objectives of EU legal migration acquis are only indirectly impacted by demographic changes.

The European Agenda on Migration³⁷⁸ emphasised that EU is facing long-term economic and demographic challenges. The box below depicts the situation to date in the EU and also countries of origin in terms of demographic trends. Due to its aging population, it is estimated that without migration, the EU's working age population will decline by 17.5 million in the next decade. Migration is seen increasingly as an important channel to enhance the sustainability of the welfare system and to ensure sustainable growth of the EU economy. The European Agenda on Migration recognises that to bridge this gap the EU should remain an attractive destination for migrants. Most Member States view migration as part of a wider strategy to address labour shortages. However, they differ in the relative importance that they give to labour migration in comparison to other measures, such as market activation of the current resident population and reforming education and training opportunities. Furthermore, concerns about competition with local workers are voiced in public and policy debates at national level on the wider public perception on migration, especially in view of the recent refugee crisis, and may act as a barrier for Member States to take an active role in managing labour migration on an economic basis.

Based on the current evidence, the rate of migration has not compensated for the decline in the working age population due to ageing or decrease in activity rates due to early retirement or the inactivity of certain labour market groups. Likewise, recent refugee inflows are only suspected to have contributed to a marginal population increase of less than 0.1% of total EU population³⁷⁹. Structurally, as presented in Section 5.1.2.4, only 29% of all residence permits issued in EU-25 in 2016 were issued for economic reasons. Furthermore, Eurostat integration indicators have shown that non-EU-born migrants systematically recorded lower activity rates than the native-born population, with these differences increasing over time. According to data from OECD, a much larger share of the migrants to EU Member States than to OECD countries outside Europe have low levels of educational attainment – the proportions are 40% and 27%, respectively.³⁸⁰

In summary, migration has not reversed the ongoing trend of population ageing and has so far not been able to alone address current labour shortages.

³⁷⁸ COM(2015) 240 final

³⁷⁹ Commission Staff Working Document 2016. Impact assessment.

Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment and repealing Directive 2009/50/EC

³⁸⁰ OECD (2016), Recruiting Immigrant Workers: Europe 2016, OECD Publishing, Paris.
<http://dx.doi.org/10.1787/9789264257290-en>

Situation in destination countries

The population of the European Union has been ageing steadily, showing only modest population growth due to higher levels of migration³⁸¹. In 2016, young people made up 15.6% of the EU's population, with older persons (aged 65 or over) accounting for 19.2% of the population (this reflects an increase of 2.4% compared to 2006)³⁸². Italy (22%), Greece (21.3%) and Germany (21.1%) had the highest share of persons aged 65 or older, with Germany also recording some of the lowest shares of young people (13.2%)³⁸³. The old-age dependency ratio reached 29.3%³⁸⁴ in 2016 compared to 23.2%³⁸⁵ in 2000 across all EU Member States. Activity rates have slightly increased among the working age population (20-64). The EU-28 activity rates of the **native born** population stood at 77.9% in 2016 compared to 75.4% in 2008. At the same time, the activity rates for **migrants born** outside the EU have decreased by 1.3% percentage points between 2008 and 2016, dropping from 74.4% in 2008 to 73.1% in 2016³⁸⁶. The median age of newly arriving migrants to the EU was 28 years compared to a median of 42 across the EU-28 population³⁸⁷.

In 2016, 35.1 million people born outside of the EU-28 were living in an EU Member State, with 4.7 million people having immigrated to one of the EU-28 during 2015. Net inflows of migrants in years 2013-2015 averaging 1.58 million as a consequence of the instability in Northern Africa and the Middle East. Net inflows for the EU as a whole in 2015 (1.8 million) were around 38% higher than the average annual inflows between 2001 and 2015 (1.3 million). A high number of refugees entered the EU in 2015 and 2016. The largest total number of immigrants were reported in Germany (1.5 million), France (369 900), Spain (342 100) and Italy (280 100) in 2015 and 2016 consecutively³⁸⁸. However, based on calculations by the European Commission, only around 45% of asylum applicants were granted international protection, contributing to a population increase of less than 0.1% of total EU population³⁸⁹.

Situation in countries of origin

Population ageing is also occurring in other parts of the world as a result of declining fertility rates and rising life expectancy, increasing migration pressures. All regions have shared a rise in life expectancy between 2000-2005 and 2010-2015, with the life expectancy in Africa rising by 6.6 years between those two time periods³⁹⁰. Between 2010 and 2015, life expectancy in Africa stood at 60.2 years, compared to 71.8 years in Asia, 74.6 years in Latin America and the Caribbean³⁹¹. The population in Africa remains comparatively young to other parts in the world, with children under the age of 15 accounting for 41 percent of the population in 2017³⁹². Latin America and the

³⁸¹ The impact of European demographic trends on regional and urban development (2011). Synthesis report. https://www.mmr.cz/getmedia/ebfd19f5-617f-4615-b6a2-afedf14e1fda/Impact_of_demographic_trends

³⁸² See: http://ec.europa.eu/eurostat/statistics-explained/index.php/Population_structure_and_ageing

³⁸³ Ibid.

³⁸⁴ Ibid.

³⁸⁵ https://www.mmr.cz/getmedia/ebfd19f5-617f-4615-b6a2-afedf14e1fda/Impact_of_demographic_trends

³⁸⁶ Eurostat 2017: http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics

³⁸⁷ European Commission, 2016. Research on Migration: Facing Realities and Maximising Opportunities. https://ec.europa.eu/research/social-sciences/pdf/policy_reviews/ki-04-15-841_en_n.pdf

³⁸⁸ See: http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics

³⁸⁹ Commission Staff Working Document 2016. Impact assessment.

Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment and repealing Directive 2009/50/EC

³⁹⁰ UN 2017. World Population Prospects. The 2017 Revision. https://esa.un.org/unpd/wpp/Publications/Files/WPP2017_KeyFindings.pdf

³⁹¹ Ibid.

³⁹² Ibid.

Caribbean, and Asia, have experienced greater declines in fertility, with children under the age of 15 making up 25 percent and 24 percent of the population, respectively³⁹³. The region has experienced high rates of population growth, which both has increased pressure on local labour markets and competition for resources.³⁹⁴³⁹⁵

Contrary to developments in Africa, declining fertility rates combined with rising life expectancy in Asia and Latin America and the Caribbean, has put pressure on the proportions of the regions' working age population, which are likely to decrease in the coming decades, affecting migration outflows³⁹⁶.

6.4.2 Socio-economic factors

Current developments in the labour markets at EU and global level suggest that socio-economic factors have to an extent influenced the achievement of the specific objectives of attracting and retaining certain categories of TCNs, enhancing the knowledge economy of the European Union, cultural enrichment, boosting competitiveness and economic growth and addressing labour shortages.

The structural changes occurring in the EU labour market have increased the demand for knowledge-intensive, high-manufacturing, and new technological skilled labour. Labour shortages in bottleneck occupations in the EU, which are mainly concentrated in high-skilled and professional areas, such as ICT, medicine, science, technology, engineering and STEM as well as nursing, midwifing and teaching, have so far been met by 15% of new entries by migrants into these strongly growing occupations between 2000-2010.

The EU has increasingly become a hub for international talent. It more than doubled its international student population between 2000 and 2012. However, the EU shows difficulties in competing with non-European OECD destinations. Only 32% of high-educated migrants chose a European OECD destination, according to the latest OECD figures (2016). The difficulties in attracting and retaining high-skilled workers from third countries have been mainly linked to issues with the recognition of qualifications and diplomas, and lengthy administrative recognition procedures

Labour market context

Country of destination

Considerable disparities regarding employment and unemployment levels persist across the EU. Between 2008 and 2015 employment increased more slowly than the population of the age group across the EU Member States³⁹⁷. While Germany (+1.56 million) saw the largest increase in employment, Spain saw the biggest drop (-2.35 million)³⁹⁸. Unemployment levels increased for all education attainments levels, with the exception of Germany and Hungary showing decreases for all three levels between 2008-2015³⁹⁹. The largest unemployment rates were recorded in Greece (from 7.7% in 2008 to 24.9% in 2015), Spain (10.6% to 21.7%) and Cyprus (from 1.3% in 2008 to 11.3% in 2015)⁴⁰⁰. The total share of human health and social work activities (+1.27pp); professional, scientific and technical activities (+0.74pp); and education (+0.61pp) have increased as a total share of economic activities among people aged

³⁹³ Ibid.

³⁹⁴ Gonzales-Garcia, J., Hitaj, E., Mlachila, M., Viseth, A. and Yenice, M. (2016). Sub-Saharan African Migration. Spillover Task Force. International Monetary Fund.

³⁹⁵ Ibid.

³⁹⁶ Zaiceva, A. and Zimmermann, K. (2014). Migration and the Demographic Shift. IZA DP No. 8743. <http://ftp.iza.org/dp8743.pdf>

³⁹⁷ Eurostat, 2017. Employment and labour demand. http://ec.europa.eu/eurostat/statistics-explained/index.php/Employment_and_labour_demand

³⁹⁸ Ibid.

³⁹⁹ Ibid.

⁴⁰⁰ Ibid.

20 to 64 between 2008 and 2015)⁴⁰¹. The sharpest decline was recorded in the manufacturing (-1.73pp) and construction sector (-1.61 pp) over the same period⁴⁰².

Changes in the skills panorama are resulting in a sharp increases in the number of jobs employing highly educated labour (+23%) compared to jobs requiring a medium level of education (+3%) and low level of education is sufficient (-24%)⁴⁰³. According to Cedefop⁴⁰⁴, bottleneck occupations are mainly concentrated in high-skilled and professional areas, such as ICT, medicine, science, technology, engineering and STEM as well as nursing, midwifing and teaching. This is the result of an insufficient supply of upper-secondary and higher education graduates to meet the increasing demand of labour in these professions. Between 2000-2010, new migrants in the EU represented 15% of the entries into strongly growing occupations, such as science, technology and engineering as well as health and education professions⁴⁰⁵. The skill shortages for healthcare professionals is particularly concerning given Europe's ageing population, which increases the demand for social care and medical services. Despite the emigration of healthcare professionals from countries that joined the EU after 2004, such as Bulgaria, Hungary and Slovakia, intending to find better working conditions, in particular as regards higher wages, many Member States face great difficulties in recruiting and retaining healthcare professionals from abroad, according to Cedefop. This includes Member States such as Austria, Denmark, Croatia, Germany, Latvia and Luxembourg.

Surplus occupations have been concentrated in specific sectors, such as construction and agriculture⁴⁰⁶. However, against the backdrop of the financial crises and rising production costs, businesses have moved their production outside of Europe, reducing the number of manual jobs. Likewise, increased digitisation has replaced many jobs, both in the manufacturing and services sector (e.g. clerical jobs).

Technological change and knowledge economy

The structural changes occurring in the EU labour market have increased the demand for knowledge-intensive, high-manufacturing, and new technological skilled labour with overall unemployment levels remaining high with differences across the EU Member States⁴⁰⁷. With a growing global talent pool, the number of 25-34 year olds with higher education (tertiary) degrees rose from 90 million in 2000 to 130 million in 2010^{408 409}. While the global labour market is absorbing the growing surplus as the demand for highly-skilled workers for the knowledge economy grows, both in high-income and middle-income countries⁴¹⁰, Europe is increasingly competing on a global scale to attract talent with highly developed economies in the North America and Australia as well as emerging economies such as the Gulf, Singapore and China⁴¹¹

⁴⁰¹ Ibid.

⁴⁰² Ibid.

⁴⁰³ Commission Staff Working Document. Impact Assessment. Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skills employment and repealing Directive 2009/50/EC

⁴⁰⁴ Cedefop (2016). Briefing note. Skill shortages and surplus occupations in Europe.

⁴⁰⁵ Commission Staff Working Document. Impact Assessment. Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skills employment and repealing Directive 2009/50/EC

⁴⁰⁶ Cedefop (2016). Briefing note. Skill shortages and surplus occupations in Europe.

⁴⁰⁷ Commission Staff Working Document. Impact Assessment. Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skills employment and repealing Directive 2009/50/EC

⁴⁰⁸ OECD and EU (2016), Recruiting Immigrant Workers: Europe 2016, OECD Publishing, Paris.

<http://dx.doi.org/10.1787/9789264257290-en>

⁴⁰⁹ Ibid.

⁴¹⁰ Hunt, J. (2010). Skilled immigrants' contribution to innovation and entrepreneurship in the US. Open for Business: Migrant Entrepreneurship in OECD Countries, PECD Publishing, Paris.

⁴¹¹ Rinne, U. (2012). The Evaluation of Immigration Policies. ZA Discussion Paper.

EU has become more attractive to international students by more than doubling its international student population between 2000 and 2012⁴¹². In 2012, there were 855 000 third-country national studying in an EU Member State; almost one in three was studying in the United Kingdom⁴¹³, followed by France (200 000) and Germany (128 000). Most students originated from Asia. In 2012, the largest number of international students in OECD and EU Member States came from China in 2012 (590 000) and India (170 000). Despite these positive trends, global figures show that international students are largely concentrated in two countries: the UK (10%) currently has the second highest share of international students globally, after the United States (13%) (OECD 2013).

While the share of highly qualified workers to the EU as a share of total migration has increased from 15 percent in 1991 to more than a quarter in the 2000s⁴¹⁴, current figures suggest that the EU seems less effective in attracting and retaining talents. According to OECD figures (2016), 68% of high-educated migrants chose a non-European OECD destination⁴¹⁵. Recognition of qualifications and diplomas, and lengthy administrative recognition procedures have been stated as being one of the major obstacles in attracting and retaining third-country nationals⁴¹⁶. According to Moreno (2013)⁴¹⁷, highly-skilled workers such as researchers have primarily targeted certain regions in North-West Europe, including Germany, Austria, Switzerland and Denmark. He suggested that those regions, which are characterised by strong knowledge and innovation clusters, have obtained the highest returns on incoming and circulating qualified migrants.

Working and living conditions

Working and living conditions may present additional drivers for migration. According to Gallup World Poll, the EU rates high on factors of attractiveness for migrants, which relate to welfare and healthcare system as well as the level of wages⁴¹⁸. This has been supported by calculations made by the OECD, which developed a composite indicator for each decade between 1820 and 2000, illustrating the relationship between well-being and the size of bilateral migration flows⁴¹⁹. The well-being indicator is composed of an equally weighted average of several indicators, including GDP per capita, real wages, inequality, life expectancy, education etc.⁴²⁰. The results indicated that high-income countries have the highest level of well-being, potentially providing another pull factor for migration. However, current evidence suggests that the importance of different countries' welfare and health care systems as a pull factor

⁴¹² OECD and EU (2016), Recruiting Immigrant Workers: Europe 2016, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264257290-en>

⁴¹³ OECD and EU (2016), Recruiting Immigrant Workers: Europe 2016, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264257290-en> UK does not implement the EU legal migration Directive, however it is not possible to deduct that their success in attracting foreign students is due to legal migration laws, given the importance of other factors such as language and colonial ties in attracting students.

⁴¹⁴ IOM, 2008. World Migration 2008: Managing Labour Mobility in the Evolving Global Economy. Geneva: International Organisation for Migration.

⁴¹⁵ Senne, J.-N. and David, A., (2016). General Context and Contribution of Labour Migration in Europe, OECD.

⁴¹⁶ Carrera, S., Guild, E. and Eisele, K. (eds), 2014. Rethinking of Attractiveness of EU Labour Immigration Policies: Comparative Perspectives on the EU, the US, Canada and Beyond. Centre for European Policy Studies. http://aei.pitt.edu/57311/1/RETHINKING_LABOUR_IMMIGRATION_POLICIES_withcover.pdf

⁴¹⁷ MIPEX (2015) International Key Findings. www.mipex.eu (accessed 04 September 2015). Moreno, R. (2013) High-Skilled Workers' Mobility: Policy Implications from the Evidence Observed in Europe. Barcelona: University of Barcelona, AQR-IREA Research Group, European Policy Brief

⁴¹⁸ Commission Staff Working Document. Impact Assessment. Proposal for a Directive of the European Parliament and the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skills employment and repealing Directive 2009/50/EC

⁴¹⁹ OECD and EU (2016), Recruiting Immigrant Workers: Europe 2016, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264257290-en>

⁴²⁰ Ibid.

for migration is weak⁴²¹. Robinson and Segrott (2002)⁴²² conducted a study with 65 asylum seekers to explore how and why they had chosen to migrate to the UK. While feeling from persecution, violence or threats of violence were put forth as the main reasons for leaving their home country, little evidence suggested that entitlements to benefits in the UK or the availability of work in the UK played a significant role⁴²³. There was also no evidence in support of respondents having particular knowledge of immigration or asylum procedures or differences in labour market and social policies between European countries⁴²⁴.

Cultural context

Contemporary research stressed the importance of transnational contacts abroad or diaspora networks as another contributing factor to both regular and irregular migration⁴²⁵. Migrants' decision and capacity to migration may be influenced by social networks present in the destination countries⁴²⁶. This is due to the fact that diaspora networks facilitate exchange of information and provide access to local markets, investment opportunities and social contacts in the host and home country⁴²⁷. According to de Haas (2011), "migration processes tend to become partly self-perpetuating, leading to the formation of migrant networks and migration systems"⁴²⁸. There is currently an evidence gap concerning migrant social networks in Europe, in particular as regards migrants coming from the MENA and Sub-Saharan African region, which have constituted a majority in recent years⁴²⁹. At present, diaspora communities across EU Member States remain weak⁴³⁰. For example, the largest Afghan diaspora community with 125 000 people is situated in Germany and is only twice the size of the next biggest diaspora community⁴³¹.

Country of origin

Africa and Asia represent the largest number of migrants to the EU⁴³². Current developments in the African economy indicate relatively weak economic growth compared to the average growth rate achieved over the past decade⁴³³. The regional economy expanded only by 2 percent in 2016, with the growth rate reaching 2.3 percent in 2017⁴³⁴. Labour force growth has resulted in an increase in the number of unemployed, in particular in Sub-Saharan Africa where the unemployment rate was at

⁴²¹ ODI, 2015. Why people move: understanding the drivers and trends of migration to Europe. <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf>

⁴²² Robinson, V. and Segrott, J., 2002. Understanding the decision-making of asylum seekers.

⁴²³ Ibid.

⁴²⁴ Ibid.

⁴²⁵ Kuznetsov, Y. and Sabel, C (2006). International Migration of Talent, Diaspora Networks and Development: Overview of Main Issues in Kuznetsov, Y (ed.). *Diaspora Networks and the International Migration of Skills. How Countries Can Draw on Their Talent Abroad*. The World Bank, Washington, DC, pp. 3-20.

⁴²⁶ ODI, 2015. Why people move: understanding the drivers and trends of migration to Europe. <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf>

⁴²⁷ Kuznetsov, Y. and Sabel, C (2006). International Migration of Talent, Diaspora Networks and Development: Overview of Main Issues in Kuznetsov, Y (ed.). *Diaspora Networks and the International Migration of Skills. How Countries Can Draw on Their Talent Abroad*. The World Bank, Washington, DC, pp. 3-20.

⁴²⁸ De Haas, H. 2011. The determinants of international migration. Conceptualizing policy, origin and destination effects (IMF Working Paper No. 32), DEMIG project paper no. 2., University of Oxford.

⁴²⁹ ODI, 2015. Why people move: understanding the drivers and trends of migration to Europe. <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/10157.pdf>

⁴³⁰ Parkes, R., 2015. Migration: new 'push' and 'pull' dynamics. European Union Institute for Security Studies. https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_34_Migration.pdf

⁴³¹ Ibid.

⁴³² OECD and EU (2016), *Recruiting Immigrant Workers: Europe 2016*, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264257290-en>

⁴³³ World Employment Social Outlook (2017), International Labour Organisation.

http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_541211.pdf

⁴³⁴ Ibid.

28 million in 2016⁴³⁵. Poor quality employment, however, remains the main labour market challenge for this region⁴³⁶. The region is characterised by a lack of sufficient productive opportunities combined with rapid population growth in the working-age population. Despite marginal decreases in extreme working poverty⁴³⁷ (from 29.3% in 2016 to 28.2% in 2017), Africa – in particular due to trends in Sub-Saharan Africa –, is performing poorly with regard to moderate working poverty⁴³⁸, which has increased from 28.3% in 2016 to 28.7% in 2017⁴³⁹.

Asia and the Pacific account for 60 percent of the global workforce⁴⁴⁰. Current growth rates in Asia and the Pacific region continue to be strong (over 5%). The growth in employment reflects structural labour market changes in the region, with a transfer of capital and labour from low to higher value added sectors⁴⁴¹. Since 2008, employment in the agriculture has been shrinking and has been offset by growth in employment in services and industry⁴⁴². While the quality of jobs has improved, investment in educations and skills development for the most vulnerable groups remains a crucial issue and may be potential grounds for out-migration, in particular in China.

6.4.3 Security factors

Security factors also have to an extent influenced the EU legal migration acquis to date. With continued political upheaval, the total number of refugees peaked at 16.1 million at the end of 2015. While the vast majority of refugees was accommodated by neighbouring countries, refugee flows increased to Europe in 2015 and 2016. 3.4 million first residence permits were issued in the European Union to non-EU citizens in 2016, increasing by 28% compared to the earliest recorded figures in 2008 – namely 2.53 millions (an increase of 735 000 residence permits)⁴⁴³. The increase was largely due to 64% of first permits being issued for 'other reasons' such as international protection and humanitarian status⁴⁴⁴.

Country of origin

Current research suggests that overall levels of conflict have been declining over the past two decades⁴⁴⁵. Intrastate conflict and low-intensity violence has been decreasing, however, less decisive than for interstate conflict and has shown an upward trend in recent years. Current projections estimate that intrastate conflicts will gradually decline to below ten conflicts per year by 2040 (compared to above 20 conflicts per year in 2015)⁴⁴⁶.

The Middle East, with its recent political upheaval and conflict, has seen the largest increase in forced displacement in recent years⁴⁴⁷. According to the UNHCR (2016), half of the world's current refugees come from Syria, Afghanistan and Somalia, with

⁴³⁵ Ibid.

⁴³⁶ Ibid.

⁴³⁷ Individuals who live on less than US\$1.90 per day.

⁴³⁸ Those living on US\$1.90 and US\$3.10 per day.

⁴³⁹ World Employment Social Outlook (2017), International Labour Organisation.

http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_541211.pdf

⁴⁴⁰ World Employment Social Outlook (2017), International Labour Organisation.

http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_541211.pdf

⁴⁴¹ Ibid.

⁴⁴² Ibid.

⁴⁴³ Eurostat, 2017. Residence permits for non-EU citizens.

<http://ec.europa.eu/eurostat/documents/2995521/8456381/3-16112017-BP-EN.pdf/e690a572-02d2-4530-a416-ab84a7fcbf22>

⁴⁴⁴ Ibid.

⁴⁴⁵ Szayna, O'Mahony, Kavanagh, Watts, Fredreick, Norlen, Voorhies (2017), Research Report, Rand Corporation (2017). Conflict trends and conflict drivers - An empirical Assessment of historical conflict patters and future conflict projections.

⁴⁴⁶ Ibid.

⁴⁴⁷ Guehenno, J. M (2016). Conflict is Key to Understanding Migration.

<http://carnegieeurope.eu/strategieurope/?fa=63578>

the number of refugees totalling at 16.1 million and the number of asylum seekers at 3.2 million at the end of 2015⁴⁴⁸. The vast majority of refugees sought refuge in neighbouring countries: 87% of refugees are accommodated in low- and middle-income countries (Turkey, Pakistan and Lebanon host the largest numbers of refugees)⁴⁴⁹. Recent flows to Europe, however, show a slight shift towards high-income countries⁴⁵⁰. 3.4 million first residence permits were issued in the European Union to non-EU citizens in 2016 compared to 2.53 millions in 2008⁴⁵¹. First residence permits were primarily issued on the basis of 'other' 'other reasons' such as international protection and humanitarian status⁴⁵².

6.4.4 Environmental factors

As presented in the Relevance section, displacement based on environmental degradation and/or climate change is likely to become a strong driver of migration as effects of climate change become more pronounced over the coming decades. The likely impacts of environmental factors are reviewed in detail under question E1F.

When examining the relationship between environmental change and migration, it is important to distinguish between long-onset and acute, episodic or disaster-related environmental impact and their possible implications on migration patterns⁴⁵³. Slow onset migration is frequently caused by depletion of resources, deforestation, desertification and pollution compared to acute onset or episodic environmental degradation, which may alter typical migration patterns⁴⁵⁴. The latter have grown in frequency and have been caused by increased energy within the climate system⁴⁵⁵. Suhrke (1993) suggests that sudden or extreme environmental degradation, such as temperature rises, floods, droughts, crop loss, and soil degradation, prompts distress migration⁴⁵⁶. Distress migration occurs in areas where food security is low and the capacity of the state is limited⁴⁵⁷ and is viewed as a means of risk diversification for rural households⁴⁵⁸.

Research findings⁴⁵⁹ suggest that localised shocks to agriculture have led to upsurges in migration flows. The study examined weather variations between 2000 and 2014 in 103 source countries translated into asylum application to the European Union, which averaged 351 000 per year⁴⁶⁰. Missirian and Schlenker (2017) found that a deviation in temperature of 20 degrees Celsius in a country's agricultural region during its growing season increased the likelihood of people seeking refugee abroad. These findings add to a growing body of literature on weather-induced conflicts.

⁴⁴⁸ What's Driving the Global Refugee Crisis? (September 2016). Commentary. International Crisis Group. <https://www.crisisgroup.org/global/what-s-driving-global-refugee-crisis>

⁴⁴⁹ OECD (2017) Perspectives on Global Development (2017). International Migration in a Shifting World.

⁴⁵⁰ Ibid.

⁴⁵¹ Eurostat, 2017. Residence permits for non-EU citizens.

<http://ec.europa.eu/eurostat/documents/2995521/8456381/3-16112017-BP-EN.pdf/e690a572-02d2-4530-a416-ab84a7fcbf22>

⁴⁵² Ibid.

⁴⁵³ Refugee Studies Centre (2008). University of Oxford. Environmentally displaced people. Understanding the linkages between environmental change, livelihoods and forced migration.

<https://www.rsc.ox.ac.uk/files/files-1/pb1-environmentally-displaced-people-2008.pdf>

⁴⁵⁴ Ibid.

⁴⁵⁵ Ibid.

⁴⁵⁶ Suhrke, A. (1993). Pressure Points: Environmental Degradation, Migration and Conflict. CMI.

<https://www.cmi.no/publications/file/1374-pressure-points-environmental-degradation.pdf>

⁴⁵⁷ Raleigh, C. (2010). Political Marginalization, Climate Change, and Conflict in African Sahel States. *International Studies Review* (2010) 12, 69–86. <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2486.2009.00913.x/pdf>

⁴⁵⁸ Avis, W. R. (2017). GSDRC. Scoping study on defining and measuring distress migration.

<http://www.gsdrc.org/wp-content/uploads/2017/04/HDR1406.pdf>

⁴⁵⁹ Missirian, A. and Schlenker, W. (2017). Asylum applications respond to temperature fluctuations.

Science, Vol. 358, Issue 6370, pp. 1610-1614. <http://science.sciencemag.org/content/358/6370/1610>

⁴⁶⁰ Ibid.

However, to what extent disasters instigate migration does not only depend on the frequency and severity of the disaster, but also on how vulnerable the affected population is as a function of their political, economic and social context⁴⁶¹.

While it is widely accepted that population movements will follow disasters and chronic environmental degradation, it remains unclear which form such migration patterns will take⁴⁶². Some research suggests that the relationship between environmental degradation and migration is far from deterministic. According to Beine and Parsons (2013)⁴⁶³, a direct relationship between either short-run or long-run climatic change on international migration cannot be drawn. Instead Beine and Parsons argue that environmental change tends to result in shorter, temporary, internal movements⁴⁶⁴. New Economic of Labour Migration theories similarly suggest that ecological disaster often result in internal rather than international displacement, causing temporary displacement⁴⁶⁵. How the affected population responds and adapts to environmental change thus determines migration patterns⁴⁶⁶.

In summary, although there are studies already showing the effect of climate change, it is very difficult to estimate the exact impact this has had on the objectives of the legal migration acquis.

⁴⁶¹Raleigh, C., Jordan, L. and Salehyan, I. Assessing the Impact of Climate Change on Migration and Conflict. The Social Development Department. World Bank. http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/SDCCWorkingPaper_MigrationandConflict.pdf

⁴⁶²Ibid. See also: European Commission, 2015. Migration in response to environmental change. http://ec.europa.eu/environment/integration/research/newsalert/pdf/migration_in_response_to_environmental_change_51si_en.pdf

⁴⁶³ Beine, M. And Parsons, C. (2013). Climatic factors as determinants of international migration. https://www.michelbeine.be/pdf/Beine_Parsons_revised.pdf

⁴⁶⁴ Beine, M. And Parsons, C. (2013). Climatic factors as determinants of international migration. https://www.michelbeine.be/pdf/Beine_Parsons_revised.pdf

⁴⁶⁵ Avis, W. 2017. Scoping study on defining and measuring distress migration. <http://www.gsdc.org/wp-content/uploads/2017/04/HDR1406.pdf>

⁴⁶⁶ European Parliament, 2011. "Climate refugees" Legal and policy responses to environmentally induced migration. http://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/462422/IPOL-LIBE_ET%282011%29462422_EN.pdf

7 Efficiency

Efficiency refers to the extent to which the desired effects of an intervention are achieved at a reasonable cost. In the framework of legal migration policy and the 'fitness' of EU legislation, efficiency is about whether the EU legislation leads to lower 'friction' or migration costs in all steps of the migration process, and whether it maximizes benefits to the various stakeholders in the migration process.

EQ 9: Which type of costs and benefits are involved in the implementation of the Legal migration Directives?

EQ 10: To what extent did the implementation of the Directives led to differences in costs and benefits between Member States? What were the most efficient practices?

The main sub-questions in the efficiency section as listed in the evaluation framework include:

- EQ 9A: How are the main costs and benefits related to the implementation of the legal migration directives distributed among stakeholders? How is this distribution affected by the implementation choices made by Member States?⁴⁶⁷
- EQ 9B: What factors drive the costs and benefits and how are the factors related to the EU intervention?
- EQ 10A: For each step of the migration chain, are there elements where there is scope for more efficient implementation? To what extent have the implementation options provided by the Directives and as chosen by MS influenced the efficiency of their implementation?
- EQ 10B: Based on the legal migration acquis as implemented in the MS (for the three main Directives): - What factors influenced the efficiency with which the way legal migration is managed by the Member State? - If there are significant differences in costs (or benefits) between Member States, what is causing them?
- EQ 10C: Is there potential for further streamlining of the current EU legal framework taking into account administrative burden?
- EQ 10D: Compare the costs and benefits between Member States for implementing legal migration Directives, including administrative costs, taking into account the implementation choices made and compare, if relevant, costs and benefits with other countries not implementing the Directives.

The study specifications indicate that the efficiency questions of the fitness check should only address those legal migration Directives that have been implemented for at least 3 years at the start of the study. This concerns three Directives: the LTR Directive, the FRD and the SPD. The BCD is only addressed partially in this section as an assessment of this Directive has already been conducted⁴⁶⁸. The SD and RD (prior to their recast) are also partially addressed, drawing on earlier implementation reports and the impact assessment on the recast S&RD.

The following sections are divided according to the sub-questions. In each section, an overview table provides the key conclusions. Key points precede each sub-section

⁴⁶⁷ Whilst some aspects of the overall cost and benefits of migration in a macro-economic perspective are analysed below (impact labour market, fiscal costs and benefits, etc), the scope of this Fitness Check was primarily to evaluate the efficiency of the implementation of the Directives.

⁴⁶⁸ ICF (2016) Study for an impact assessment on a proposal for a revision of the Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment ("EU Blue Card Directive"), Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/legal_migration/final_report_en.pdf (Access 14.2.2018)

including the most important results, before detailed results per question are shown. The answers to questions EQ9A and EQ10D are combined due to the significant overlap in the response to these questions.

7.1 EQ9A: How are the main costs and benefits related to the implementation of the legal migration directives distributed among Stakeholders? How is this distribution affected by the implementation choices made by Member States? and EQ10D Compare the costs and benefits between Member States for implementing legal migration Directives, including administrative costs, taking into account the implementation choices made and compare, if relevant, costs and benefits with other countries not implementing the Directives.

Research question	Sources of information	Key conclusions
EQ9A: How are the main costs and benefits related to the implementation of the legal migration directives distributed among Stakeholders? How is this distribution affected by the implementation choices made by Member States?	1A Contextual analysis: review and stock-take of existing sources of relevant literature at EU, national and international levels	The legal migration acquis resulted in a number of benefits to EU economy and society, employers, and migrants. It positively affected the economy and labour markets. In the short term it also contributed to improved demographic structure. Equal treatment provisions introduced with four of the directives represented a benefit both to third country migrants and EU societies.
	1Bii Contextual analysis: overview and analysis of legal migration statistics.	
EQ10D: Compare the costs and benefits between Member States for implementing legal migration Directives, including administrative costs, taking into account the national implementation choices made and compare, if relevant, costs and benefits with other countries not implementing the Directives.	1Ci Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives	The EU directives resulted in fiscal benefits (tax contributions by third country migrants) and costs (government expenditure to provide equal treatment). In most countries the net effect of these was most likely positive.
	1Cii Contextual analysis: Intervention logics: External Coherence of the EU legal migration Directives	The directives resulted in administrative costs and benefits to government administrations, as well as cost to applicants (migrants and employers). The costs to administrations represented insignificant share of government spending. Costs to migrants to obtain permits for the different directives were estimated to be between EUR 396 million and EUR 832 million, and between EUR 66 million and EUR 132 million to employers (in 2016).
	Contextual analysis : Intervention logic : Directive specific paper	
	3Ai Public and stakeholder consultations: EU Synthesis Report	The Directives contributed to a simplified approach and harmonised admission procedures, making the legal migration process more efficient many Member States.
	3Aii Public and stakeholder consultations: OPC Summary Report	
	4c Economic analysis	

7.1.1 Types of costs and benefits

This section examines the costs and benefits linked to the Legal migration acquis. There are broadly three categories of costs and benefits linked to the legal migration directives:

Administrative costs and benefits – the process of the implementation of each of the directives generates costs for all stakeholders in the process: (1) the government administration responsible for reviewing the application and issuing of permits and visas (staff costs to review, adjudicate applications, and issue permits, overhead, capital expenditure for equipment and software, training costs, cost of appeals) (2) the third country national or their families (payment of permit fees, time and expense to gather all the documents needed to satisfy the application conditions) and (3) the employer or university (human resources, legal, other fees to apply on behalf of third country nationals).

The cost for employers and third-country nationals who participate in the application process also have numerous components. These may include the following:

- Permit application fee
- Permit card fee
- Residence permit fee
- Other fees (e.g. postal or 'biometric data processing fees') – detailed information is provided in the response to Q10A below.
- Cost of time to collect necessary documents from other institutions / prepare application
- Translations fees (detailed information is provided in Q10A below)
- Certification fees
- Legal fees for external legal council
- Fees for acquiring other required documents (e.g. copies of birth certificates; criminal record affidavits)
- Travel expense to consulates or other institutions
- Entry visa fees
- Sickness insurance
- Renewal fee (for permits or for residence cards)
- Training of in-house HR staff for familiarisation with new directives
- costs for 'qualifying' to recruit third-country nationals (e.g. recognised sponsorship scheme fee in NL)

These costs differ according to:

- Directive / type of permit
- Member State (fees / additional fees / types of documents vary)
- Country of origin of migrant
- Type of applicant (business vs migrant)

The **benefits** related to the administrative process include the income from permit or other fees collected by the administration, as well as the reduction in costs, as well as fees, following the introduction of simplification procedures, such as the ones associated with the SPD.

Fiscal costs and benefits are the result of the employment of third country nationals and the equal treatment provisions that four of the examined Directives (LTR, RD, BCD, SPD) have. The fiscal impact of third country nationals in the EU could be direct or indirect.⁴⁶⁹ The **direct fiscal impact** includes fiscal contributions by third country nationals (which is a benefit to EU societies) and the government's public expenditures (which results in a benefit to the third country national). The direct fiscal expenditures include government transfers to migrant households (or households where one of the members is a third-country national) such as: family and children related allowances; social assistance payments; housing allowance; unemployment benefits; pensions / old age benefits; disability benefits; education related allowance / scholarships. Fiscal contributions, or transfers from third country nationals to the government, include income taxes (including corporate income tax by migrant entrepreneurs), social security contributions, health coverage, or local taxes. **Indirect fiscal impact** of migrants may include indirect taxes paid by migrants via consumption (e.g. VAT or excise tax payments when they make purchases), as well as 'consumption' or use of social services, such as healthcare, education, or active labour market policies, the judicial system, etc.

Wider economic and social costs and benefits linked to legal migration

include: (1) impact on the economy and economic growth, on competitiveness, research and innovation⁴⁷⁰; on **labour markets**, on employment, and on labour productivity.⁴⁷¹

- **The directives, especially the equal treatment provisions or family reunification provisions also impact** social cohesion and integration in the EU, but may also impact social cohesion and families in countries of origin with high-rates of emigration.⁴⁷²
- **All directives have contributed improvement in EU's demographic situation:** increasing the working age population, and improving the dependency rate – the ratio of working age-population to the total population.

A thorough assessment of the wider social and economic costs and benefits of the legal migration acquis, as well as the economic impact of the directives warrants a separate study. The broader social and economic impact assessment, including assessment of fiscal impacts is outside the scope of the Fitness Check, and Annex 4c, provides a high-level overview of the types of costs and benefits generated by the Directives.

7.1.2 Attributing costs to the legal migration acquis

Before discussing in more depth the various costs and benefits linked to the legal migration acquis, an important methodological issue needs to be raised. Any cost or

⁴⁶⁹ OECD (2013) 'The Fiscal Impact of Migration in OECD Countries' in *International Migration Outlook*, pp.125-189

⁴⁷⁰ OECD (2014), "Is migration good for the economy", *Migration Policy Debates* May 2014

⁴⁷¹ Sébastien, J., Orsetta, C., Jiménez, M. and Wanner, I, (2010) Migration and Labour Market Outcomes in OECD Countries, *OECD Journal: Economic Studies Volume 2010*; West, D. (2011) The Costs and Benefits of Immigration, *Political Science Quarterly*, Volume 126, Issue 3 Fall 2011, Pages 427–443; European Migration Network (2015) Determining labour shortages and the need for labour migration from third countries in the EU: Synthesis Report for the EMN Focussed Study 2015; Reymen et al. (2015) Labour Shortages in the European Union – Study for the EMPL Committee, [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542202/IPOL_STU\(2015\)542202_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/542202/IPOL_STU(2015)542202_EN.pdf)

⁴⁷² Dilip Ratha, Sanket Mohapatra and Elina Scheja (2011), Impact of Migration on Economic and Social Development: A review of evidence and emerging issues; World Bank Papers, <https://elibrary.worldbank.org/doi/abs/10.1596/1813-9450-5558> (Accessed 3.8.2017); World Economic Forum (2017) Migration and Its Impact on Cities, http://www3.weforum.org/docs/Migration_Impact_Cities_report_2017_low.pdf

benefit estimate regarding EU's legal migration acquis needs to recognise and take into account the fact that national migration schemes for all categories of third-country nationals existed in some shape and form prior to the adoption of each of the directives. Even if there were no separate schemes in some MS of 'highly skilled'⁴⁷³ workers, such workers had been working in Member States. These national schemes or domestic migration laws themselves generated migration flows, and continue to generate, costs and benefits to Member States. The introduction of the EU acquis in some cases simply substituted the costs or benefits that national schemes generated. For Member States that chose to preserve their parallel schemes, potentially the EU directives increased their costs, as personnel and IT systems needed to be trained and adapted to handle the new schemes.

In order to assess the value that has been added by the EU migration acquis over the pre-existing or co-existing national schemes, as a minimum 'before and after' data of the number of permits for various categories is needed. Before and after time-series data on student, researchers, family members, or long-term residents prior to the introduction of the respective directives, or respectively from Eurostat prior to Regulation 862/2007⁴⁷⁴, is not available. Pre-2008 OECD data is available only for some countries and for some categories of third-country nationals. For instance, OECD data on first permits for family reasons, issued prior to the adoption of the Directive in 2003 is only (partially) available for 5 EU MS (PT, DE, NL, FR, SE).

7.1.3 Economic and social costs and benefits.

7.1.3.1 Labour market impacts

The EU Directives result in a range of labour market and economic benefits to EU societies. These benefits differ according to the directive and the Member State. The key types of benefits are the following:

- **Impact on labour supply:** the three Directives (BCD, SPD, SWD, RD) are each tools to facilitate the entry of third-country nationals to the EU labour markets. The impact of third-country migrants on labour markets across the EU varies significantly between countries and between different occupations. The impact on net employment growth by third country nationals has been most pronounced in highly qualified professions (ICT, science, business and legal occupations) as well as in low-qualified occupation, such as cleaners and personal services workers – in all cases contributing to less than 2 percentage points of the net changes.⁴⁷⁵
- The three directives (BCD, SPD, SWD) have provisions to **manage economic migration flows** through the possibility to apply volumes of admission; The Union preference principle, requiring employers to give preference to EU citizens over third-country nationals when filling a post, and labour market tests, which examine the extent to which there are labour shortages that would justify hiring third-country nationals (relevant for the Directives regulating admission for the purposes of economic migration), when applied properly, could be used to better 'point' the 'supply' of third-country nationals to sectors where needs are the highest;

⁴⁷³ For instance, only 12 Member States had pre-existing schemes for highly-skilled workers, and only 3 had scheme for researchers. These schemes later became in many cases 'parallel schemes'.

⁴⁷⁴ Regulation (EC) no 862/2007 of the European parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers

⁴⁷⁵ Op. cit. Meghnagi (2018), p.25

- Impact on the size of the labour force and on filling the gap in **labour shortages**. All Directives, as long as they make the EU more attractive labour migration destination can contribute to easing labour shortages. However, linking migration policies to labour market needs is a difficult process and can only be one of many policy measures “to address both the existence and the root causes of labour and skill shortages”.⁴⁷⁶
- Impact of migration on local wages – there have been safeguards in BCD or SWD against negative effects (e.g. suppressing local salaries).
- Impact on **employment and unemployment** rates of the native population: while the Directives’ main objective is to reduce labour shortages and positively impact employment rates, studies on impact of migration on local labour market employment and unemployment rates, shows that impact may be in some cases negative, (i.e. increasing unemployment rates of the resident population).

A table presenting a summary of some studies on the impact on the EU economies from more generally from migration, is provided in Appendix 3 to Annex 4c.

7.1.3.2 Competitiveness, economic growth and the knowledge economy

Boosting competitiveness, economic growth and the knowledge economy is a specific objective for BCD, ICT and SRD. Attracting highly qualified workers is widely believed to lead to boosting economic growth, competitiveness and knowledge economy, not only through the increasing the workforce of highly qualified workers and gaining human capital but also through multiplier effects on GDP, as for example the local workforce may learn from the highly qualified TCN and as they meet a demand which in turn may also lead to an increased need for complementary medium and lower skilled labour. Also in the longer term, by increasing demand, they also contribute to firms and production to expand⁴⁷⁷.

A relatively low number of Blue Cards have been issued in the EU (2014 – 5,825; 2015 – 4,908 and 2016 – 8,907) with a significant share issued by Germany.⁴⁷⁸ Given the low number of Blue Cards issued it is unlikely that the BCD has contributed to a significant extent to boosting of competitiveness, economic growth and enhancing the knowledge economy.

With regard to ICT and SRD, given the recent adoption of these Directives, it is too early to include them in this analysis. Although too early to assess their effects, the ICT and S&RD are expected to make a positive contribution to this objective (also considering that contrary to the BCD, no parallel schemes are allowed under these Directives).

7.1.3.3 Harmonisation – minimum standards

One of the key intended benefits of the legal migration acquis was the creation of a **level playing field** in the EU, through the approximation and harmonisation of Member States' national legislation and establishing common admission criteria and conditions of entry and residence for TCNs. By offering similar procedures, conditions and standards, this was expected to make the EU a more attractive migration destination and to bring related economic benefits. The research undertaken as part of

⁴⁷⁶ IOM (International Organization for Migration) (2012). *Labour shortages and migration policy*

⁴⁷⁷ Amelie F. Constant, IZA world of labour (May 2014). *Do migrants take the jobs of native workers?*

⁴⁷⁸ Eurostat data on first residence permits issued to highly skilled workers is available, however many Member States do not report such data as they do not disaggregate the skill levels of the residence permits and thus, it is not possible to establish the share of EU Blue Cards of all residence permits issued to highly skilled workers. The following Member States have not issued Blue Cards in the period 2011-2016: BE, EL and CY.

this evaluation however showed that there continues to be substantial variation in the rules concerning admission procedures across the Directives, while the 'may clauses' and the different interpretations of 'shall' clauses result in different standards across EU countries.

7.1.3.4 Simplified administrative procedures

The EU Directives are considered to have ***simplified administrative procedures for some Member States***, merging the various national procedures or reducing the duration of such procedures. On the one hand this gives rise to direct reduction of costs to applicants, and potentially creates some economic benefits (from shortened time for administrative time, and increased time for employment, which in turn results in fiscal and economic benefit to the host society. Indirectly, this may lead to increase the attractiveness of the EU for TCNs when taking the decision to migrate, even if it does not create new channels of entry.

The Impact Assessment delivered in 2007⁴⁷⁹ assessment showed that more than half of MS (CY, DE, EE, EL, ES, FI, FR, IT, NL, PT) had a single application procedures, in some MS (DE, EE, EL, ES, FI, FR, IT, PT) took the form of a residence permit allowing access to the labour market. Therefore, cost-savings were associated only be realised in countries without such a procedure (AT, BG, BE, CZ, LT, LV, RO, SI, and SK), which had separate procedures for obtaining work and residence permits are needed. The baseline impact assessment showed that the legal deadline for a decision on an application varied between 50 and 65 days, and it was expected to be reduced by 15 days (i.e. to fall to between 35 and 50 days). The present analysis undertaken under Task 2 showed that the processing times for the eleven Member States where the SPD was adopted had not changed significantly, except in RO and SI, where it was 30 days.

Following the adoption of the SPD, the overall volume increased from 1.7 million single permits issued in 2013 to 2.6 million issued in 2016. The impact of the Directive on simplified administrative procedures and related in-direct benefits could be most clearly demonstrated by the single permits issued by the Member States that had no prior single permit scheme (data was not available for Belgium), which increased overall from 8 438 in 2013 to 170 535 in 2016.

7.1.3.5 Equal treatment rights: costs and benefits

Equal treatment provisions in the examined Directives are a 'benefit' to the migrant and EU societies, but could be a cost to the employer and the state budget, giving rise to increased government expenditure. Four of the examined Directives (LTR, RD, BCD, SPD) include provisions on equal treatment of TCNs with respect to nationals of the Member States, covering a number of aspects, including, *inter alia*, working conditions, social security benefits, education, tax benefits, access to goods and services and advice services.

The equal treatment of migrant workers on the one hand makes the EU a more attractive migration destination, which has indirect economic impact. In addition, these rights contribute to improved social cohesions and relations with resident population, as well as the integration of migrants. There is no reliable data that allows for quantification of the both of these aspects as well as the related indirect economic. The fiscal aspect of equal treatment provisions is discussed in section 7.1.5.

7.1.3.6 Integration and socio-economic cohesion

Promoting of integration and socio-economic cohesion is an explicit objective in the FRD and LTR (which together represent over 45% of all residence permit holders in

⁴⁷⁹ Ibid.

the EU in 2016). Integration and socio-economic cohesion have, in turn, a number of short and long-term economic effects, including higher employment rates and labour market participation levels.

7.1.3.7 Intra-EU Mobility

Enhancing and promoting intra-EU mobility, with the underlying aim to make the EU an attractive destination as a whole, is a specific objective in several Directives. Provisions regulating intra EU-mobility can be found in six Directives (LTR, BCD, ICT, SD, RD S&RD). The intended benefits were that the simplified, inexpensive and swift access to residence permits in a second Member State, making the EU more attractive migration destination, and more flexible in responding to shifts in labour market demand. However, the limited level of facilitation that has been achieved with the intra-EU mobility clauses (discussed in the evaluation question) may only have resulted in a minimal, if any measurable economic benefit.

7.1.3.8 Preventing exploitation at the labour market

Preventing exploitation and ensuring decent living standards are explicit aims of the SWD, FRD and ICT. The prevention of exploitation contributes to effectively responding to demands for labour at certain key skills levels, while counteracting a distortion of the EU labour markets by ensuring equal treatment of third-country nationals (workers mainly), notably as regards pay and working conditions, social security and other areas, thus avoiding their exploitation and preventing discrimination in the EU. In practice, all Member States have adopted different measures for the prevention, identification and sanctions of employers for exploitation of third-country national workers. These provisions in the Directives give to various enforcement costs for the government, as well as costs to employers.

7.1.3.9 Retention of students

International students who remain in the Member State (or in the EU) after graduation, contribute to marginal supply shift of tertiary educated labour. The rate at which such tertiary educated migrants remain in the EU depends largely on the labour market demand for them⁴⁸⁰. An OECD study, showed that in 2012, there was little demand for staying by international students. Only a minority of them pursued studies in STEM (science, technology, engineering, and mathematics), for which there was a growing demand in the EU.⁴⁸¹ After 2012, though, continuously falling unemployment rates in the EU contributed to higher demand for labour, and the stay rates increased. One reliable indicator is the change of status from education to remunerated reasons: which increased from 23 107 to 42 847 in 2016 for EU 27 (without the UK)⁴⁸². The long-term benefits to the EU economy though, is not certain, as studies have shown that some students consider this first post-graduation job as part of their increasing of qualification and experience before returning to their country.⁴⁸³

7.1.3.10 Circular migration

Only seven Member States have established measures encouraging circular migration as per SWD (recital 34).⁴⁸⁴ Measures encouraging circular migration in two Member States are mainly targeted at allowing seasonal work in specific sectors such as

⁴⁸⁰ Weisser (2016) "Internationally mobile students and their post-graduation migratory behaviour: an analysis of determinants of student mobility and retention rates in the EU", OECD; <https://www.oecd-ilibrary.org/docserver/5jlwxbvmb5zt-en.pdf>

⁴⁸¹ Ibid. p.24-25

⁴⁸² Eurostat data migr_reschange -- see the Annex 1Bii, section 3.3.2 for detailed country breakdown for 2016.

⁴⁸³ Op.cit. (Weisser 2016), p.50

⁴⁸⁴ DE, EL, ES, IT, PL, PT and SE.

agriculture and/or tourism.⁴⁸⁵ The economic benefit from these provisions mainly concerns third countries, where the migrants have impact on local economy.

7.1.3.11 Demographic benefits

A number of empirical studies find a positive relation between emigration flows migrant⁴⁸⁶ age: young people tend to emigrate more than older people, as they expect to reap the expected benefits of emigrating over a longer period. Therefore, labour migration can positively impact the size of the labour force, and hence the dependency ratio, the working age-population (15-65) and the population not in the labour force (0-15 and 65+). In the long-term, though, the "overarching consensus is that international migration cannot offset the negative effects of population and labour force aging in the long term".⁴⁸⁷

7.1.4 Fiscal costs and benefits of migration⁴⁸⁸

The fiscal costs and benefits of migration refer to the fiscal contributions that migrants make to central or local governments' budgets, as well as the government's own outlays to migrants in terms of direct social payments or public services. The fiscal impact of third country nationals in the EU could be direct or indirect. The **direct fiscal benefits** may include government-funded transfers to migrant households such as: family and children related allowances; social assistance payments; housing allowance; unemployment benefits; pensions / old age benefits; disability benefits; education related allowance / scholarships. Fiscal contributions, or transfers from third-country nationals to the government, include income taxes (e.g. corporate income tax by migrant entrepreneurs), social security contributions, health coverage, or local taxes. **Indirect fiscal impacts** of migrants may include indirect taxes paid by migrants via consumption (e.g. VAT or excise tax payments), as well as consumption of social goods, such as healthcare, education, or active labour market policies, or other public goods, such as criminal justice or defence systems, etc.

7.1.4.1 Migrant contributions

There are a number of fiscal contributions that migrants make:

- Payment of income and local taxes
- Social security contributions
- Pension contributions
- indirect tax payments via consumption (VAT / excise taxes)

There is no reliable data to allow for the calculation of the above contributions. In order to have a full understanding, not simply permits for remunerated reasons (BCD, RD, SWD, ICT) should be used, but also data on the number of work permits and employment levels for family members, student, or long-term residents also needs to be factored in. Gross earnings data for each category of permit will need to be assessed, as highly skilled workers or seasonal workers, or students are likely to have significantly different earning levels.

⁴⁸⁵ ES and IT.

⁴⁸⁶ Tranos, E., Gheasi, M., & Nijkamp, P. (2015). International migration: a global complex network. *Environment and Planning B: Planning and Design*, 42(1), 4-22.; Mayda, A. M. (2010). International migration: A panel data analysis of the determinants of bilateral flows. *Journal of Population Economics*, 23(4), 1249-1274.

⁴⁸⁷ Spielvogel, Michela Meghnagi (2018) The contribution of migration to the dynamics of the labour force in OECD countries: 2005-2015, OECD, <http://www.oecd.org/els/mig/wp203.pdf>, p.9-10

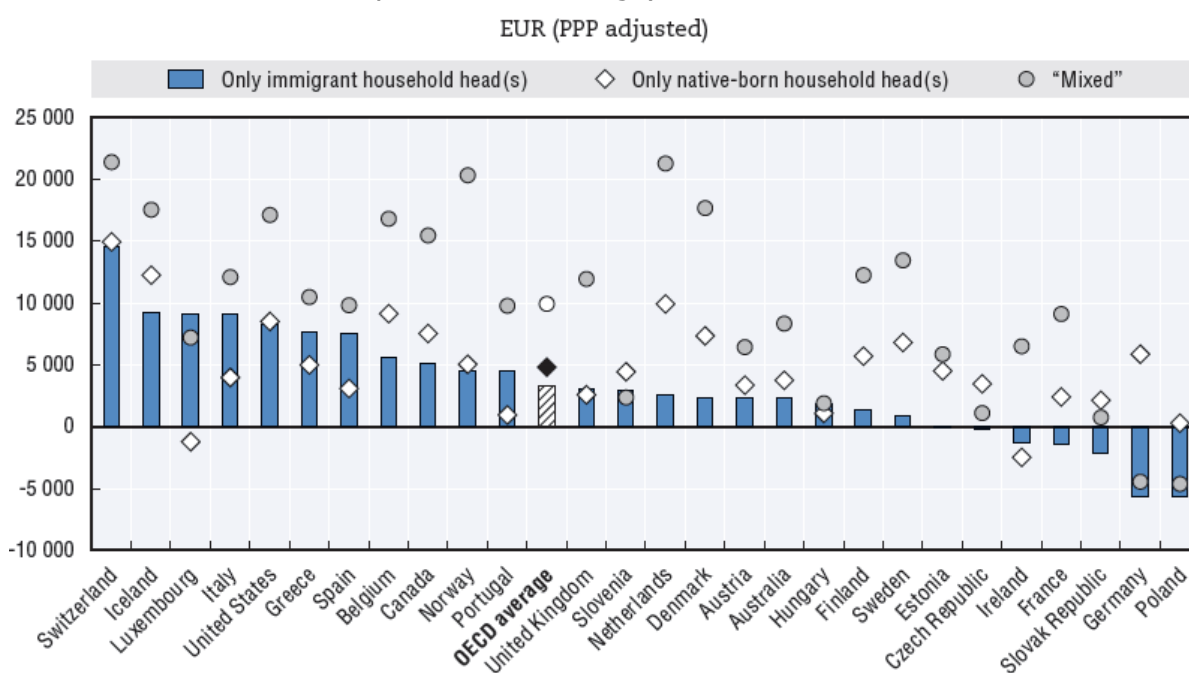
⁴⁸⁸ This section is largely based on the most recent study on this issue that covers most EU MS, the OECD (2013) 'The Fiscal Impact of Migration in OECD Countries' in *International Migration Outlook*, pp.125-189

7.1.4.2 Equal treatment costs

As already noted, equal treatment provisions are a 'benefit' to the migrant and EU societies, but could be a cost to the employer and the state budget. Four of the examined Directives (LTR, RD, BCD, SPD) include provisions on equal treatment of TCNs with respect to nationals of the Member States. The SPD provided a common set of rights to third-country workers legally residing in a Member State. These included: (a) working conditions (b) freedom of association (c) education and vocational training; (d) recognition of diplomas (e) branches of social security (f) tax benefits (g) access to goods and services made available to the public (e.g. housing) (h) advice services afforded by employment offices. The Impact Assessment delivered in 2007⁴⁸⁹ showed that the adoption of the SPD could result in costs and benefits only in respect to certain type of equal treatment rights, and only in some Member States, as others had already such rights in place.

An OECD Study (2013) assessed the fiscal impact of third-country nationals for the 2007-2009 period, by comparing the net effect of third-country nationals' tax and social security contributions and the fiscal transfers from which third-country nationals benefit (e.g. education, health, social welfare, unemployment benefits). It found that, depending on demographic profiles, the fiscal impact varies across the EU. In the majority of EU MS, which are OECD members, the **net fiscal impact is positive (i.e. migrant contributions minus government fiscal expenditure on migrants)**, while in a few Member States (CZ, IE, FR, SK, DE, and PL) the impact is negative. In the EU countries where the impact is positive, generally the native born population has higher net contributions, except in the Italy, Spain, Greece, and Portugal, where third-country nationals contribute more than the native born households.

Figure 20. Average Direct Net Fiscal Contribution of household by migration status of household head (2007-2009 average).



Source: OECD (2013, p.147)

⁴⁸⁹ 'Accompanying document to the Proposal for a Council **Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State: Impact Assessment: Volume II – Annexes**', Brussels, 23.10.2007.

7.1.5 Administrative costs

The administrative costs and benefits linked to the implementation of the legal migration Directives are accrued by the authorising bodies on one side and the applicants (third-country national or employers / university) on the other. Calculations on both sides is challenging. On the applicants side systematic data collection on the *volume* of costs that employers or migrants accrue has not been carried. In the process of the open public consultation and review of requirements as part of Task II, it became clear that such costs may far outweigh the cost of the application fees, which is the only known cost across EU Member States and across different legal migration Directives. In regards to the authorising bodies' costs, an attempt to collect data in order to make calculations needed for the standard cost model, via an EMN ad-hoc survey, resulted in only three MS (DE, FI, 3rd MS⁴⁹⁰) providing sufficient information.

In respect to benefits: the authorising bodies generate income from the permit application fees, while the migrants and employers have a range of other benefits in terms of increased personal income (for migrants), optimised labour skills or costs, or improved productivity. Again, while on the permit fee income systematic data can be calculated, on migrant and employer benefits no systematic data exists. Clearly though, the process generates sufficient expected benefits that far outweigh the costs associated with the administrative process itself. The costs and benefits presented below **are only partially** estimated for a number of reasons:

- only cost and benefits for first permits are considered- not renewals / extensions.
- data on rejected applications is very limited (see next section below) and various to such an extent that 'averages' or estimates are not appropriate to use.

For the full range of costs (listed in the previous section) to the administration, migrants, and employers, there is no data, and no credible estimates can be done.

The table below is based on an application of the Standard Cost Model, but it also integrates data collected in the process of Task II research, and the EMN ad-hoc query results. It is oversimplified as it takes into account only few of the variables needed to make a calculation, and some of the directives. The methodology and detailed calculations, as well as detailed data per Member State, and per type of permit is provided in Annex 4C to this report and provides details of the calculations and methods used.

The upper and lower bound estimates for costs to migrants and employers depend on the assumptions for the time taken to prepare the application and collect supporting documents, as well as the assumed cost of time for preparation of the application. Between the costs to employers and to migrants there is a certain degree of overlap, but there is no reliable data on how the application fees are shared, as in some instance they are covered by the employer and in others by the third country national.

Table 24. Estimated annual administrative costs and benefits for 2016

Type of cost	Calculation approach	Costs	Benefit
Total administrative costs and	Total Cost to Administration =	€ 9,622,120 (FI)	€ 9,752,726 (FI)
	((Number of residence permits + Number of Rejected Applications) x	€ 12,521,865 (DE)	€ 14,839,500 (DE)

⁴⁹⁰ The third Member State submitting data requested to be anonymous.

benefits to administrations	(Cost of Permit Issuance) + (Total number of appeals x Cost of appeals) Total Benefit (fee income) to Administration = Number of Resident Permit Applications x Application fee	€ 3,952,311 (MS 3)	€ 3,888,000 (MS3)
		Lower bound	Upper bound
Cost to third country nationals	Cost to migrants = Number of residence permit issued x Permit fee + (Number of residence permit issued x estimated hourly wage x estimated time to complete / prepare application x (complexity of procedure co-efficient ⁴⁹¹))	€ 396,944,402	€ 832,811,520
Cost to employers	Employers Cost = (Number of permits for remuneration reasons issued x application fees) + (Number of permits for remuneration reasons issued x hourly wage of an administrative clerk in the private sector x time to prepare documents x complexity of procedure co-efficient)	€ 66,030,536	€ 132,424,202

Source: ICF research

Cost and benefits to the administrations

Due to the above listed limitations, the SCM data reported below is limited to providing the calculations for three Member States that have provided sufficient information on the processing times and costs: Germany, Finland and the third MS. The total estimated administrative costs for processing permits in Germany, MS3, and Finland was EUR 26 million, which represents an insignificant part of the general public spending (respectively 0.0009% of Germany's, 0.002% of MS3, and 0.008% of Finland's government spending)⁴⁹². In all cases, the costs seem to be approximately the same or even higher than the income from application fees.

Costs to migrants

Based on these calculations, the cost to third country nationals in 2016 was estimated to be in the range between EUR 396 and EUR 832 million. The EUR 396 million should be seen as an absolute minimum: of this EUR 210 million is the cost of the application fees, EUR 186 million is the cost of the time spent on the preparation of the application. The estimated time (24 hours⁴⁹³) and hourly wage (5 euro) are also a lower bound estimation of the cost. For instance, if one assumes one full week (40 hours) to gather all documents, and 5 euros/hour equivalent wage, then the total cost would increase to EUR 521 million, and to EUR 832 million for the high bound when assuming 40 hours and EUR 10 hourly wage opportunity cost.

The costs for migrants vary significantly across directives as well as across Member States. On average, fees for the Blue Card permits are the highest, while those for the

⁴⁹¹ This co-efficient is calculated based on data collected in Task 2, and it is described in Appendix 4, Annex 4c.

⁴⁹² Data for public spending: Eurostat (gov_10a_main), accessed 8.6.2018

⁴⁹³ National researchers in Task II were only able to calculate the time needed to fill the application, which in most cases was between 1 and 3 hours. No estimates were collected on the time needed to collect the documents.

long-term residents the lowest (see Table below). As the analysis in Q7.3 below on the documentary evidence required shows, there are significant differences amongst Member States. These differences then are further complicated as the cost of acquiring the same document (e.g. birth certificate or criminal record checks) differs significantly between countries. On average though, FRD or BCD include conditions (such as completion of integration measures, interviews, professional qualification attestations) that are costlier than the documentary requirement for students and researchers, which also explains the difference in fees and overall costs for these categories of migrants.

Cost to employers

The assumptions that was made was that only the applications for blue cards, researchers, and single permits might have been submitted by employers. Even though it is possible that some of the family reunification costs may also have been supported or prepared by the employers, overall this was not the case in the majority of cases. Therefore, these applications have not been included in the formula.

Based on these assumptions the total costs for employers are between EUR 66 million and EUR 132.4 million, depending on the amount of time assumed to be spent on preparing the application. Further details and breakdowns by Member State and type of permit is provided in Annex 4c.

7.2 EQ9B: What factors drive the costs and benefits and how are the factors related to the EU intervention?

Research question	Sources of information	Key conclusions
EQ9B. What factors drive the costs and benefits and how are the factors related to the EU intervention?	1Biii Contextual analysis: drivers for legal migration: past developments and future outlook 2A Evidence base for practical implementation of the EU legal migration Directives: Synthesis Report 3Aii Public and stakeholder consultations: OPC Summary Report	The main factors that impact the costs and benefits of the legal migration acquis are linked to the national implementation choices (including admission procedures and conditions, deadlines, availability of information) and institutional setups (the number of agencies involved in the migration management process). Broader social and economic facts also influence the levels of migration, and indirectly the economic and fiscal costs and benefits linked to the legal migration process.

Various external drivers may have impacts on the levels of migration (economic and labour market policies, taxation policies, social welfare policies, international relations, environmental policies, etc.), and indirectly on the wider economic and fiscal costs and benefits that are linked to the overall migration process.

In the responses to the two questions aforementioned, each step of the migration process assesses how national implementation choices and institutional setups have an impact on costs and efficiency saving. Here, some horizontal factors are highlighted that influences several steps of the migration process.

7.2.1 Implementation choices

In the responses to the next two questions (EQ10A and EQ10B), each phase of the migration phase assesses in depth how national implementation choices and institutional setups impacts costs and efficiencies. Here, some horizontal factors are highlighted that cut across several phases.

Access to Information

The information that is (1) easily accessible (2) 'user friendly', (3) understandable in more than one languages could be a major factor in reducing the costs of migration. The lack of available information typically forces migrants either to (1) hire advisors / lawyers who understand the process or speak the language. In many Member States international business or IT companies, or even tourism industry for seasonal workers, may have English as a working language. In such instances the labour migrant may not need to speak the local language. Yet, when the information required going through the application process or filling the application documents is only available in the national language the migrant is forced to use intermediaries, which increases the costs of the application, and may even discourage migrants to apply⁴⁹⁴.

Participants in the stakeholder consultations gave as an example access to information on family reunification, which they described as "often not available" and migrants having to rely on civil society organisations to get the relevant information.⁴⁹⁵

Submitting applications and providing evidence in all steps of the migration process (including initial application and renewals) continues to be a paper driven process where contacts with third-country nationals are made "in-person". This increases the costs to migrants and businesses, and reduces the appeal of the application process. The costs to migrants in terms time spent in travelling and waiting in lines in public authorities leads to the perceptions expressed in the Open Public Consultation that it takes several 'weeks' to prepare and submit an application.

Admission conditions

The analysis of the impact of 'may clauses' in Q10B demonstrate that the Member States' choices most often lead to increased costs to migrants (by design i.e. Requirements stemming from the various document and of evidentiary requirements that have to be translated and or certified) as well as to the administrative authorities themselves.

Processing times

Lengthy processing times drive the cost of recruitment for employers upwards. On the one hand, the duration between the time the employer has committed to hiring a migrant by submitting an application and waiting for the migrant to commence employment reduces productivity. There is also uncertainty, as competitive offers may dissuade the migrant from pursuing a job opportunity in the EU. The global market for talent, especially IT specialists or researchers is dynamic and competitive.

Eighty three percent (83%) of the respondents of the OPC under the profile of third country nationals stated that the most common issue for them was the length of the procedure, followed by the high costs of the residence permit and the documents required (57%).

Equal treatment rights and benefits

All Directives with the exception of the SD and FRD include equal treatment provisions. The access to equal treatment rights or social benefits are benefit for the migrants and society, but a cost for Member States' budgets. Member States' choices to grant optional rights may increase the cost of the Directives. On the other hand, equal treatment benefits society at large, as it contributes to better cohesion and integration of migrants, who enjoy equal rights with the resident population. Certain

⁴⁹⁴ Interviews with Ecosystems of entrepreneurs

⁴⁹⁵ European Migration Forum took place on 2-3 March 2017 and was jointly organised by the European Commission and the European Economic and Social Committee (EESC)

equal treatment rights also reduce the risks of exploitation, which is of benefit to all stakeholders.

In the coherence section, we identified that: (1) certain migrant categories covered by the Directives do not benefit from the same rights ('Inactive' family members, seasonal workers who are already in the EU) and (2) certain categories of migrants are not covered at all by the Directives or only partially (low and medium skilled, self-employed third-country national, investors, service providers which fall outside the scope of the ICT, highly mobile workers).

7.2.2 Institutional setup

The specific institutional setup for migration management in Member States may result in more complex application procedures, permit issuance, or arrival registration procedures that increase costs both for the administration and the migrants. The more institutions are involved in the processing of applications or in the issuance of permits, the slower and the costlier the procedure is. Under question Q10B, we have mapped the institutional setups in terms of the number of institutions involved in each of these two processes.

7.3 EQ10A: For each step of the migration chain, are there elements where there is scope for more efficient implementation? To what extent have the implementation options provided by the Directives and as chosen by MS influenced the efficiency of their implementation?

Research question	Sources of information	Key conclusions
EQ10A. For each step of the migration chain, are there elements where there is scope for more efficient implementation? To what extent have the implementation options provided by the Directives and as chosen by MS influenced the efficiency of their implementation? (<p>1Bi Contextual analysis: overview of the evolution of the EU legal migration acquis</p> <p>1Bii Contextual analysis: overview and analysis of legal migration statistics.</p> <p>1Biii Contextual analysis: drivers for legal migration: past developments and future outlook</p> <p>1Ci Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives</p> <p>1Cii Contextual analysis: Intervention logics: External Coherence of the EU legal migration Directives</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder</p>	<p>The analysis of steps of the migration process shows that Member States often make implementation choices that hinder efficiency. The implementation options provided by the legal migration Directives provide a range of implementation options that increase costs to third-country nationals and the administration in the implementation of the acquis. At each step, there is scope for increasing efficiency, in terms of optimisation of application condition, fees, duration of permits, or various deadlines that administrations need to adhere to, during the migration process.</p>

consultations: OPC
Summary Report
Additional desk research



7.3.1 Pre-application phase (information)

The more recent EU legal migration directives (e.g. Art 35 of the S&RD; Art. 10 of the ICT Directive, Art. 11 of the SWD) have clauses on 'Access to Information' obliging Member States to make easily accessible to applicants the information on all the documentary evidence needed for an application and information on entry and residence conditions, including the rights, obligations and procedural safeguards, of the third-country nationals falling under the scope of the Directives and or even of family members. Such formulations are broad enough to allow Member States to provide the information, yet to be difficult for third-country nationals to find it, or even if they do, to fail to understand the process entirely.

In most Member States, it is easy to find websites and other information channels and to identify the required pieces of information. Many websites have good search engines and/or are clearly structured, although they are often limited to the Member State language and English. Finding information in Greece, Italy, Bulgaria (application forms on the Migration Directorate website, which is a sub-site of the Ministry of the Interior) and Malta (RD status) is considered more complicated. With regard to the level of detail of the information, most Member States receive slightly less positive scores, with information channels (and in particular websites) not being considered user friendly and/or easy to navigate. Specific complications have been identified with finding information in Member States like Greece, Italy, Bulgaria and Malta. Access to information (measured by whether a specific piece of information can be accessed in less than four clicks) is considered relatively good, although in Member States such as Bulgaria, Cyprus, Finland and Spain, more than four clicks were needed. In Finland, the websites had several sub-categories on the pages, making it a confusing and complicated experience to find a specific piece of information.

In all Member States online information is available in the Member State's national language and in English. Close to half of the Member States provide the information also in French⁴⁹⁶, Spanish⁴⁹⁷ and Russian⁴⁹⁸. Information in other languages like Arabic and Turkish is available in few countries (Austria, Germany, the Netherlands, Poland, and Sweden). Member States which make information available in most languages include the Netherlands⁴⁹⁹ and Germany⁵⁰⁰, as well as Portugal, where an information hotline is available in 60 languages.

Access to information was mentioned as an issue as part of the stakeholder consultation, where e.g. third-country nationals responding to the OPC indicated that there is a lack of clear and practical information coming from official sources on

⁴⁹⁶ AT, CZ, DE, EL, FI, IT, NL, PL, PT, RO, SI

⁴⁹⁷ AT, DE, EL, FI, IT, NL, PT, SI, SK

⁴⁹⁸ AT, CZ, EE, ES, FI, IT, LT, LV, NL, PL, PT, SI

⁴⁹⁹ Arabic, Bahasa Indonesia, Chinese, Dutch, English, French, German, Japanese, Portuguese, Russian, Spanish and Turkish

⁵⁰⁰ Spanish, French, Albanian, Arabic, Bosnian, Indonesian, Italian, Portuguese, Russian, Serbian, Turkish and Vietnamese

procedural aspects, clearly there is scope for further streamlining the information available.

7.3.2 Pre-application phase (documents)

In our research, we looked at number of aspects related to the preparation of the documents: time to complete the application and to collect the documents, admission conditions. The OPC and our research both showed that the application itself is not an issue, while the greatest challenge in terms of time and expense is the collection of the required documents to fulfil the conditions. As the tables below illustrate for each of the directives a great number of documents is not simply required, but also need to be translated and certified in order to fulfil the conditions. The only facilitating condition is that some document, even though required, may be submitted later after the application is lodged – this is the case only for some documents and only in some of the Member States.

Third country nationals participating in the OPC on average spent around 300 euros to collect all the documents needed, and spent about between 1 to 4 weeks in collecting them. For some Member States it takes the migrant up to three months to collect such documents (in terms of waiting time to obtain the required documents from government institutions).

In addition, the recognition of diplomas as a condition for admission, which is referred to in the BCD, RD and SD, is explicitly applied in most Member States⁵⁰¹ for the BCD in six Member States⁵⁰² for the RD and in five Member States⁵⁰³ for the SD. Most Member States provide inadequate guidance on the procedures for obtaining recognition of diplomas. Birth certificates are also required by some Member States despite the fact that they prove to be a costly requirement for some migrants, and are clearly obsolete as they are always combined with other documents proving identification.

There is plenty of scope for simplification and streamlining of documents required, from formalistic requirements, such as ‘proofs of accommodation’ or ‘sufficient resources’, or ‘sickness insurance’, ‘birth certificates’, all of which are formalistic, can be always ‘ticked’ by the migrants, and do not substantially improve the assessment whether the migrant presents a threat to the social security system or public security of a Member State.

Table 25. *Documentary evidence required (by Directive)*

Family reunification Directive		Yes	No	Blue Card Directive		Yes	No
Documentary evidence of the family relationship	Requirement	23	0	A valid work contract or binding offer	Requirement	22	1
	Translation	22	1		Translation	16	6
	Certified	24	0		Certified	17	4
	Required to lodge the application	14	10		Required to lodge the application	16	7
Interviews with the sponsor and	Requirement	5	19	Attest for regulated	Requirement	18	4
	Translation	0	0		Translation	12	9

⁵⁰¹ AT, BG, CZ, DE, EE, EL, IT, LT, LV, MT, NL, PT, RO, SE, SI, SK

⁵⁰² BG, ES, IT, LT, MT, NL

⁵⁰³ BG, EE, EL, LT, RO

Family reunification Directive		Yes	No	Blue Card Directive	Yes	No	
his/her family members	Certified	0	0	professions	Certified	17	4
	Required to lodge the application	0	0		Required to lodge the application	14	7
Proof of sufficient resources	Requirement	24	0	Attest for unregulated professions	Requirement	19	4
	Translation	20	4		Translation	16	7
	Certified	20	3		Certified	19	3
	Required to lodge the application	17	7		Required to lodge the application	16	6
Proof of adequate accommodation	Requirement	20	4	Valid travel document	Requirement	23	0
	Translation	15	9		Translation	9	10
	Certified	18	6		Certified	17	4
	Required to lodge the application	15	9		Required to lodge the application	15	7
Proof of sickness insurance	Requirement	19	5	Visa application or visa	Requirement	14	8
	Translation	13	11		Translation	5	8
	Certified	18	6		Certified	11	6
	Required to lodge the application	13	11		Required to lodge the application	7	12
Proof of compliance with integration measures	Requirement	4	19	Valid residence permit or long-term visa	Requirement	12	10
	Translation	4	19		Translation	4	14
	Certified	3	20		Certified	8	10
	Required to lodge the application	4	19		Required to lodge the application	9	12
Proof of having required period of residence	Requirement	9	14	Proof of sickness insurance	Requirement	17	6

Student Directive		Yes	No	Researchers directive	Yes	No	
Valid travel document	Requirement	24	0	Valid travel document	Requirement	24	0
	Translation	8	13		Translation	8	12
	Certified	18	5		Certified	16	7
	Required to lodge the	14	7		Required to lodge the	17	7

Student Directive	Yes	No	Researchers directive	Yes	No		
	application			application			
Parental authorisation for minors	Requirement	18	5	Hosting agreement with a research organisation	Requirement	24	0
	Translation	14	9		Translation	16	6
	Certified	17	6		Certified	20	4
	Required to lodge the application	12	10		Required to lodge the application	17	7
Sickness insurance	Requirement	20	4	Sickness insurance	Requirement	15	8
	Translation	15	8		Translation	11	12
	Certified	20	4		Certified	12	10
	Required to lodge the application	12	11		Required to lodge the application	11	12
Certificate for medical examination	Requirement	9	14	Evidence of sufficient monthly resources	Requirement	20	4
	Translation	5	16		Translation	14	8
	Certified	9	12		Certified	15	7
	Required to lodge the application	3	18		Required to lodge the application	15	9
Proof of payment of application fees	Requirement	15	8	Statement of financial responsibility issued by the research organisation	Requirement	12	12
	Translation	5	13		Translation	9	14
	Certified	9	11		Certified	10	12
	Required to lodge the application	12	10		Required to lodge the application	10	13
Proof of not constituting a threat to public policy or public security	Requirement	16	6	Certified copy of his/her qualification	Requirement	7	17
	Translation	12	9		Translation	7	17
	Certified	14	7		Certified	9	15
	Required to lodge the application	10	10		Required to lodge the application	6	18
Other documentary evidence	Requirement	17	3	Certificate for medical examination	Requirement	8	15

Long term resident directive	Yes	No	
Proof of legal and continuous residence within in the Member State for five years	Requirement	16	8
	Translation	7	15
	Certified	13	9

	Required to lodge the application	15	9
Stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family	Requirement	24	0
	Translation	19	4
	Certified	18	5
	Required to lodge the application	16	7
Sickness insurance	Requirement	18	6
	Translation	12	12
	Certified	17	7
	Required to lodge the application	13	10
Compliance with integration conditions	Requirement	11	11
	Translation	4	17
	Certified	7	14
	Required to lodge the application	8	14
Proof of not constituting a threat to public policy or public security (e.g. proof of a clean criminal record, background check, etc.)	Requirement	13	8
	Translation	7	12
	Certified	9	10
	Required to lodge the application	7	14
Other documentary evidence	Requirement	18	5
	Translation	11	8
	Certified	12	6
	Required to lodge the application	10	11

Source: ICF Research

7.3.3 Application phase:

There are three areas in the application phase, where there is scope for more efficient application of the directives: modus of submission of the application, application fees, and times for processing application.

Application process

The **applications process** continues to be primarily on paper. A full online submission (i.e. the necessary information is entered and submitted online) can be made in five Member States⁵⁰⁴ – as opposed to making available downloadable application forms (see also the pre-application phase above) - while in seven Member States it is only possible to lodge an application via post.⁵⁰⁵

There is clearly scope for more efficient development both in the introduction of a 'paperless process' via online application (which should cut processing costs and reduce processing times), as well as in terms of application of the SPD. The fact that some Member States offer these more efficient approaches (e.g. NL has online application for national highly skilled scheme, but not for BCD) is a further argument in support of the need for an optimisation of the application process.

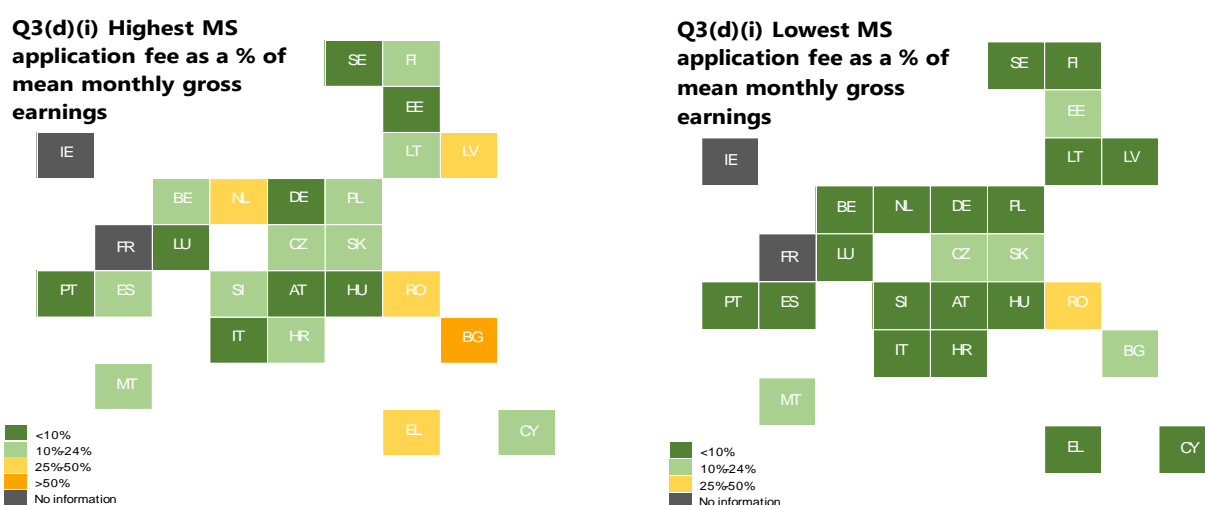
⁵⁰⁴ FI, LV, NL, RO, SE.

⁵⁰⁵ BG, CY, LU, LV, MT, SE, SI

Application fees

Application fees vary greatly between the Member States, both in absolute and relative terms (e.g. when considering the fees as a share of the mean monthly gross earnings each Member State). In some Member States, the excessive fees could constitute a barrier for some third-country nationals or significant cost to employers – small business for instance may not take advantage of the Directives. Around one fifth of the Member States charge other obligatory fees: temporary residence card fee (LT), card-renewal fee (100 EUR - FI), Costs of personalisation (photography and signature (20 EUR - AT); consular or communal tax (20 EUR – BE); long-term visa fees (116 EUR – IT); standard administrative stamp ('marca da bollo' – 15 EUR – IT); post office fee (since the application can only be submitted via an authorised post office (30 EUR – IT); biometric data collection fee (27.5 EUR – MT); residence card fee (12 euros). Some of these fee may exceed the cost of the application itself (IT, MT).

Figure 21. Highest and lowest application fees as a share of mean monthly average earnings in Member States



Source: ICF research

In the Open Public Consultation, both third-country nationals (30%, n=389) and employers (n=4) highlighted the high costs of permits as a key issue.

Based on the above data, it is evident that there is scope for further optimization of the fees of permits, in order to make them more reasonable, in relation to average incomes in the Member States, and more attractive to third-country nationals and employers. Following infringement procedures against some Member States, charges have been lowered (BG, IT). Further cases have recently been opened, where the Commission has deemed the charges disproportionate.

Processing times

Sixteen of the Member States⁵⁰⁶ reviewed have put in place a legally applicable deadlines to process applications under all relevant Directives. The average number of days set for processing applications in the Member States which apply deadlines is 86 days. Member States allow themselves most time for processing applications under FRD (152 days on average), still lower than the nine months prescribed as maximum in the Directive, while applications under the SD and the BCD have much shorter deadlines.

⁵⁰⁶ AT, BG, CZ, EE, HR, HU, IT, LT, LU, LV, NL, PL, PT, RO, SI, SK

While for a number of countries actual data on the 'real' number of days to process an application is not available in the public domain, according to estimates by national researchers from 11 Member States⁵⁰⁷ with set deadlines, the "real" average number of days required for completing the processing of applications does not vary significantly from the number of days stipulated.

Table 26. Number of Calendar Days to Process Application for EU Legal Migration Directives

	BCD	FRD	SD	RD	LTR	SPD
AT	56	183	183	183	183	183
BE	90	274.5	N/A	N/A	152.5	N/A
BG	37	33.5	14	7	91.5	52
CY	90	152.5			183	122
CZ	90	270	60	60	120	60
DE	N/A	N/A	N/A	N/A	N/A	N/A
EE	61	61	61	61	61	61
EL	91.5	274.5	20	20	122	N/A
ES	60	106	45.5	75.5	136.5	91.5
FI	90	229	30.5	N/A	N/A	122
FR	90	120	120 (30 – trainees)	120	120	120
HR	90	90	90	90	90	90
HU	21	21	15	15	70	70
IT	140	230	50-110	110	90	110
LT	61-122	120	61-122	61-122	120	61-122
LU	212	396.5	231.5	231.5	244	N/A
LV	N/A	N/A	N/A	N/A	N/A	N/A
MT	N/A	N/A	N/A	N/A	N/A	N/A
NL	90	90	60	60	180	90
PL	61	183-244	61	61	91.5	61
PT	60	91.5	90	90	183	90
RO	N/A	30.	30	39	183 (+91.5)	30 (+15)
SI	30	30	30	30	30	30
SE	90	425	30-60	30-90	-	90
SK	30	90	30	30	90	90
Average no days	77.75	152.39	68.10	74.93	124.33	88.17

Source: ICF country research

⁵⁰⁷ CZ, EE, EL, FI, HR, LV, MT, PL, RO, SE, SK

The variety of standard durations to process applications shows that there is scope for further optimization of the application process and, therefore, for reducing costs to businesses and third-country nationals: either because in practice in some MS take less time than foreseen in the Directive (e.g. FRD) or because sufficient number of Member States demonstrate that time could be significantly shorter (e.g. LTR). The fact that some Member States (e.g. PT) have shorter processing times for equivalent national status, further highlights the possibility to reduce processing times.

Entry visa requirement

Broadly three different approaches have been identified:

- In Estonia and Sweden, an entry visa is not required for any of the statuses, as the permits are provided in the embassy abroad. For Sweden this is only valid the third country national comes from country that does not require a Schengen visa. Otherwise, the third country national would need an entry visa.
- A second, small group, of Member States⁵⁰⁸ allow visa-free entry on their territory depending on the status granted.
- A larger group of Member States require an entry visa for all statuses and do not apply any exceptions⁵⁰⁹. Of these, only three Member States⁵¹⁰ have set up a facilitated process for obtaining an entry-visa for all types of statuses, even though the FRD, RD and BCD all require Member States to “grant such persons every facility for obtaining the requisite visas”.

The cost and time to obtain entry visa affects negatively the efficiency of the Directives.

7.3.4 Entry and travel phase

Besides the entry visa requirement discussed above, there are not too many opportunities, for optimisation of the process in terms of travel and arrival phases. The main area, where there is scope for more efficient handling of newly arrived third-country nationals concerns the requirements for registration with various institutions.

Nineteen of the reviewed Member States⁵¹¹ require the third-country nationals to register with the competent local authority upon arrival on their national territory, while 15⁵¹² require registration with local security institutions and 11⁵¹³ require registration with healthcare providers. Austria, Greece, Spain, Italy, Latvia, the Netherlands and Romania, for example, may ask for registration with all three institutions listed above, depending on the migration status. In addition to registering with the local authority, the social security institutions and the healthcare providers, Latvia also requires third-country nationals to be duly registered by their employer with the State Revenue Authority. Cyprus, the Netherlands and Poland also apply additional procedures, such as registration with immigration authorities (e.g. Cyprus), registration with the Tax and Customs Administration (e.g. the Netherlands) and an obligation for persons who arrive as family members to submit their fingerprints and pick up their residence card (e.g. Poland).

The above described procedures show that some procedures are redundant or obsolete. Registration with law-enforcement institutions, often requiring the person to show proof of rental contract is formalistic, keeping in mind that the third-country national mostly likely has already undergone security checks and has been required to present proof of accommodation as part of the application process

⁵⁰⁸ BE, EL, ES, PT, SK

⁵⁰⁹ AT, BG, CY, CZ, DE, HU, IT, LT, LU, LV, MT, NL, PL, RO

⁵¹⁰ BG, MT, NL

⁵¹¹ AT, BE, CZ, DE, EE, EL, ES, FI, HR, IT, LT, LU, LV, MT, NL, PL, RO, SE, SI

⁵¹² AT, CY, EL, ES, FI, HR, IT, LU, LV, NL, PL, PT, RO, SI, SK

⁵¹³ AT, BE, EL, ES, HR, IT, LV, NL, PT, RO, SK

7.3.5 Post application phase

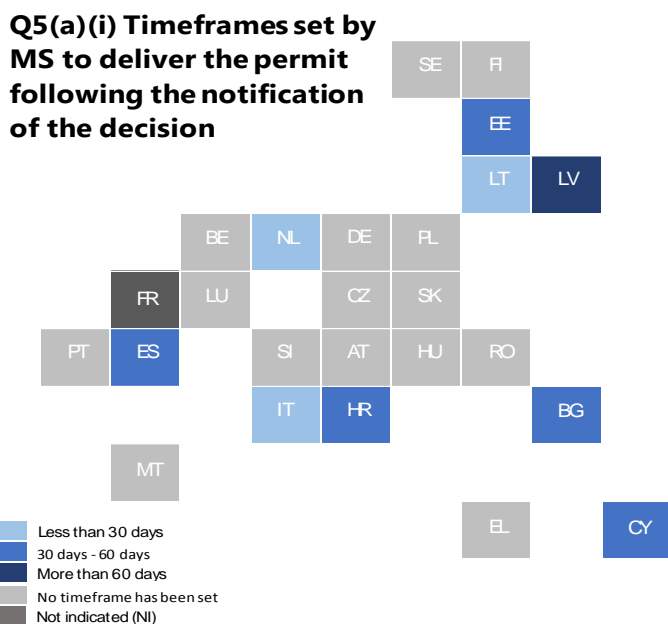
In the post application phase, three aspects could be outlined that provide opportunity for further optimisation of costs to authorities and third-country nationals and businesses: (1) time to deliver the permit (2) additional fees being charged, and (3) duration of residence permits issued.

Time taken to deliver the permit

The time taken to deliver the permit, adds to the overall time of the application process and presents costs to businesses which incur productivity losses while awaiting the arrival of the third-country national.

As shown in the figure below, 15 Member States⁵¹⁴ do not have a set timeframe to deliver the permit following the notification of the positive decision on the application. The Member States which require the lowest number of days for the delivery of the permit are Lithuania (10 days) and the Netherlands (14 days), followed by Italy (20 days). Five Member States⁵¹⁵ have indicated a timeframe of 30 days, while Latvia has the longest with 65 days. Streamlining and reducing the times in takes to deliver the permits will increase the efficiency of the process.

Figure 22. Q5(a)(i) Timeframes set by MS to deliver the permit following the notification of the decision



Additional fees

While 11 Member States⁵¹⁶ do not apply any additional charges in addition to the application fee, 13 Member States⁵¹⁷ charge for the act of issuing and / or delivering the permit and for the biometric features on the permit, for the loss of the permit, etc. These charges vary across the Member States from a minimum of around 10 euro in Croatia and Poland to a maximum of around 200 euro in Portugal (for the issuance of a new permit). From an administrative service point of view including all fees in a

⁵¹⁴ AT, BE, CZ, DE, EL, FI, HU, LU, MT, PL, PT, RO, SE, SI, SK

⁵¹⁵ BG, CY, EE, ES, HR

⁵¹⁶ CY, CZ, EE, EL, FI, HU, IT, LU, MT, NL, SE

⁵¹⁷ AT, BE, BG, DE, ES, HR, LT, LV, PL, PT, RO, SI, SK

single application fee, would optimize the process and reduce the time spent in processing multiple payments.

Duration of residence permits

As seen from the table below, Member States have adopted a wide variety of approaches to duration of residence permits. The short duration of permits may add significant and unnecessary costs to both the third-country national and the administration. A more flexible approach that some Member States adopt for students and researchers, which is linked to their overall duration of studies or research project, could be applied to other permits by linking the permit length to the work contracts of third-country nationals or their sponsors, or making it indefinite for LTR. Setting a fixed term not linked to the needs of third country nationals adds additional costs for repeated issuance of permits, and time lost in administrative procedures.

Table 27. Duration of resident permits issued (numbers of Member States issuing permits with such duration)

	1 year	2 years	3 years	4+ years
BCD	1	9	2	7
FRD	5	2	1	7
SD	1	15	1	4
RD	6	6	1	3
LTR	2	1		13
SPD		11	1	3

Source: ICF research

7.3.6 Residency phase

There is one key aspect in the residence phase where there may be scope for efficiency and reducing the costs to third country nationals as well as the administration: the renewal of residency permits.

There is little scope for 'efficiency' improvement, in terms of equal treatment or integration measures, as both represent rights and obligations. Although for integration, Member States have the discretion to provide or impose, for equal treatment, only a limited number of restrictions to equal treatment with nationals is permitted by the Directives.

Renewal of residency permits

Table 28. Duration of renewed resident permits issued (numbers of Member States renewing permits with such duration)

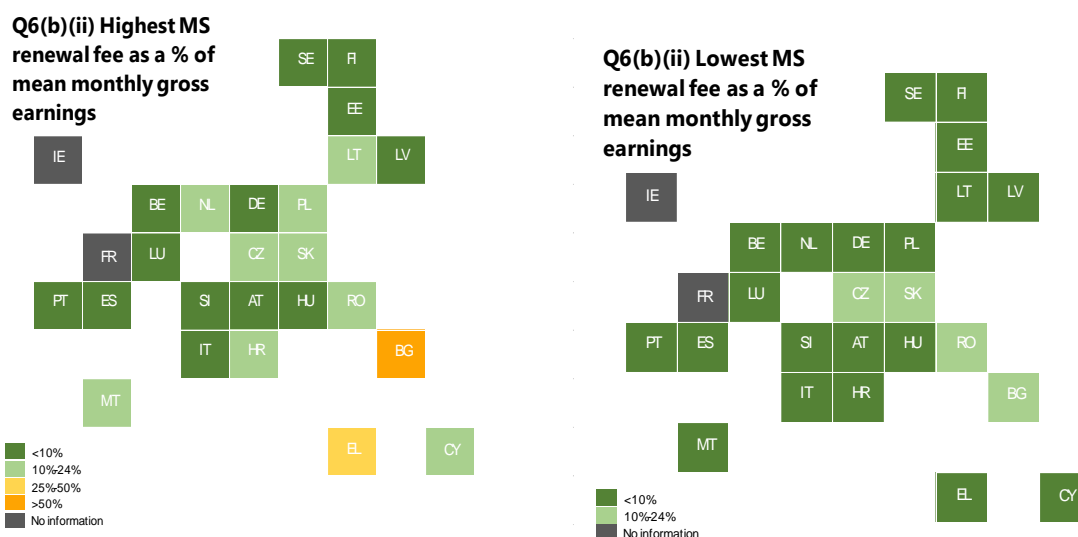
	1 year	2 years	3 years	4+ years
BCD	2	7	2	8
FRD	4	5	5	4
SD	3	5	1	1
RD	7	3	2	5
LTR		1		15

Source: ICF research

The renewal duration of a permit based on **family reunification** usually depends on the permit of the sponsor – i.e. it is of the same validity and cannot exceed the validity of the permit of the sponsor. This is the case in eight Member States⁵¹⁸. Renewals of permits based on the **SD** are issued for the duration of the course in eight Member States⁵¹⁹. Similarly, renewals of permits based on the **RD** are issued for the duration of the research/project in 6 Member States⁵²⁰. With regard to LTR, the residence permit is issued for an indefinite period and does not need to be renewed in 8 Member States⁵²¹. In 15 Member States⁵²², it needs to be renewed every 5 years. With regard to the **SPD**, in most Member States, the renewal duration depends on the duration of the work contract and also varies depending on the particular permit. Again, as with the initial issuance of the residence permit, some Member States apply more efficient approach as they link the renewal to the validity of the terms of the study or the research, or the work contract. Such an approach would reduce the costs to both third country nationals / businesses as well as the administrations.

Another aspect of the renewal process, where there is a possibility for optimisation are the renewal fees. The figures below above present respectively the highest and the lowest fees for renewals of residence permits charged by the Member States as a share of the mean monthly gross earnings in that Member State. As can be seen from the graph, similarly to the application fees for initial permits, in one Member State (Bulgaria), the highest fees for renewals charged corresponds to more than 50% of the mean monthly gross earnings, while in Greece these represent between 25-50% of the monthly earnings. In nine Member States the fees correspond between 10% and 25% of mean monthly gross earnings, which is still significant. This represents an opportunity for optimisation with bringing fees at levels under 10% of mean monthly gross earnings.

Figure 23. Fees for renewal as a share of mean monthly gross earnings in the Member State



Another aspect where there is room for optimisation concerns the modus operandi for launching the application for renewal. In 13 Member States⁵²³, the application for renewal can only be submitted **in person** (see table below). In addition to those

⁵¹⁸ EE, ES, HR, IT, LU, MT, RI and SI

⁵¹⁹ BE, CY, EE, EL, IT, LV, PL, RO

⁵²⁰ BE, DE, EL, IT, LV, SE

⁵²¹ BE, CY, DE, EE, FI, SE, SI, SK

⁵²² AT, BE, EL, ES, HR, HU, IT, LT, LU, MT, NL, PL, PT

⁵²³ AT, BG, CY, EE, EL, HR, HU, LT, LV, MT, PT, PL, SK

Member States, that allow submission only in person or those which allow submission via post but require physical presence for capturing biometric data (FI and SI), in only a few countries the application can also be submitted via **post** (CZ, EE⁵²⁴, IT, LU, SE); **e-mail** (EE⁵²⁵) and **online** (NL, RO and SE). Clearly, keeping in mind that electronic identification is already common throughout the EU, and biometrics are taken during the initial application process, there is scope to further expand the possibility for online application, thus reducing costs to both the third country national and the administration.

Table 29. Possibilities for launching an application for renewal of residence permit

Ways of lodging application	No. of MS	Member States
In person	21	AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, HR, HU, LT, LV, LU, MT, PL, PT, RO, SE, SI, SK
Online	7	BE, EE, ES, FI, NL, PL, RO, SE
Post	6	CZ, EE, FI, IT, LU, SI, SE
E-mail	1	EE

7.3.7 Intra-EU mobility phase

The key aspect of intra-EU mobility, where there is scope facilitation concerns the possible facilitations to the procedures and documentation requirements that Member States may provide to mobile third country nationals. These include, for example, shorter application processing times, an exemption from need to provide proof of sickness insurance, as well as exemptions from integration measures, proof of accommodation and labour market tests. Any of them can reduce costs to third-country nationals and businesses.

Table 30. Do the conditions and procedures for admission in a second Member State differ for 'mobile' third-country nationals compared those for a first time applicant third-country nationals under EU Directives

		EU Blue Card Directive	Family Reunification Directive	Students Directive	Researchers Directive	Long-term residents Directive
Procedures and conditions to request a residence permit	Yes	AT, BG, CZ, DE, EE, EL, FI, IT, LV, MT, NL, PT, RO, SK,	DE, EE, FI, LT, LV, NL, SK,	BG, DE, EE, FI, IT, LU, LV, MT, NL,	BG, DE, EE, FI, IT, LU, LV, NL, PL, RO, SK,	AT, BE, BG, CZ, DE, EE, ES, FI, IT, LT, LV, MT, NL, PL, PT, SE, SK,
	No	BE, ES, HR, HU, LT, LU, PL, SE, SI,	AT, BE, CY, CZ, EL, ES, HR, HU, IT, LU, MT, PL, PT, RO, SE, SI,	AT, BE, CY, CZ, EL, ES, HR, HU, LT, PL, PT, RO, SE, SI, SK,	AT, BE, CY, CZ, EL, ES, HR, HU, LT, MT, PT, SE, SI,	CY, EL, HR, HU, LU, RO, SI,
	N/ACY,		BG,			

⁵²⁴ if less than 5 years have passed from capturing of fingerprints, otherwise it has to be submitted in person

⁵²⁵ ibid

		EU Blue Card Directive	Family Reunification Directive	Students Directive	Researchers Directive	Long-term residents Directive
Procedures and conditions to request a work permit	Yes	BG, EE, EL, IT, MT, NL, RO, SE	NL, SK,	LU, NL,	DE, EE, IT, LU, NL,	BE, BG, DE, ES, IT, NL, SE, SK
	No	AT, BE, CZ, DE, ES, HR, HU, LT, LU, LV, PL, PT, SI, SK,	AT, BE, CY, CZ, DE, EE, EL, ES, HR, HU, IT, LT, LU, LV, MT, PL, PT, RO, SE, SI,	AT, BE, CY, CZ, DE, EE, EL, ES, HR, HU, LT, LU, LV, PL, PT, RO, SE, SI, SK,	AT, BE, CY, CZ, EL, ES, HR, HU, LT, LU, LV, MT, PL, PT, RO, SE, SI, SK,	AT, CY, CZ, EE, EL, HR, HU, LT, LU, LV, MT, PL, PT, RO, SI,
	N/A	CY, FI,	BG, FI,	BG, FI, IT, MT,	BG, FI,	FI,

Source: ICF research

Overall, with regard to work permits, the majority of Member States apply the same procedure for intra-EU mobility as for first time applicants. For residence permits this is less pronounced, and the procedures are much facilitated. In terms of the documents needed, again, in the majority of Member States there is no difference between first time applicants and mobile third-country nationals.

In other Member States, mobile third-country nationals are **exempted from certain requirements** that first time applicants need to meet, such as exemption from integration conditions (language, culture) if already met in the first Member State (NL); exemption from permit procedure if evidence of sufficient means is presented (NL). Another facilitating factor mentioned is the shorter time for processing the application (CZ, PT). In Portugal, there is an entirely different residence permit scheme for EU LTRs.

There is significant scope for the legal migration Directives to introduce more provisions that stipulate facilitating conditions and procedures for intra-EU mobility.

7.3.8 End of legal stay

The only aspect that raises issues of efficiency during this phase concerns the procedures around absences from Member States. Shorter periods of permitted absence, means a less flexible approach that potentially may lead to the third-country national (and employer) reapplying for a permit and incurring again application costs.

The LTR⁵²⁶ and BCD⁵²⁷ contain provisions regulating the period of absences tolerated outside the EU before a residence permit is withdrawn. As the other legal migration Directives do not contain provisions on this topic, the legislative framework in a number of Member States' does not provide for rules in this area for permits issued based on the FRD, SD and RD.⁵²⁸

⁵²⁶ Article 9(1) of the LTR stipulates that third-country nationals are now longer entitled to the states in case of an absence for a period of 12 consecutive months from the territory of the Member State

⁵²⁷ Article 16(4) of the BCD states that by way of derogation from Article 9(1)(c) of the LTR, Member States shall extend to 24 consecutive months the period of absence from the territory of the Community which is allowed to an EC long-term resident holder of a long-term residence permit with the remark referred to in Article 17(2) of this Directive and of his family members having been granted the EC long-term resident status.

⁵²⁸ AT, BG, CZ, EE, HU, LV, MT, PL, SE, SI.

Periods of absences allowed in other Member States are the following:

- FRD: on average, 7 months of absence are allowed in Member States,⁵²⁹ ranging from 30 days in Croatia and Greece to up to two years in Finland.
- SD: on average, 5 months of absence are allowed in Member States, ranging from 30 days in Croatia to up to one year in the Netherlands.
- RD: on average, 7 months of absence are allowed in Member States, ranging from one month in Croatia, three months in Cyprus, Spain and Greece to up to two years in Finland.

While the BCD only regulates the period of absence allowed in cases where the (former) Blue Card holder has long-term residency status, it does not include provisions concerning absences taken *before* the third-country national has reached that point. Not all Member States have regulated this nationally.⁵³⁰ For example, Estonia does not take into account periods of absences outside its territory as the validity of the residence permit is linked to the purpose and length of the residence permit. In other Member States,⁵³¹ the periods of absences allowed depend on the implementation of the BCD. Blue Card holders in Belgium and Germany can be absent for 12 consecutive months. In Bulgaria, Spain, Greece and Latvia, Blue Card holders can be absent for 12 consecutive months with a total of 18 months within the five years period of the validity of the residence permit. In other Member States, absences to the country of origin for work and/or studies (e.g. Romania), or for short-term visits or holidays (e.g. Finland) are not taken into account.

Most Member States comply with the provisions set in the LTR regarding the minimum period of absences from the EU before a long-term residence permit is withdrawn.⁵³² According to Article 9(1)(c) of the LTR Directive, holders of a long-term residence status will have their status withdrawn in the event of absence from the territory of the EU longer than 12 consecutive months. A few Member States have allowed for a longer period of absence in their legislation, in accordance with the option left in Article 9(2) of LTR.⁵³³ The 'may' clause of Article 9(2) of LTR – which states that Member States may consider absences exceeding 12 consecutive months or for specific or exceptional circumstances as not causing a withdrawal of the LTR status – was transposed by 16 Member States.⁵³⁴ Partial or incorrect transposition was found in three Member States where specific or exceptional circumstances are not clearly specified in national legislation.

The above data indicates that there is scope for more efficient implementation of the directives, allowing for more flexible approach that corresponds to the needs of third-country nationals and employers, while potentially reducing costs linked to reapplying for permits.

7.4 EQ10B: Based on the legal migration acquis as implemented in the MS (for the three main Directives): - What factors influenced the efficiency with which the way legal migration is managed by the Member State? - If there are significant differences in costs (or benefits) between Member States, what is causing them?

Research question	Sources of information	Key conclusions
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⁵²⁹ BE, CY, DE, ES, FI, HR, IT, LT, LV, LU, NL, PT, RO, SK.

⁵³⁰ AT, CZ, EE, HU, MT, PL, SE, SI.

⁵³¹ BE, BG, CY, DE, EL, ES, FI, IT, LT, LU, LV, NL, PT, RO, SK. In HR however, the absence of 12 consecutive months concerns absences outside Croatia and not the EU.

⁵³² With the exception of EE and ES.

⁵³³ AT and FI provide for two years of absence.

⁵³⁴ AT, BE, CZ, DE, EE, EL, ES, FI, LT, LU, LV, MT, NL, PL, PT, SI.

<p>EQ10B. Based on the legal migration acquis as implemented in the MS (for the three main Directives): - What factors influenced the efficiency with which the way legal migration is managed by the Member State? - If there are significant differences in costs (or benefits) between Member States, what is causing them?</p>	<p>2A Evidence base for practical implementation of the EU legal migration Directives: Synthesis Report</p>	<p>The analysis of implementation choices in regards to admission procedures and intra-EU mobility, shows that that most of the time most Member States choose implementation options that increase their processing costs and the costs to third-country nationals. Some Member States have an overall conservative approach, and that results in a costlier overall migration process and experience to third-country nationals. In terms of intra-EU mobility, the implementation choices made by most Member States hinder the achievement of the overall objective of intra-EU mobility, as one of the key advantages of having an EU migration acquis.</p>
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This section aims to clarify how the modus of implementation of the legal migration acquis has influenced the efficiency with which Member States manage legal migration. In specific the analysis focuses on the admission procedures and intra-EU mobility.

In terms of admission procedures, two factors that impact efficiency are examined: (1) institutional setup in the processing of applications and issuance of permits and (2) impact of national implementation choices, or 'may clauses', on efficiency.

The implementation choices of Member States are policy decisions, where efficiency is not necessarily a primary objective. More efficient procedures and approaches by one Member States, may be indicative of lower levels of perceived threats and risks, rather than a cost saving strategy.

In the answers to the previous question (Q10A) a number of efficiency possibilities were identified both for third-country nationals and Member State administrations that could reduce the administrative burdens and costs in the admission procedures. This section examines two other aspects of the procedures: the number and types of institutions involved in the processing of the applications and the issuance of the residence / work permits.

7.4.1 Admission procedures

The specific institutional setup for migration management in Member States may result in more complex application procedure, permit issuance, or arrival registration procedures that increase costs for the administration and the third-country national. Domestic institutional migration management setups are shaped by:

- Administrative arrangement of the Member State (e.g. federal vs. non-federal)
- Traditional levels of migration – Member States that have experienced in the past higher levels of migration may have more developed institutional framework, and may have more complex administrative structures
- Pre-existing national schemes may pre-determine the implementation modus, as changing these for the purpose of an adopted EU directive / or creating parallel structures may be too costly.

Institutions involved in processing of applications

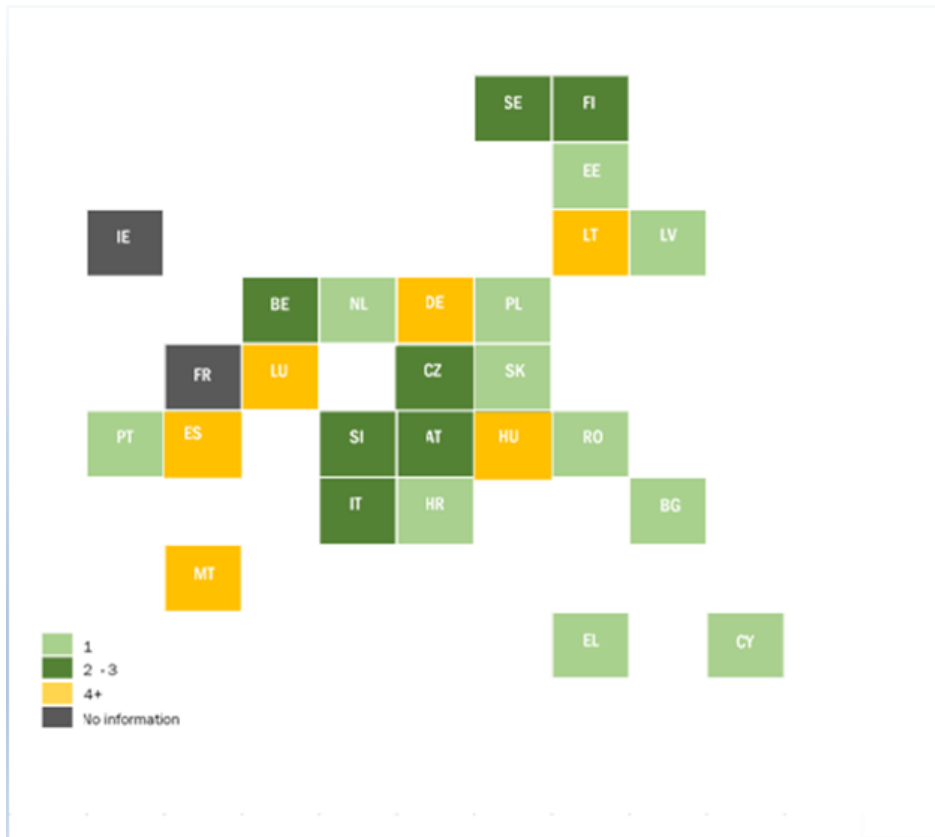
In 10 Members States one authority is responsible,⁵³⁵ whilst in 14 Member States, different Member State authorities are involved in the processing of applications,⁵³⁶ going up to five different authorities in Malta and four in Lithuania and Germany. However, in many cases the number of authorities is dependent on the type of status

⁵³⁵ BG, CY, EE, EL, LV, NL, PL, PT, RO, SK

⁵³⁶ AT, BE, CZ, DE, ES, FI, HR, HU, IT, LT, LU, MT, SI, SI

applied for. In Austria, for example, if a person does not intend to work, only one authority is involved.

Figure 24. Number of institutions involved in processing of permit applications



Source: ICF research

The authority receiving the application is either the migration authority / agency or the diplomatic mission in the country of the third-country national, depending on who can lodge the application. In many cases the second authority involved is either the one responsible for the issuing of the visa, where this is necessary, and/or the one subsequently delivering the permit to stay. Other types of authorities often quoted include the employment office (for work permits), education agencies (e.g. for students), as well as border guards / law enforcement units. Some Member States also make use of external service providers to accept applications (e.g. Hungary and Czech Republic).

In the majority of cases, third-country nationals lodge the application with a single authority (i.e. only one step), although in a few Member States, once having received a favourable decision, they need to pick up (and sometimes request) the residence permit with another authority than the one where they lodged the application. When the permit is only provided upon arrival in the Member State, the third-country national also, where applicable, has to apply for a visa.

In eight cases⁵³⁷, application issues have been identified with regard to the SPD, requiring those falling under the Directive to still introduce different requests and/or follow multiple steps (most often one for a decision on the status and another for the residence permit). In Latvia, for example there are different procedures which apply for different statuses – the procedure for workers foresees three steps and the

⁵³⁷ AT, BG, DE, IT, LT, LU, LV, RO

procedure for third-country nationals coming to Latvia for other purposes has two steps.

Institutions involved in the issuance of permits

In eight Member States one authority is responsible for both processing the application and issuing the permit,⁵³⁸ whilst in 14 Member States⁵³⁹, different authorities are involved in the application and permit issuing procedure, going up to four different authorities in Germany, Spain and Luxemburg. However, in many cases the number of authorities depends on the type of status applied for. In Austria, for instance, if a person does not intend to work, only one authority is involved.

In nine Member States⁵⁴⁰ the number and type of authorities involved in the issuing of permit are different from those involved in the application procedures. The authorities involved in the application procedure are often either the migration authority/agency or the embassy/consulate in the country of the third-country national. In many cases the second authority involved is either the one responsible for the issuing of the visa (where this is necessary), and/or the one subsequently delivering the permit to stay.

Figure 25. Number of institutions involved in the issuance of permits



Source: ICF research

The authorities involved in the permit issuing procedure are often either the migration authority/agency or the embassy/consulate in the country of the third-country national, or the local police office. Other types of authority often quoted, include education institutions (e.g. for students and researchers), the employment office (for work-related permits), as well as border guards / law enforcement units, social insurance and health authorities, which often are consulted as part of the application process.

In some Member States, the roles of multiple agencies result in an overall application and post-application process that is slow and complex: in Italy, for instance, the process involves multiple applications, steps and authorities. In Spain, the involvement of different authorities is often problematic as the same documentation may be subject to a different assessment. Similarly, in Luxemburg, the three-step

⁵³⁸ BE, BG, EE, HR, PL, PT, RO, SK

⁵³⁹ AT, CY, CZ, DE, ES, FI, HU, IT, LT, LU, MT, NL, SE, SI

⁵⁴⁰ CZ, DE, FI, HU, IT, LT, LV, MT, SI

procedure could raise concerns as regards the single procedure, single application and single decision principles underlying the SPD.

Single application procedure

A single application is an efficient solution both for applicants and government administrations. It is most often offered under the LTR (18 Member States⁵⁴¹), followed closely by the RD (15⁵⁴²), SPD (13⁵⁴³) and SD (13⁵⁴⁴) which can still however cover different elements to be filled in by different actors (e.g. a part for the sponsor, a part for the third-country national wishing to migrate and a visa application).

Yet, many Member States require multiple applications, covering the application for the status itself, the visa, and/or permits to reside / work depending on the status:

- A separate visa application;
- Application for a work permit, which is problematic in the Member States with SPD transposition problems – e.g. Latvia, where a separate registration of the invitation by the employer is required, Romania, where pre-authorisation of the right to work is required, Bulgaria, where first the employer has to apply to the Employment Agency. This essentially goes against the concept of the single residence and work permit and constitutes an infringement of the SPD;

Evidently, the supporting documents which are to accompany the application are generally to be obtained from many different entities, with Cyprus for example requiring VAT clearance, Labour Office endorsement of labour contracts, proof of revenue of the employer and Romania requiring a preliminary endorsement by the Immigration Inspectorate for work-related permits as well as involving educational authorities for students and researchers.

Implementation choices

The ‘may clauses’ in the legal migration are generally of two types. They give Member States an opportunity to adopt ‘stricter migration rules and procedures’ (e.g. requiring additional documents, longer term to examine applications, or possibility to reduce the duration of permits). The ‘may clauses’ also can provide an opportunity to adopt more efficient solutions that reduce costs either to the third-country national or the administration. The tables below show a mixed picture. The ‘may clauses’ whose transposition increases the costs to third-country nationals and the administration (e.g. requiring various additional documents, sickness insurance, evidence, or conditions) were **not** adopted only by a minority of Member States. Therefore, the majority opted for the costlier options. The only exceptions are the clauses concerning integration measures (FRD Art.7(2) and the requirement to submit Blue Card application from outside the country (BCD, Art.10.4), which the majority of Member States did not transpose.

Table 31. Impact on costs of the ‘may clauses’ adopted in pre-application and application phases

Directives and relevant provision: Pre-Application Phase	Number of MS not transposed	MS	Effect of non-transposition on costs
FRD			
Article 7	10	CY, CZ,	Lower costs

⁵⁴¹ AT, BE, BG, CY, CZ, DE, EE, FI, HR, HU, IT, LV, MT, NL, PL, PT, SE, SK

⁵⁴² AT, BE, CZ, DE, EE, FI, HR, HU, LT, MT, NL, PL, PT, SE, SK

⁵⁴³ AT, CZ, DE, EE, ES, FI, HR, HU, MT, NL, PL, PT, SK

⁵⁴⁴ AT, CZ, DE, EE, FI, HR, HU, LT, MT, NL, PL, PT, SK

Directives and relevant provision: Pre-Application Phase	Number of MS not transposed	MS	Effect of non-transposition on costs
<p>1. When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:</p> <p>(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;</p>		EL, FI, HR, HU, LV, NL, RO, SI	
<p>(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;</p>	10	BG, CY, CZ, EL, HR, HU, LV, PT, SE, SK	Lower costs
<p>(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.</p>	5	CY, EL, HU, LV, RO	Lower costs
<p>Art. 7(2) Member States may require third country nationals to comply with integration measures, in accordance with national law.</p>	15	CZ, EE, ES, FI, HR, HU, LU, LV, MT, PL, PT, RO, SE, SI, SK	Lower costs
<p>Art 15(1) Not later than after five years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor.</p>	10	AT, BE, HR, IT, LT, LU, LV, NL, SI, SK	Lower costs
BCD			
<p>Art. 5</p> <p>2. Member States may require the applicant to provide his address in the territory of the Member State concerned.</p>	8	ES, FI, HR, IT, LT, PT, SE, SI	No impact

Directives and relevant provision: Application phase	Number of MS not transposed	MS	Effect of non- transposition on costs
SD			
Article 20 Fees Member States may require applicants to pay fees for the processing of applications in accordance with this Directive.	6	DE, IT, LT, LU, MT, NL	Lower costs
RD			
Art. 14 -3. Member States may accept, in accordance with their national legislation, an application submitted when the third-country national concerned is already in their territory.	8	DE, ES, LT, LU, LV, MT, PL, RO	Higher costs
SPD			
Article 4 Single application procedure 1. An application to issue, amend or renew a single permit shall be submitted by way of a single application procedure. Member States shall determine whether applications for a single permit are to be made by the third-country national or by the third-country national's employer. Member States may also decide to allow an application from either of the two.	5	BE, DE, IT, LU, MT	No impact
BCD			
Art. 10 (3) By way of derogation from paragraph 2, a Member State may accept, in accordance with its national law, an application submitted when the third-country national concerned is not in possession of a valid residence permit but is legally present in its territory.	8	BG, CY, ES, IT, LU, RO, SE, SI	Lower costs
Art. 10 (4) By way of derogation from paragraph 2, a Member State may provide that an application can only be submitted from outside its territory, provided that such limitations, either for all the third-country nationals or for specific categories of third-country nationals, are already set out in the existing national law at the time of the adoption of this Directive.	18	AT, BE, BG, CY, CZ, DE, EE, ES, FI, HR, HU, IT, MT, NL, PL, PT, RO, SK	Lower costs

Source: ICF Research

From the evidence presented so far, it becomes evident, that there is much scope to improve efficiency in terms of process and in terms of legislation in the application procedures – both in terms of streamlining the application processes, as well as by opting for more efficient application of the legal migration acquis.

7.4.2 Intra-EU mobility

As shown in the analysis of this phase in answering Q10A, there is scope to increase efficiency in the application of intra-EU mobility provisions of the directives by adopting provisions that facilitate intra-EU mobility. The majority of Member States continue to apply a conservative approach, requiring the same procedures, conditions (including market tests) or proof of residence as first time applicants, both under the EU and national schemes. Differences in adoption of equal treatment provision amongst MS, and failure to transpose equality provisions means that third-country nationals face different market conditions when moving between Member States. Similarly, such a conservative approach is also applied to family members.

Table 32. Extent to which conditions and procedures differ between 'mobile' third-country national's family members compared to first-time applicants under EU directives?

	Blue Card Directive (2009/50/EC)	Family Reunification Directive (2003/86/EC)	Students Directive (2004/114/EC)	Researchers Directive (2005/71/EC)	Long-term residents Directive (2003/109/EC)
Yes	AT, BE, BG, EE, EL, FI, HU, NL, SK,	HU, NL, RO, SE, SK,	HU, NL, SK,	HU, NL, SK,	BE, CZ, ES, HU, NL, SI, SK,
No	CZ, DE, ES, HR, IT, LT, LU, LV, MT, PL, PT, RO, SE, SI,	AT, BE, CY, CZ, DE, EE, EL, ES, FI, HR, IT, LT, LU, LV, MT, PL, PT, SI,	AT, BE, CY, CZ, DE, EE, EL, ES, FI, HR, IT, LT, LU, LV, PL, PT, RO, SE, SI,	AT, BE, CY, CZ, DE, EE, EL, ES, FI, HR, IT, LT, LU, LV, MT, PL, PT, RO, SE, SI,	AT, CY, DE, EE, EL, FI, HR, IT, LT, LU, LV, MT, PL, PT, RO,
N/A	CY,	BG,	BG, MT,	BG,	BG, SE,

Source: ICF Research

The 'may clauses' related to intra-EU mobility mostly provide an opportunity to adopt more efficient solutions that reduce costs either to the third country national or the administration. The tables below show a mixed picture. In regards to the BCD, where there are a number of 'facilitation' may clauses, the majority of Member States opted to adopt these, and it was only a minority of MS that did not take advantage. In regards to the LTR, the majority of MS opted for cost-increasing options (Art. 14(3) and (5), giving them opportunity to require additional documents and impose additional conditions. Only in respect to requirement of integration measures for mobile LTR, the majority of MS opted out.

Table 33. Impact on costs of the 'may clauses' adopted in pre-application and application phases

Directives and relevant provision	No MS not transposed	MS	Effect of non-transposition on costs
RD			
Art. 13 (3) If the researcher stays in another Member State for more than three months, Member States may require a new hosting agreement to carry out the research in that Member State. At all events, the conditions set out in	5	AT,LT,LV,PL,PT	Lower costs

Directives and relevant provision	No MS not transposed	MS	Effect of non-transposition on costs
Articles 6 and 7 shall be met in relation to the Member State concerned.			
BCD			
Art. 18 (3) The application may also be presented to the competent authorities of the second Member State while the EU Blue Card holder is still residing in the territory of the first Member State.	7	BG, DE, LT, PL, PT, RO, SK	Higher costs
Art. 18 (5) If the EU Blue Card issued by the first Member State expires during the procedure, Member States may issue, if required by national law, national temporary residence permits, or equivalent authorisations, allowing the applicant to continue to stay legally on its territory until a decision on the application has been taken by the competent authorities.	6	BE, IT, LT, PT, RO, SE	Higher costs
Art. 18 (6) The applicant and/or his employer may be held responsible for the costs related to the return and readmission of the EU Blue Card holder and his family members, including costs incurred by public funds, where applicable, pursuant to paragraph 4(b).	7	BG, CZ, DE, ES, LT, LU, SI	Higher costs
Art 18 (7) In application of this Article, Member States may continue to apply volumes of admission as referred to in Article 6. 8. From the second time that an EU Blue Card holder, and where applicable, his family members, makes use of the possibility to move to another Member State under the terms of this Chapter, 'first Member State' shall be understood as the Member States from where the person concerned moves and 'second Member State' as the Member State to which he is applying to reside.	15	AT, BE, CZ, DE, FI, HU, IT, LT, LU, LV, NL, PT, SE, SI, SK	Lower costs
LTR			
Art. 14 (3) In cases of an economic activity in an employed or self-employed capacity referred to in paragraph 2(a), Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for, respectively, filling a vacancy, or for exercising such activities. For reasons of labour market policy, Member States may give preference to	10	AT, BE, BG, EE, ES, HU, LT, LU, LV, PL, SE	Lower costs

Directives and relevant provision	No MS not transposed	MS	Effect of non-transposition on costs
Union citizens, to third-country nationals, when provided for by Community legislation, as well as to third country nationals who reside legally and receive unemployment benefits in the Member State concerned.			
Art. 14 (5) This chapter does not concern the residence of long-term residents in the territory of the Member States: (a) as employed workers posted by a service provider for the purposes of cross-border provision of services; (b) as providers of cross-border services. Member States may decide, in accordance with national law, the conditions under which long-term residents who wish to move to a second Member State with a view to exercising an economic activity as seasonal workers may reside in that Member State. Cross-border workers may also be subject to specific provisions of national law.	10	AT, CZ, FI, IT, LT, LU, NL, PT, RO, SK	Lower costs
Art. 15 (3). Member States may require third-country nationals to comply with integration measures, in accordance with national law. This condition shall not apply where the third-country nationals concerned have been required to comply with integration conditions in order to be granted long-term resident status, in accordance with the provisions of Article 5(2).	15	AT, BE, BG, CY, CZ, ES, FI, HU, IT, LT, PL, PT, RP, SI	Lower costs

Source: ICF Research

7.5 EQ 10C: Is there potential for further streamlining of the current EU legal framework taking into account administrative burden?

Research question	Sources of information	Key conclusions
EQ10C. Is there potential for further streamlining of the current EU legal framework taking into account administrative burden?	2A Evidence base for practical implementation of the EU legal migration Directives: Synthesis Report	There is potential for streamlining EU legal migration legislation for the purpose of increased efficiency and reduced costs and administrative burden in all phases of the migration process. There are opportunities to streamline legal directives in the direction of adopting clearer rules on various deadline and fees, as well as reducing the range of obsolete admission conditions.

The general question about streamlining and simplification of the current EU legal framework has already been answered in the context of answers to questions on

Coherence (EQ2B and EQ3). In these sections we have identified streamlining possibilities in a broader sense, including streamlining that would bring about the accomplishment of the objectives of the EU legal migration acquis.

This section focuses on streamlining of the legislation that would bring about reduction of the administrative burden and more efficient management of the migration flows. In questions EQ10A and EQ10B, we identified a number of areas, where there is scope for Member States to transpose and apply in practice the legal migration acquis in ways that can make the migration process much more efficient. As evidence about the inefficiencies in the current legislation have been presented already in the answers to these questions, in this section, we will only outline the possible areas for simplification.

Streamlining of the current EU legal framework is a matter of political consensus amongst Member States. Each Directive is a product of political negotiation between Member States, and a compromise that serves the perceived needs of all Member States. The Historical Overview, which is part of this report, presented the original Commission proposals and the ensuing negotiations that led to the adoption of each of the directives in the EU legal migration acquis. The paper also outlined the debate around the 2001 proposal on an Economic Migration Directive (which was later withdrawn in 2005). This section does not take into account the historical political arguments for or against propositions for streamlining that may have been put forward by Member States.

7.5.1 Pre-application phase (information)

The main opportunities for streamlining of legislation are:

- Extending the information requirement beyond the more recent EU legal migration directives (e.g. Art 35 of the 2016/801 S&R Directive; Art. 10 of the 2014/66/EU ICT Directive, Art. 11 of the 2014/36/EU SWD), to FRD, BCD, and SPD, which should all have clauses on 'Access to Information'
- Further outlining the requirements for presentation of the information, in terms of language availability, explanations of both process and steps and documentary requirements.

7.5.2 Pre-application phase (documents)

The following admission conditions could be entirely eliminated:

- Proof of adequate accommodation' (FRD, BCD)
- Interviews with sponsor (FRD)
- Proof of sufficient resources (FRD, RD, LTR)
- Proof of sickness insurance (FRD, BCD, SD, RD, LTR)
- Birth certificates (not specific requirement, but should be excluded if valid travel document is presented)

7.5.3 Application Phase

The main areas where there is scope for streamlining of legislation, include:

- Submission of application – the use of electronic applications, should be at least partially introduced, if not full electronic service. This could reduce time and cost to third-country nationals, who often need to travel several times in order to submit an application. Another aspect is the possibility for application, whenever the third country national is already inside the country.
- The analysis of processing times, showed that there is much scope for reduction in maximum allowed processing time.

7.5.4 Entry and travel phase

The main areas where there is scope for streamlining of legislation, include:

- The requirement to register with local authorities is not strictly speaking an issue linked to the legal migration acquis. Yet, treating third country nationals that have gone through the entire application process, proving residence and labour contracts, as other third country nationals and long-term visitors and tourists, is obsolete.

7.5.5 Post application phase

The main areas where there is scope for streamlining of legislation, include:

- The time to deliver the permit should be determined across all directives, thus minimizing the opportunities to prolonged or excessive delays.
- The duration of resident permits should be streamlined into a more flexible approach where duration of studies / research / work contracts should be taken into account.

7.5.6 Residency phase

The main areas where there is scope for streamlining of legislation, include:

- As above, the duration of renewed resident permits should be streamlined into a more flexible approach where duration of studies / research / work contracts should be taken into account.
- Fees for renewal of permits, still seem to be disproportionately high to incomes. There is significant scope to bring them across the EU to less than 10% of mean monthly gross earnings.

7.5.7 Intra-EU mobility

The main areas where there is scope for streamlining of legislation, include:

- Only the introduction of further mandatory facilitating application conditions that would clearly differentiate between first time applicants and mobile third country nationals would contribute to the objective of intra-EU mobility, which is a key aspect of the legal migration acquis.

7.5.8 End of legal stay

The main areas where there is scope for streamlining of legislation, include:

- Introducing a lower threshold for allowed minimum periods of absence of permit holders (presently only The LTR⁵⁴⁵ and BCD⁵⁴⁶ contain provisions regulating the period). This would better correspond to the needs of employers and third country nationals, and possibly reducing costs from reapplying for permit.

⁵⁴⁵ Article 9(1) of the LTR stipulates that third-country nationals are now longer entitled to the states in case of an absence for a period of 12 consecutive months from the territory of the Member State

⁵⁴⁶ Article 16(4) of the BCD states that by way of derogation from Article 9(1)(c) of the LTR, Member States shall extend to 24 consecutive months the period of absence from the territory of the Community which is allowed to an EC long-term resident holder of a long-term residence permit with the remark referred to in Article 17(2) of this Directive and of his family members having been granted the EC long-term resident status.

8 EU Added Value

This evaluation criterion relates to a series of questions examining the EU added value of the legal migration Directives, specifically looking at the following two evaluation questions, as listed in the evaluation framework:

- EQ 11. What have been the positive effects and results brought in by the EU legislation compared to what could have been achieved at Member State or international level?
- EQ 12. To what extent do the issues addressed by the legal migration Directives continue to require action at the EU level?

The information on EU added value was mainly extrapolated from the analysis of the other evaluation questions, the data collected via desk research and stakeholders' consultation, which includes OPC, interviews, focus groups and workshops.

The following sub-sections are divided according to the sub-questions as listed in the evaluation framework. In each section, an overview table provides the key conclusions, based on a traffic light system, highlighting in green the main answers to the questions and in yellow potential issues with regard to EU added value. Key points precede each sub-section including the most important results, before detailed results per question are shown.

8.1 EQ11. What have been the positive effects and results brought in by the EU legislation compared to what could have been achieved at Member State or international level?

This section addresses what the positive effects and results brought in by the EU legislation have been, compared to what could have been achieved at Member State or international level. It includes two sub-questions:

8.1.1 EQ 11A: What would the situation have been today without the EU intervention, compared to interventions only at national level?

Based on the evidence collected and building on the findings of the other evaluation questions, this section identifies and analyses the positive results brought in by EU legislation, assessing the extent to which the positive achievements associated with the adoption of the legal migration Directives would have taken place (anyway) were the Directives not to exist. The table below gives an overview of the main sources of information utilised and the key conclusions of EQ1A.

Research question	Sources of information	Key conclusions
What would the situation have been today without the EU intervention, compared to interventions only at national level?	<p>1Bi Contextual analysis: overview of the evolution of the EU legal migration acquis</p> <p>1Bii Contextual analysis: overview and analysis of legal migration statistics.</p> <p>1Biii Contextual analysis: drivers for legal migration: past</p>	EU-level action in legal migration has been taken through a series of Directives proposed by the Commission and approved by the Council and - after the Lisbon Treaty - the European Parliament, from 1999 to 2016 ⁵⁴⁷ , a period dense of economic, legal and political changes. This had an impact on the resulting Directives, in terms of approach adopted by the Commission, compromises reached during the negotiations, number of 'may clauses' contained in the texts, and, in general, ambition of the Directives, and consequently on their added value.

⁵⁴⁷ The S&RD was adopted in 2016, while its proposal was put forward by the Commission in 2013.

Research question	Sources of information	Key conclusions
	<p>developments and future outlook,</p> <p>1Ci Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives</p> <p>Contextual analysis : Intervention logic: Directive specific paper</p> <p>2A Evidence base for practical implementation of the legal migration Directives: Synthesis report</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC Summary Report</p> <p>Additional desk research</p> <p>Findings under the other evaluation questions</p>	<p>At the time of their entry into force of each Directive, most Member States had already a system in place covering that particular category of migrant or permit. This is the case for the FRD, LTR Directive, SD, SPD, SWD and ICT, while there were few prior national equivalents of the RD and BCD.</p> <p>Without the EU intervention the labour migration policies of Member States will be more fragmented and less consistent, at least in terms of mechanism and shared objectives. The more harmonised approach of the EU Directives, coupled with intra-EU mobility contributes to the attractiveness of the EU for third-country nationals (see also EQ11B for more detail).</p>

8.1.1.1 Introduction

As shown in the historical overview paper,⁵⁴⁸ EU-level action in legal migration has been implemented through a series of Directives⁵⁴⁹ proposed by the Commission and negotiated / approved by the Council⁵⁵⁰ and - after the Lisbon Treaty (2009) - the European Parliament,⁵⁵¹ from 1999⁵⁵² to 2016⁵⁵³, a period of considerable economic, legal and political changes. This had an impact on the resulting Directives, in terms of the approach adopted by the Commission, compromises reached during the negotiations, number of 'may clauses' contained in the texts, and overall on the ambition of the Directives, and ultimately on their added value.

Most of the Directives have built on existing national schemes, harmonising them and setting minimum standards. With few exceptions (ICT, SWD, S&RD), national permit regimes have been allowed to continue alongside EU schemes, and even to be

⁵⁴⁸ Under Task 1B of this assignment.

⁵⁴⁹ Directives are transposed into national legislation and implemented by each Member State.

⁵⁵⁰ Consultation procedure: Council deciding by unanimity with the European Parliament giving only non-binding advice.

⁵⁵¹ In co-decision with the Council.

⁵⁵² Date of the proposal for FRD, finally adopted in 2003.

⁵⁵³ The S&RD was adopted in 2016, while its proposal was put forward by the Commission in 2013.

introduced following transposition. Looking at the evolution in the EU's legal migration acquis, the following factors are noteworthy:

- 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;
- An increasing acknowledgement over time of the role of migration in tackling labour market and demographic challenges;
- 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.

The main Directives in managing legal migration cover students and researchers (SD, RD and S&RD), highly-qualified employees (BCD), a single residence permit combining stay and employment and harmonising certain rights (SPD), seasonal workers (SW) and intra-corporate transferees (ICT). Each of these Directives requires Member States to grant certain rights and structure the admission and stay of a category of migrants. Other Directives cover the acquisition of long-term residence (LTR) and the right to family reunification (FRD).

In terms of EU coverage, the United Kingdom and Ireland have an opt-in to EU migration-related legislation.⁵⁵⁴ Denmark has an opt-out clause and is not subject to any EU migration policy decision. With the exception of the participation of Ireland to the RD, the other Directives do not apply to these three countries. If we take the SD as an example, the United Kingdom, Ireland or Denmark accounted for between one-third and one-half of valid student permits in 2013, although they had only 23.9% of all TCN students in 2003. However, whereas less than ten years ago, the United Kingdom was the main driver of student migration in the European Union (it accounted for half of the non-EU student inflow in 2008), its share fell to 38% by 2014, as more Member States became involved in international study and the United Kingdom imposed restrictions.

There follows an analysis Directive by Directive of the added value brought by each of them, compared to the existing national framework at the time of their entry into force.

8.1.1.2 FRD⁵⁵⁵ (proposed in 1999 - adopted in 2003)

Prior to the adoption of the Directive, all Member State had a system in place varying from a right to family reunification to a discretionary power to allow it under certain conditions. With the transposition of the Directive, all but four Member States⁵⁵⁶ have a specific procedure in place for family reunification. The FRD provides a general, common framework to Member States with positive effects in terms of **harmonisation, increased legal certainty** and **improvement of the rights of family members** overall across Member States and in particularly for those Member States where there were no specific legal instruments for that purpose.⁵⁵⁷ Provisions on family reunification are also contained in the RD, BCD, LTR, ICT and in the S&RD for the category of researchers.⁵⁵⁸ This increases the **attractiveness of the EU** for

⁵⁵⁴ Only when they choose to opt in are they bound by EU migration policy measures.

⁵⁵⁵ See effectiveness section and European Migration Network (EMN), 'Family Reunification of Third-Country Nationals in the EU plus Norway: National Practices', April 2017, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_synthesis_report_final_en_print_ready_0.pdf.

⁵⁵⁶ CZ, HU, LV and PL.

⁵⁵⁷ This was the case for EL, CY, MT, RO.

⁵⁵⁸ There are also rules on family members in the asylum acquis, which is beyond the scope of this study.

the category in exam, but potentially also for labour migrants, facilitating family life. Family reunification is one of the main avenues for legal migration to the EU, as it accounts for approximately a third of all arrivals of TCNs.⁵⁵⁹

8.1.1.3 LTR (proposed in 2001 - adopted in 2003)

The Directive does not apply to labour migrants alone, as its key standard is five years continuous legal residence. According to a study on the legal status of TCNs commissioned by the European Commission in 2000,⁵⁶⁰ the grounds for obtaining LTR status did not vary significantly across Member States.

LTR status is meant to grant third-country nationals rights as close as possible to those enjoyed by nationals, without actually conferring EU citizenship.⁵⁶¹ Its added value resides indeed in the fact that:

- It **enhances intra-EU mobility** of third-country nationals, which is a priority of EU level action;
- It imposes an obligation of **equal treatment** of LTRs with nationals regarding several social and economic rights, which to a certain extent were already recognised by Member States. However, the Directive brought a certain convergence and an improvement in the conditions of the LTR.

8.1.1.4 SD (proposed in 2003 - adopted in 2004)

At the time of the SD adoption, all EU Member States already had study permits broadly in line with the Directive and admission requirements were quite consistent throughout the Member States. Therefore, Member States had to make few adjustments to their legislation. However, in some cases implementation required more than just renaming an existing student permit. Before Poland transposed the Directive, for example, international students had to apply for general visas or fixed-term residence permits. There was no such thing as a “student permit”. Transposition therefore created a new ‘student category’ of migrant and thus establishing greater harmonisation.

The added value of the SD is found in the introduction of **intra-EU mobility** rules (see though below Q12A): the Directive requires Member States to create mobility provisions for TCN students who have studied in a first Member State (for no less than two years) and wish to continue or complement their studies with a related course in a second Member State. The mobility provision also applies to participants in a “Community or bilateral exchange programme”. As with initial admission and renewal, the second Member State must admit the student within a period that does not “hamper” the pursuit of studies. This provision has brought about change in all Member States as none of them had mobility clauses prior to transposition.⁵⁶²

Positive effects for international students are the **temporary residence permit** that allows them to stay in the Member State temporarily after completing their studies⁵⁶³ and the **visa exemptions** that allow them to change countries without having to return home or await a new visa in the first country of study.⁵⁶⁴ Also having the **right to work and be self-employed** during their studies is a positive effect.

⁵⁵⁹ Based on Eurostat data (2011-2015) (extracted on 19-20 January 2017) concerning TCNs who received a residence permit in the EU and EFTA countries, or an EU Blue Card in the EU countries. Eurostat data show that, in 2015, more than 440,000 first permits for family reasons were issued to TCNs (reuniting with a TCN sponsor) in the EU Member States.

⁵⁶⁰ Groenendijk, Guild & Barzilay / Legal status of third country nationals / 2000 (study commissioned by COM) <http://cmr.jur.ru.nl/cmr/docs/status.pdf>.

⁵⁶¹ Naturalisation remains of exclusive competence of Member States.

⁵⁶² However, the conformity analysis shows that in a number of Member States there are conformity issues in relation to this provision: EE, LT, PL, RO, ES, SE, SK.

⁵⁶³ BE, BG, DE, EE, FI, LT.

⁵⁶⁴ DE, IT, NL, LU, MT.

As stated in the 2016 OECD study,⁵⁶⁵ the SD increased the access of international students to employment opportunities during their studies, allowing them to make more contact with employers. This increases the likelihood of being hired after graduation, although it does not represent a new channel for admission.

Finally, ***in a few countries students were not allowed to work at all until the transposition of the Directive***. One example was Lithuania, which students are now allowed to work 20 hours per week, i.e. above the minimum working hours stipulated by the Directive.

There has been steady growth in international studies over the past two decades, with total numbers of international students in OECD countries more than doubling from 1.6 million in 2000 to 3.4 million in 2012.⁵⁶⁶ In addition, although global increases in international studies largely bypassed the EU numbers in the late 2000s, with the United States experiencing a bigger rise than the EU Member States covered by the Directive, there are signs that inflows to EU Member States are picking up.⁵⁶⁷

8.1.1.5 RD (proposed in 2004 - adopted in 2005)

At the time of transposition, only two EU Member States⁵⁶⁸ had already a specific residence permit for TCN researchers under the national scheme,⁵⁶⁹ therefore there is evidence of ***greater harmonisation***.

In many Member States⁵⁷⁰ the transposition of the Directive led to more favourable legislation, measures and conditions for researchers.⁵⁷¹ The ***main advantages*** introduced by the provisions of the Directive related to the following:

- Exemption from the work permit requirement (including associated labour market tests);
- Possibility to apply for a LTR permit from within the Member State;
- Facilitation of family reunification.

The transposition of the Directive has also had a ***positive impact on the administrative procedure in some Member States***.⁵⁷² This has mainly related to fast tracking of applications⁵⁷³ as well as the introduction of single desks and authorities responsible for the processing of these particular applications.⁵⁷⁴ These measures have sped up the time taken for decisions to be made. For example, in Hungary, the processing times for considering a residence permit application is 15 days compared to the general deadline of 21 days.

As mentioned, Ireland was not bound by the Directive but chose to transpose it. Ireland's inflows of researchers were substantial relative to the size of the country: 1750 in the first six years after transposition. In universities, between 10% and 30% of all researchers are employed under the Irish research permit.⁵⁷⁵ Although comparison is difficult, Member States that have transposed the Directive do not

⁵⁶⁵ OECD and EU (2016).

⁵⁶⁶ Although that figure includes a substantial number of mobile students within Europe.

⁵⁶⁷ OECD and EU (2016).

⁵⁶⁸ FR and UK.

⁵⁶⁹ Although 9 Member States had adopted measures to facilitate the admission of third-country researchers.

⁵⁷⁰ BE, CZ, FR, EL, HU, IE, IT, LT, NL, PL, SK, SI, SE.

⁵⁷¹ EMN, 'Attracting Highly Qualified and Qualified Third-Country Nationals', 2013, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/attracting/emnsr_attractinghqworkers_finalversion_23oct2013_publication.pdf

⁵⁷² CZ, DE, HU, IT, LT, IE.

⁵⁷³ CZ, HU, IE, LT, SK.

⁵⁷⁴ HU, IT.

⁵⁷⁵ OECD and EU (2016).

appear to attract relatively more researchers than those which have not.⁵⁷⁶ However, in some Member States (e.g. the Netherlands) the RD led to an increase in the uptake of the research permit.⁵⁷⁷

Finally, the RD affords researchers **more favourable intra-EU mobility rights** as well as **family reunification and EU mobility for family members**, neither of which apply to students.⁵⁷⁸

Contrary to later labour migration Directives (such as the BCD), there is no provision for labour market tests or wage requirements for remunerated researchers. By concentrating on conditions of admission and residence, it creates a framework under which Member States are required to admit certain third-country nationals, which – along with the SD – makes it the first instance of supranational harmonisation of labour migrant admission policies.⁵⁷⁹

8.1.1.6 BCD (proposed in 2007 - adopted in 2009)

The BCD introduced a permit category for which there were few prior national equivalents. According to the impact assessment prepared by the Commission in advance of its proposal for the BCD⁵⁸⁰, 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.

The key intended added-value of the BCD was creating a system that attracts and retains highly qualified third-country workers who can contribute to the EU labour market, supporting efforts for the EU to be a competitive and dynamic knowledge-based economy. It seeks to better **harmonise the conditions for the admission of highly qualified workers**, so that employers across EU Member States have to meet similar requirements when recruiting them and can offer them permits with similar benefits.

The Blue Card has advantages which can be provided only by EU-level legislation⁵⁸¹, principally:

- It affords TCN migrants **intra-EU mobility** without their having to exit outside the EU to apply for a new visa and work permit for the next Member State of employment;

⁵⁷⁶ Colussi, T. (2016), "The Impact of EU Directives on Third-Country Migrant Inflows", *OECD Social, Employment and Migration Working Papers*, No. 181, OECD Publishing, Paris, <http://dx.doi.org/10.1787/1815199x>.

⁵⁷⁷ OECD and EU (2016).

⁵⁷⁸ However, EU Member States often fail to make it clear in their legislation that they admit TCN researchers for up to three months if issued with a permit from another member state. Austria, for example, has no special provisions to that effect, which can create uncertainty in the interpretation and application of mobility provisions in all Member States. Although most Member States require a new hosting agreement to be signed should a research job exceed three months, the Netherlands and Poland do not. Poland accepts a hosting agreement signed with a research institution in another EU Member State if it includes plans to conduct research in Poland, too: the foreign researcher applying for a residence permit to conduct research in Poland has only to produce the agreement signed with another EU Member State. In the Netherlands, mobile researchers do not need temporary residence permits (known by the acronym MVV) and no new residence permit is required for stays of more than three months.

⁵⁷⁹ OECD and EU (2016).

⁵⁸⁰ 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.

⁵⁸¹ EMN, , 'Attracting Highly Qualified and Qualified Third-Country Nationals', 2013, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/attracting/emnsr_attractinghqworkers_finalversion_23oct2013_publication.pdf.

- It enables third-country nationals to accrue periods of residence in different Member States to acquire **LTR status**.

Moreover, the BCD contains elements which could be more favourable relative to national schemes, mainly:

- It puts a relatively short ceiling on processing times;
- It creates possibilities for migrants to be accompanied by their families (immediate in case of mobility to a second Member State) and grants family members immediate labour market access;
- It allows Blue Card holders to seek work in the event of unemployment (i.e. they do not lose their right to stay with the loss of the position).

The EU Blue Card has clearly created a more favourable category of permit in a number of EU Member States which previously had no special category for highly qualified workers.⁵⁸²

However, the Blue Card has struggled to compete with national schemes whose fewer documentation requirements make them simpler to access (e.g. in France, the Netherlands, and Belgium), and in countries where the general framework is very open (e.g. Sweden).

Indeed, the BCD initially had a very limited take-up⁵⁸³ and as a consequence the Commission was asked to review the Blue Card and submit a new proposal for a revised Directive in 2016 (negotiations ongoing).

8.1.1.7 SPD (proposed in 2007 - adopted in 2011)

The SPD was launched alongside the draft BCD in 2007. This was the first Directive to be adopted under the Lisbon Treaty and, therefore, in accordance with full parliamentary co-decision powers. The overriding purpose of the SPD is simplification, by uniting the procedure for granting or renewing both the right to work and the right to reside and by appointing a single competent authority as responsible for the procedure (a "one-stop-shop").⁵⁸⁴ Moreover, it introduces **procedural safeguards** for the applicant, a **deadline of a maximum of four months for a decision**, and a **common set of rights** for most legally resident TCN workers (e.g. equal treatment, economic and social rights).

At the time the SPD was passed, numerous EU Member States already had a single permit and a single application procedure in place⁵⁸⁵ and statutory processing times within the limits set by the Directive. Effective processing times for work permits in most EU Member States were below the statutory limits of the Directive, with the notable exception of Italy and Greece, where long processing delays were also in violation of national statutory requirements.

Although some Member States kept the pre-existing system, national permit procedures and rights were brought in line with the SPD, without having to make

⁵⁸² EE, BG, HU, LV, LT, PL, RO, SI and SK. Before they transposed the Blue Card they had only general work permit programmes in place. While the EU Blue Card provides more favourable conditions than the standard work permit in those countries for migrants who meet the Blue Card criteria, those same criteria also clear the way to alternative permits which require demonstrating fewer qualifications.

⁵⁸³ All Member States but DE and LU have continued applying the parallel existing national scheme.

Furthermore, due to the numerous 'may' clauses and also the existence of parallel national schemes in many Member States, the effects of the Blue Card as a legal instrument has been weakened. For example, Member States are permitted to apply quotas. In Cyprus, such a quota is set at 0 Blue Cards which de facto means that the instrument is not applied at national level.

⁵⁸⁴ Although other authorities can be consulted in the process.

⁵⁸⁵ 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.

radical changes in most Member States. However, the effect of the transposition of the SPD goes much further, since the transposed directive dovetailed or coincided with broader changes in the national permit system which went beyond the articles and the scope of the Directive.⁵⁸⁶ A typical example of the implementation approach was Lithuania, where pre-existing procedures largely corresponded to the requirements of the Directive. While Lithuania kept the temporary residence permit already in place, it changed its permit issuance procedure. It scrapped the work permit once issued to most workers and it restructured them for single permits.⁵⁸⁷ Overall, the single permit scheme was a little more flexible and faster than the previous permit procedure. Moreover, for single permit holders Lithuania waived its rule that most TCN workers should leave after two years and reapply for a permit.

However, as Member States secured ample room for manoeuvre for interpretation, involving national law and restricting the rights of third-country nationals,⁵⁸⁸ the harmonisation effect of the Directive is likely to be limited.⁵⁸⁹

8.1.1.8 SWD (proposed in 2010 - adopted in 2014)

Prior to the adoption of the SWD, 20 out of 26 Member States had specific, yet divergent, regulations in place for this category of workers. The admission procedures, the duration of the permit, the rights of the seasonal worker, even the definition of "seasonal workers" itself, all varied significantly across Member States.⁵⁹⁰ Some countries have well established seasonal work programmes and permits.⁵⁹¹ Many seasonal work schemes are part of bilateral agreements with countries of origin and the Directive has left them intact as long as they are compatible with it. Other Member States⁵⁹² authorise seasonal work without requiring a specific permit, if workers meet the requisite conditions.⁵⁹³

The Directive does not seek to change the nature of the two very different approaches (permits vs. short-stay employment authorisation), but it sets minimum standards, **harmonising admission procedures and establishing basic rights**, and here resides its added value.

Since it only applies to third-country nationals residing outside the EU, it is not designed to cover and will not give rise to intra-EU mobility. Furthermore, the Directive does not grant family reunification rights and it limits equal treatment in a number of areas. Although the Directive's non-recognition of certain rights is related to the temporary nature of seasonal work, it somehow underscores the stratifying effects of the sectoral approach.

8.1.1.9 ICT (proposed in 2010 - adopted in 2014)

One of the most complex and difficult Directives to negotiate was the ICT, adopted in 2014. Before its entry into force, the requirements for admission of ICTs varied significantly across Member States, despite a generalised recognition of the category

⁵⁸⁶ OECD and EU (2016).

⁵⁸⁷ Although it continued to apply labour market tests.

⁵⁸⁸ Brinkmann, G. (2012), "Opinion of Germany on the Single Permit Proposal", *European Journal of Migration and Law*, Vol. 14, Issue 4, pp. 351-366; Groenendijk, K. (2013) "Social Assistance and Social Security for Lawfully Resident Third-Country Nationals: On the Road to Citizenship?", in E. Guild, S. Carrera and K. Eisele (eds.), *Social Benefits and Migration: A Contested Relationship and Policy Challenge in the EU*, Centre for European Policy Studies, Brussels; Peers, S. (2012), "Single Permits and Workers' Rights", in S. Peers et al. (eds.), *EU Immigration and Asylum Law (Text and Commentary)*, Second Revised Edition, Vol. 2: *EU Immigration Law*, Martinus Nijhoff, Leiden.

⁵⁸⁹ Pascouau, Y. and S. McLoughlin (2012), "EU Single Permit Directive: A small step forward in EU migration policy", *Policy Brief*, European Policy Centre, Brussels, 24 January.

⁵⁹⁰ See the legal and practical application study, under Task 1B of this assignment.

⁵⁹¹ DE, FR, IT, ES and EL.

⁵⁹² E.g. Nordic countries.

⁵⁹³ OECD and EU (2016).

of ICTs in their immigration laws.⁵⁹⁴ Procedures varied greatly from one Member State to another. The application process was associated with lengthy waiting periods and administrative complexity.⁵⁹⁵ Most Member States⁵⁹⁶ issued residence and work permits separately, and the period of validity of the work permit varied significantly from Member State to Member State. Some Member State recognised equal treatment for ICTs with EU nationals but applied various conditions and limitations to the equal treatment rights.

Like the SWD and S&RD, the ICT Directive **does not allow Member States to keep their national practices**: this is because national schemes would have limited the effective application of the mobility provisions. The qualified majority procedure in use after the Lisbon Treaty allowed the Directive to be more ambitious at the EU level. In contrast to seasonal workers, ICTs are granted **extensive family reunification rights**. ICTs and their families benefit from a scheme that entitles them to reside and work in Member States other than the one which issued the ICT permit.

The most notable aspect of the ICT Directive is the set of ground-breaking **intra-EU mobility rights** that simplify the formalities for transferees performing work for different entities of their employer in multiple Member States. The innovation regarding intra-EU mobility rights are threefold: an exception to Schengen rules, a simplified procedure for work activities less than 90 days in a second Member State (short term mobility) and a simplified procedure for work activities longer than 90 days in a second Member State (long-term mobility).⁵⁹⁷

However, as mentioned in section 5, the Directive is more likely to change existing practices in European countries and help formalise ICTs in Member States where the category is still undeveloped, whilst in countries where current practice is to use local hiring provisions, the practice is likely to continue.

8.1.1.10 S&RD (proposed in 2014 - adopted in 2016)

The European Commission produced reports on the SD and RD in 2011, as required by the Directives identifying a number of areas where transposition was less than satisfactory:

- With regard to the SD⁵⁹⁸, the main issues identified concerned insufficiently clear admission procedures including visas, rights (e.g. equal treatment) and procedural safeguards. Processing times and transparency were identified as areas for improvement, as was the possibility of post-graduation work.
- As for the RD, low inflows were attributed to problems of definition and insufficient publicity of the permit.

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

⁵⁹⁴ For example, 4 Member States (CZ, DE, NL, AT) required certificates attesting previous academic and professional skills; 3 Member States (ES, NL and IE) required previous experience in the same activity; three Member States (IE, NL, FR) set annual minimum salary thresholds; 1 Member State (RO) set annual quotas for ICTs.

⁵⁹⁵ E.g. in SK and RO.

⁵⁹⁶ All except DE and DK.

⁵⁹⁷ De Bie A., Ghimis A., 'The intra-corporate transferees directive : a revolutionary scheme or a burden for multi-national companies?', ERA forum (2017) 18 :199-211, available at: https://link.springer.com/epdf/10.1007/s12027-017-0466-3?author_access_token=_cvheAHzELgTU1xPyjRDsve4RwIQNchNBByi7wbcMAY4B3CY2ceX4_qWOe00r6sgXt_WAx7azG5vGKwRFwxA4jIEq2iIL5UNhFfkEAWKRQNYWoWcT3c0XbXYiLu6LBARLsRZJ-5O8ievGU7gzR-a5ZA==.

⁵⁹⁸ See Impact assessment of the SRD Directive.

The Commission's proposal to make the recast Directive wider in scope and exclude alternative national schemes was largely unsuccessful.⁵⁹⁹ In the final version of the Directive, adopted in May 2016, admission conditions are generally facilitated, and some of the previously optional categories⁶⁰⁰ have become binding. The amended Directive also extends and improves intra-EU mobility for students and researchers and labour market access for members of the families of third-country researchers (but not students). It grants them coverage under the FRD, but exempts researchers from many of its most restrictive conditions (those related to integration measures before reunification and waiting periods). Mobility provisions for both students and researchers are increased.

The amended Directive is much more explicit than the two 2013 draft original Directives in its emphasis on the labour migration aspect. The SRD offers students greater opportunity to work while studying. It allows both students and researchers to stay on for an additional nine months after completion of studies or research in order to seek work or to start a business.

The SRD is expected to bring in further legal clarity and certainty, including on the categories which were not mandatory under SD.

8.1.1.11 Conclusions

From the above analysis of each Directives, the legal migration Directives have **added value at the EU level** that would not have been realised without them, including:

- the recognition of rights of third-country nationals across the EU;
- harmonisation of rights and conditions, helping to create a 'level playing field';
- legal certainty and predictability;
- intra-EU mobility; and
- Simplified administrative procedures for some Member States and standardised procedures for applicants and facilitation of entry, thus making the EU relatively more attractive for these groups.

The positive effects brought in by the EU legislation are analysed in details under the following sub-questions.

8.1.2 EQ 11B: What have been the qualitative and quantitative positive effect/results brought in by EU legislation?

This section gives attention to the positive effects resulting from the EU legal migration Directives. As discussed under the previous sub-question, they have been brought in by the EU legislation, mainly regarding the recognition of the rights of TCN across the EU; harmonisation of rights and conditions; legal certainty and predictability; intra-EU mobility; and simplified administrative procedures for some Member States.

The table below gives an overview of the main sources of information utilised and the key conclusions of EQ11B.

Research question	Sources of information	Key conclusions
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⁵⁹⁹ The proposal sought to make binding previously optional rules relating to school pupils, unpaid trainees, volunteers and – two new categories – au pairs and paid trainees. It also prevented Member States from having alternative schemes for these categories.

⁶⁰⁰ E.g. remunerated and unremunerated trainees, and volunteers under the European Voluntary Service Scheme.

Research question	Sources of information	Key conclusions
What have been the qualitative and quantitative positive effect/results brought in by EU legislation? (EQ11B)	<p>2A Evidence base for practical implementation of the legal migration Directives: Synthesis report</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC Summary Report</p> <p>Additional desk research</p> <p>Findings under the other evaluation questions</p>	<p>There is evidence of a number of added values brought in by EU legislation, including:</p> <p>the recognition of rights of TCN across the EU;</p> <p>harmonisation of rights and conditions;</p> <p>legal certainty and predictability;</p> <p>intra-EU mobility; and</p> <p>Simplified administrative procedures for some Member States.</p>

8.1.2.1 Recognition of the rights of third-country nationals across all Member States

The Directives⁶⁰¹ include provisions on **equal treatment of third-country nationals with respect to EU nationals**. Those provisions cover, *inter alia*, working conditions, terms of employment and freedom of association, social security, statutory pensions, goods and services, education and vocational training, tax benefits and the recognition of diplomas and qualifications.⁶⁰² A huge step in this direction has been achieved with the adoption of the LTR which has also strengthened the prospects for legal TCN migrants to access permanent residence,⁶⁰³ a right further facilitated by other Directives (e.g. RD, BCD). Also the SPD is a stride towards more **equal treatment of third-country nationals across the EU**, with transposition in many countries improving the right to access new jobs and bringing more stable residence status, fewer labour market tests and simpler renewal procedures (see also sections below).

The prospects for third-country nationals to enjoy treatment relative to EU citizens have been indeed strengthened. The rights of resident third-country nationals converge closely with those of EU nationals. However, the different provisions on equal treatment across Directives and the multiple 'may clauses' with possible restrictions result in a preferential treatment for some categories of third-country

⁶⁰¹ Seven of them: LTR, RD, BCD, SPD, SWD, ICT, S&RD.

⁶⁰² See Task IC for in-depth analysis on internal coherence of equal treatment provisions. The FRD and SD do not include provisions on equal treatment. However, as per Article 12(1) of the SPD, equal treatment applies to all third-country workers, who consist of (i) TCNs who have been admitted to a Member State for purposes other than work in accordance with Union or national law, who are allowed to work and who hold a residence permit in accordance with Regulation (EC) No 1030/2002 (Art. 3(1) (b)); and (ii) third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law Art. 3(1) (c). This means that FRD status holders are now covered in as far as they fall within the scope of the SPD based on the provisions above.

⁶⁰³ Permanent residence status, which predates the Long-Term Residents Directive, exists in all EU Member States. Options for gaining permanent residence through work or study depend on various considerations such as the time spent in the host country (usually five years, although years as a student may count for half or nothing). There may also be different sets of prescribed conditions such as the offer of permanent employment, wages or income, skills levels or language tests. The new Students and Researchers Directive will further harmonise many of the above elements.

nationals. The main problem with regard to equal treatment stems though from no or incomplete transposition of some legal provisions of the respective Directives, which means that certain equal treatment rights have not been (explicitly) guaranteed, notably in relation to access to social protection.⁶⁰⁴ This diminishes the level of legal certainty for TCNs.

Finally, the ***rights of TCNs family members have been significantly improved***, and this has taken place not only via the FRD. Most of the legal migration Directives⁶⁰⁵ contain provisions on family reunification, sometimes with derogations from FRD on the right to family reunification setting higher standards in several important respects.⁶⁰⁶ The general framework for family reunification applies therefore to most labour migrants and is a clear benefit, which increases the EU attractiveness.

The majority of TCN respondents to the OPC consider that TCNs generally receive equal treatment as compared to nationals of the EU country in which they reside, although a lower share of non-EU citizens residing or having resided in the EU reported to never have been treated differently when it comes to social security benefits and working conditions. We can therefore conclude that there is a ***perception among TCNs of increased legal certainty regarding the recognition of the rights of TCNs across all Member States***, which constitutes an important factor in migration decisions by TCN.

8.1.2.2 Harmonisation

There is evidence of convergence between the Member States' admission conditions following the implementation of the *acquis*. As shown in Task II, although some coherence issues were identified,⁶⁰⁷ ***several admission conditions were harmonised due to the implementation of the Directives***, including the request of evidence of sufficient resources, sickness insurance, adequate accommodation and proof of address and proof of a valid travel document. Furthermore, this harmonised legal framework also includes the conditions related to public policy, public security and public health and the fact that there is no risk of overstaying and that the costs of return are covered. However, as discussed in the effectiveness section, the research identified remaining gaps that still need to be harmonised at EU level (see below Q12).

Another positive effect of the EU action is the ***introduction by the EU legislation of permits that did not exist previously in some Member States***, such as the ICT, the highly skilled schemes (RD and BCD), and more limitedly the SD, with consequent harmonisation and greater legal certainty (see also below section iii. Legal certainty and predictability) and potentially opening up additional avenues for legal migration across the EU. On top of harmonised ease of entry and admission procedures for (highly) qualified migrants, Member States have recognised the importance of additional incentives to influence the migration decision of TCNs. This includes, in particular, offering improved family reunification rights, tax incentives, social security benefits and unrestricted labour market access (see above section 'i. Recognition of the rights of TCNs across all Member States').⁶⁰⁸ According to the recent EMN study on high-skilled workers,⁶⁰⁹ Member States with well-developed policies and measures are indeed the ones also attracting the highest shares of (highly) qualified migrants. Entry and admission is also further assisted through fast-tracking and reduction of

⁶⁰⁴ See, for further information, Task II-First EU synthesis report on the practical application of the Directives and section on effectiveness.

⁶⁰⁵ RD, BCD, LTR, ICT and in the S&RD (for the category of researchers).

⁶⁰⁶ This is the case for the BCD and ICT.

⁶⁰⁷ See coherence section.

⁶⁰⁸ EMN, , 'Attracting Highly Qualified and Qualified Third-Country Nationals', 2013, available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/attracting/emnsr_attractinghqworkers_finalversion_23oct2013_publication.pdf.

⁶⁰⁹ Ibid.

application fees (see below section 'v. Simplified administrative procedures for some Member States').

There is evidence that the **legal migration policy across Member States is less fragmented and more consistent**, although, as largely discussed under the other evaluation questions, there is still substantial diversity of policy across Member States at the time of transposition. This is mainly due to the fact that most EU Member States had already their own national framework in place at the time of the implementation of a common legal migration policy, stemming from different histories and very different conceptions of the role of labour migration. Systems evolved in response to different demographic, historical, economic, linguistic and geographic situations and in some cases continue to exist in parallel with the EU system. Furthermore, the existence of 'may clauses' and the number of Directives adopted under the consultation procedure (with the European Parliament giving only non-binding advice) brought the different practical application of the provisions of the Directives across Member States and resulted in different standards across EU countries. As pointed out in the 2016 OECD study,⁶¹⁰ the heterogeneity of policies, however, is not in itself inimical to EU policy making. Within the EU, the diversity of policy settings in individual Member States can be considered of value, as each Member State maintains a broad degree of flexibility in its search for solutions to particular problems, producing policy innovation and responding to national specificities. This insofar as the shared objectives set by the EU legal migration policy are achieved and the EU legislative instruments implemented at national level. Evidence demonstrates the trend towards convergence in aims and mechanisms, with a clear added value.

Noteworthy is that harmonisation is also facilitated, under today EU legal framework, by the CJEU jurisprudence in the event of non-compliance or court challenges.

Harmonisation has been confirmed to be a positive effect of EU legislation during consultations. A large number (73%) of the consulted authorities in Member States, in particular, believe that it is positive that all EU countries have comparable admission conditions and procedures for non-EU citizens. Furthermore, Member States authorities consulted as part of the Member States hearing noted that the Directives have established a **common, harmonised legal framework**, and that they have influenced Member States' national laws in a positive way, as there are now similar conditions across the EU. Some Member States reported that the Directives have had a positive effect on the management of migration flows, as a result of the unification of definitions of particular categories of immigrants, as well as the creation of uniform, or similar, conditions for the admission of third-country nationals in all Member States applying the directives. As a result, migration flows can be monitored in a better way in individual Member States and across the EU and that there is a better coordination between Member States. The Member State representatives noted that such European harmonisation of the conditions for acquiring long-term resident status assumes mutual trust between the Member States concerned, which must not grant such status under more favourable conditions than those laid down by Long-term Resident directive.

On the other hand, consulted Members of the European Parliament pointed out that the legal migration Directives leave a wide margin to Member States to apply them in different ways, and thus were not designed to be fully harmonising. This means that TCNs must still understand which rules apply in the different Member States. Greater harmonisation of the rules would need to apply to address this situation. A potential sustainable solution identified by Members of the EP would be to have a small number of general laws, which would set the same rules for all Member States as regards

⁶¹⁰ OECD and EU (2016).

procedures, while the issue of volumes and specific needs of each Member State should remain under their competence.

8.1.2.3 Legal certainty and predictability

A well-functioning, transparent, speedy and user-friendly admission system is an explicit aim of all EU legal migration acquis and constitutes another important factor in migration decisions by TCN. More consistent and 'easier-to-comply-with' legislation is highly relevant not only for TCNs, but also for employers and host organisations.

Legal certainty is key **for businesses**. Compliance is a major concern for businesses and, as reported by migration agencies, it is important also as a reputational issue.

As noted by Luxembourg at the Member States' hearing, businesses appreciate that there is now greater legal certainty, especially in regards to the stricter deadlines which save businesses time and money. Spain echoed this point, stating that the EU legislation gives a large amount of legal certainty, and economic operators and large companies focus on this as it is a major concern for them when operating with EU legislation.

The Directives have aimed to ensure legal certainty by introducing the respective statuses and common standards for each Directive in all Member States. Member States are thus obliged to issue a permit to applicants who meet the criteria in accordance with the Directives and are not allowed to add additional conditions. The European Court of Justice ruled in 2014 that Member States could not deny a student visa if the conditions in the Directive were exhaustively met, even when they were unconvinced that the applicant was a bona fide student. With evidence, the Directives have achieved decreasing the element of discretion and allowing **more legal certainty for applicants**, and this is a clear EU added value. Introducing some statuses that did not previously exist in national legislation has had a positive effect in terms of ensuring legal certainty too. Over half of the consulted authorities in Member States agrees that EU legislation has helped address specific groups of non-EU citizens who were not previously covered by national migration rules. During the stakeholder consultation, civil society organisations in a selected number of EU Member States have found that the FRD and the LTR have positively contributed to legal certainty and equal treatment, LTR was really important in the Italian legal framework as it allowed legal certainty and a permanent status for TCNs which did not exist previously. Similarly, in Italy the FRD has fostered the consolidation of values and the protection of migrants' rights in court.

When comparing provisions across Directives, it can be observed that provisions in earlier Directives⁶¹¹ are much shorter and that some important provisions, notably equal treatment, are missing⁶¹². Later Directives include much more detailed and explicit provisions which facilitate the legal certainty and leave less room for interpretation and discretion, especially when it comes to **procedural safeguards**.

Legal certainty is also brought by the Court of Justice of the EU: in 2014 the Court⁶¹³ ruled that Member States could not deny a student visa if the conditions in the Directive were exhaustively met, even when they were unconvinced that the applicant was a bona fide student.

8.1.2.4 Intra-EU mobility

Intra-EU mobility is a **clear added value of the EU legal migration acquis**. Before, no national migration policy has ever factored TCNs' residence in another EU Member State into its decision to grant permits.⁶¹⁴

⁶¹¹ E.g. FRD, LTR, SR and RD.

⁶¹² E.g. from FRD – see Internal Coherence for further details.

⁶¹³ C-491/13 Ben Alaya vs Germany.

⁶¹⁴ OECD and EU (2016).

The reason why EU action enhancing intra-EU mobility can achieve more in scale and scope than at the national level is first of all that the **larger EU-wide labour market is more attractive for TCNs than the individual Member States' labour markets.**

The question is whether the Union as an entity could be a destination which is more attractive than the sum of its parts.⁶¹⁵ Evidence suggests that a larger labour market is more attractive than a smaller one:⁶¹⁶ it offers more opportunities, better matches with qualifications, and the prospect of earning higher wages.⁶¹⁷ Economies of scale or positive spill-overs (e.g. word of mouth) can help job seekers to find employment sooner. Furthermore, certain jobs might be so rare and specialised that they can only be found in large markets, where qualified workers must seek them out.⁶¹⁸ The effect of being part of a larger labour market is to increase overall interest, although such interest is not necessarily equally distributed. In fact, the analysis conducted in the OECD study of labour migration in individual countries has shown that local or regional labour markets within countries – even those which are attractive and have a surplus of eligible candidates – struggle to compete for labour migrants with more populous destinations in the same country. Similarly, some Member States may profit more from belonging to the EU labour market than other Member States.

Freedom of movement is one of the fundamental rights of European citizens. However, it does not extend to TCNs (unless they enjoy a derived right as a family member of a mobile EU national) as their ability to move to another country to work is subject to the restrictions imposed in individual Member States. **Specific provisions enhancing EU-mobility exist in the LTR, BCD, SD, ICT, S&RD and RD.**⁶¹⁹ Compared to EU citizens, who may be subject only to a “registration regime”,⁶²⁰ procedures and application supporting documents required by mobile TCNs are part of a “permit regime”, i.e. the Member State has the discretion to decline an application. Indeed, new labour migrants are bound to the Member State where they are employed, at least in the initial phase⁶²¹, and are not allowed to move freely to take up employment in another EU Member State without repeating the admission procedure, either inside the first or second Member State (without having to leave the European Union). In terms of rights for family members of mobile TCNs: these are subject to national legislation, and very few Member States make any connection with rights in first Member States.

Despite the differences with EU citizens' intra-mobility and some concerns about its effectiveness,⁶²² **intra-EU mobility has been identified** during the stakeholder consultation **as one of the main added value of EU legislation.** Migrants appear to be more mobile early in their stays than later on, when they become long-term residents. A high share of migrants do not remain in the country of initial destination.⁶²³

⁶¹⁵ Noteworthy is that the United Kingdom and Ireland have an opt-in while Denmark has an opt-out to EU migration-related legislation. Ireland has decided to opt-in to the RD only, while the UK and DK are not subject to any EU migration policy instrument.

⁶¹⁶ Manning, A. and B. Petrongolo (2011), “How Local Are Labor Markets? Evidence from a Spatial Job Search Model”, *CEPR Discussion Paper*, No. DP8686, Centre for Economic Policy Research, December, <http://ssrn.com/abstract=1976028>.

⁶¹⁷ OECD and EU (2016).

⁶¹⁸ Helsley, R.W. and W.C. Strange (1990), “Matching and Agglomeration Economies in a System of Cities”, *Regional Science and Urban Economics*, Vol. 20, No. 2, pp. 189-212, [http://dx.doi.org/10.1016/0166-0462\(90\)90004-M](http://dx.doi.org/10.1016/0166-0462(90)90004-M).

⁶¹⁹ They also exist in the ICT and the S&RD, but these are not covered by Task II.

⁶²⁰ They have *inter alia* to prove to have sufficient resources.

⁶²¹ The period varies under the specific status, but generally third-country nationals in possession of a valid travel document and a residence permit or a long-stay visa issued by a Member State to enter into and move freely within the territory of the Member States for a period up to 90 days in any 180 days period.

⁶²² See effectiveness section.

⁶²³ OECD and EU (2016).

Regarding the attractiveness of the EU, the large majority of the stakeholders consulted agree that the EU is attractive: for over 70% of stakeholders, this is in particular true **for international students and researchers from third countries** (see Q11A for more information).

Stakeholders agree that intra-EU mobility would also be beneficial for workers but the evidence shows that while this is perceived as a significant added value, in practice its utilisation is limited. Problems often arose from the transferability of social security benefits. The stipulations on intra-EU mobility are considered to be very complicated and require intensive cooperation and exchange of information between Member States (see Q12).

8.1.2.5 Simplified administrative procedures

The EU Directives are also considered to have **simplified administrative procedures for some Member States**, merging the various national procedures or reducing the duration of such procedures. This increase the attractiveness of the EU for TCNs when taking the decision to migrate, even if it does not create new channels of entry.

As mentioned⁶²⁴, the RD, for example, had a positive impact on the administrative procedure in some countries, via the introduction of fast track procedures for applications or of single desks and authorities responsible for the processing of the applications. These measures have sped up the time taken for decisions to be made. For example, in Hungary, the processing times for considering a residence permit application is 15 days compared to the general deadline of 21 days.

A number of countries have implemented fast-track processing - going further than the conditions established by the Directive - also for ICT⁶²⁵ and skilled workers, other than under the BCD.⁶²⁶

Also labour market test exemptions have simplified procedures in a number of countries. And the growing body of official information on Blue Cards curbs opportunity costs for candidates and employers.⁶²⁷ With regard to the SPD, the introduction of joint work and residence permits also simplifies procedures.

At the Member States' hearing, Luxembourg reported this as an EU added value, as it merged the various national procedures which they previously had. Latvia also reported that the directives have reduced the duration of such procedures. Furthermore, regarding the Single Permit simplified procedures for granting residence permits for work, the Czech Republic reported that it would have been difficult for them to do this at the national level, as authorities would not have consented to such reshuffling of competences, and the directives provided a basis for why this should take place. Similarly, the Single Permit has simplified procedures for applicants in the Netherlands, as there is now one procedure and one application desk. However, this is not the case for employers. Before the implementation of the Single Permit directive, employers were allowed to employ a migrant after receiving the employment permit, which was before the granting of a residence permit. Now the employer must wait until the Single Permit has been issued and that itself takes more time.

However, **there are also less positive effects**. In the case of Poland, the necessity of implementing the requirements provided in the directives has in fact complicated proceedings concerning the admission of foreigners. The country reported that it is difficult to adjust some of the conditions of the Directives to the requirements and realities of the administrative proceedings, especially if the issue requires the

⁶²⁴ See above RD, for further information

⁶²⁵ ES, FR.

⁶²⁶ ES, BG, FR.

⁶²⁷ However, in this case, the extra administrative burden caused by the need to prove qualifications cancels out the gains from exemptions.

cooperation of many actors. Furthermore, in the case of the Netherlands, a simple and fast admission scheme for highly skilled migrants was already in place, therefore the added value of the BCD and ICT is limited.

During the focus group with social partners, it was commented that whereas theoretically the SPD has streamlined procedures between different Ministries, some national organisations held that national administrative complexity i.e. many authorities having overlapping mandates, can undermine this aim. It should be noted that in eight Member States application issues have been identified with regard to the the SPD, requiring those falling under the Directive to still introduce different requests and/or follow multiple steps (most often one for a decision on the status and another for the residence permit). This means that de factio in eight Member States there is no single procedure as prescribed by the Directive. At the same time, some found that if EU directives can help Member States simplifying procedures, at the same time some discretion shall be kept at the national level to adapt to special national circumstances. This is, for instance, the case for salary thresholds.

With regard to the possibility of **transferring successful practices from one Member State to another**, over 60% of the consulted authorities in Member States agree that that EU legislation offers a channel for sharing information with other EU countries. However, the agreement was lower regarding their views on whether EU legislation has helped improve national rules (where around 40% agreed on this) and about the application of 'lessons learned' from EU legislation, whereby only 29% of authorities agree that they applied lessons learned in national migration rules.

As discussed in more detail in EQ12B below, the legal migration Directives contribute to enhancing the attractiveness of the EU as a whole, compared to single Member States. Equal treatment, and legal certainty across the EU coupled with the possibility of intra-EU mobility enhances the EU's attractiveness for TCNs. This was also confirmed during the stakeholder consultation, where stakeholders specifically mentioned that the access to the whole EU was a particular point that makes the EU attractive for third-country nationals.

For Member States themselves, a common legal migration policy contributes to a better management of current of future challenges, including ageing of population and skills shortages (see also the relevance section for more details). A common approach reduces the competition between Member States and thus enhances the competitiveness of the EU compared to other popular migration destinations, such as Canada or the United States.

8.2 EQ 12: To what extent do the issues addressed by the legal migration Directives continue to require action at the EU level?

This section analyses to what extent do the issues addressed by the legal migration Directives continue to require action at the EU level. It includes three sub-questions:

8.2.1 EQ 12A: Based notably on the statements on subsidiarity in the initial proposals for the Directives, which issues still require interventions at the EU level?

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

The following issues have been identified as still requiring action at EU level, namely the need for:

- A better management of intra-EU mobility;

- An increased coverage of minimum standards (harmonisation);
- Improving equal treatment
- Improving matching systems with demand

In this section, the identified issues are analysed. The table below gives an overview of the main sources of information utilised and the key conclusions of EQ12A.

Research question	Sources of information	Key conclusions
Based notably on the statements on subsidiarity in the initial proposals for the Directives, which issues still require interventions at the EU level? (EQ12A)	2A Evidence base for practical implementation of the legal migration Directives: Synthesis report	Although the clear positive effects resulting from the EU legal migration Directives, issues have been identified as still requiring action at EU level.
	3Ai Public and stakeholder consultations: EU Synthesis Report	In particular, there is evidence of a need for: A better management of intra-EU mobility;
	3Aii Public and stakeholder consultations: OPC Summary Report	An increased coverage of minimum standards (harmonisation);
	Additional desk research	Improving equal treatment
	Findings under the other evaluation questions	Improving matching systems with demand

8.2.1.1 A better management of intra-EU mobility

Provisions are generally included to facilitate the mobility of TCNs within the European Union, a measure which can only be achieved at the EU level. However, intra-EU mobility still appears to be limited. Although facilitated under EU law for certain categories (e.g. LTR and highly skilled workers), is conducted through bilateral arrangements with no reporting outside communication between the two Member States involved.⁶²⁸ Furthermore, TCN intra-EU mobility is still far from being comparable to EU citizens' intra-mobility and there are concerns about its effectiveness.⁶²⁹ The attractiveness of a larger EU-wide labour market is bound up with the effectiveness of mobility provisions.⁶³⁰ Moreover, intra-EU mobility potentially enhances also the ability to respond to shocks. A larger labour market allows workers affected by adverse employment shocks in one part of the market to find work in another part – as was seen during the European employment crisis, when the mobility

⁶²⁸ OECD and EU (2016).

⁶²⁹ Beyond the principle of equal treatment, the mobility of third-country nationals has been restricted to at least certain minimum periods spent in the initial first Member State (this is due to concerns of some Member States of abuse of intra-EU mobility channel).

⁶³⁰ See effectiveness section for further information.

of EU workers increased and absorbed as much as one-quarter of the asymmetric labour market shock within a year.⁶³¹

Indeed, the evidence shows that the third-country national workers' utilisation of intra-EU mobility in practice is limited.⁶³² According to Poeschel,⁶³³ third-country nationals are about half as likely to be mobile within the EU as EU nationals. Highly educated individuals are more likely to be mobile than other migrants – a pattern also found in EU national populations, where the tertiary-educated are generally more mobile than the workforce at large. Problems often arose from the complex transfer of social security benefits, language differences, relocation costs, the recognition of qualifications, as well as a patchwork of regulated professions. The barriers relevant to EU citizens do not necessarily apply to third-country nationals. Indeed, there is evidence that workers who have migrated once are more likely to do so again, and that they are more willing to move in response to labour market opportunities than the native-born⁶³⁴. In accordance to the OECD study, third-country nationals in the EU are open to migration because they: are more likely to be unemployed and seeking employment, and (job opportunities in another country might appear more attractive); are younger (their average age is 33, compared with 41 among EU nationals); do not generally have qualifications obtained in the country of residence (when they arrive as adults), which would tie them to that country.⁶³⁵

These findings are confirmed by the stakeholder consultations conducted: stakeholders agree that intra-EU mobility would also be beneficial for workers but the evidence shows that while this is perceived as a significant added value, in practice its utilisation is limited.

Problems often arose from the transferability of social security benefits: the stipulations on intra-EU mobility are considered to be very complicated and require intensive cooperation and exchange of information between Member States.

Another problem to be solved is third-country national retention. As mentioned above, the SD broke new ground in the area of intra-EU mobility, bringing about change in all Member States. Positive effects for international students are the temporary residence permit that allows them to stay in the Member State temporarily after completing their studies⁶³⁶ and the visa exemptions that allow them to change countries without having to return home or await a new visa in the first country of study.⁶³⁷ However, international student retention rates are low in the European Union. Depending on the method used for calculating those who stay on, the rates are estimated at between 16% and 30%⁶³⁸ and range significantly from one EU Member State to another. The addition of a job-search extension to the S&RD addresses that omission, but does not resolve the issue of post-graduation intra-EU mobility or offer more favourable channels to other forms of employment. The problem might concern also labour migrants who may have lost their jobs due to changing economic circumstances in the country of employment or any other reasons.

⁶³¹ Jauer, J. et al. (2014), "Migration as an Adjustment Mechanism in the Crisis? A Comparison of Europe and the United States", *OECD Social, Employment and Migration Working Papers*, No. 155, OECD Publishing, Paris, <http://dx.doi.org/10.1787/5jzb8p51gvhl-en>.

⁶³² Ibid.

⁶³³ OECD and EU (2016), Poeschel, 2016.

⁶³⁴ Ibid.

⁶³⁵ On the other hand, however, they are slightly more likely to be married and much more likely to have children living with them – 40% live with their children compared to 31% among EU nationals. Both characteristics are barriers to mobility.

⁶³⁶ BE, BG, DE, EE, FI, LT.

⁶³⁷ DE, IT, NL, LU, MT.

⁶³⁸ Weisser, R. (2016), "The Impact of International Students and Post-Graduation Internal Mobility: An Analysis of Student Mobility and Retention Rates", *OECD Social, Employment and Migration Working Papers*, No. 186, OECD Publishing, Paris, <http://dx.doi.org/10.1787/1815199x>.

8.2.1.2 Increased coverage of minimum standards (harmonisation) and gaps in coverage

It is noteworthy that there remain some areas pertaining to labour migration which are in national purviews and cannot be regulated at EU level. They include the regulation of professions, setting volumes of admission for TCN labour migrants from outside the EU, and determining the criteria for naturalization.

Despite the above mentioned improvements, the research identified remaining gaps that still need to be harmonised on EU level. There is substantial variation in the rules concerning admission procedures across the Directives, e.g. with regard to access to information, submission of application, timeframe to process the application.

The existence of 'may clauses' and the different application of the provisions of the Directives across Member States – also due to the fact that most of the Member States had already a pre-existing migration scheme – result in different standards across EU countries.

Moreover, the complexity and fragmentation of the current EU system focusing only on some categories of third-country nationals has been indicated by the stakeholders consulted as a major obstacle in achieving harmonisation and a level playing field.

Member States' representatives note that national permits are in several cases preferred and provide a broader spectrum of rights for third-country nationals and are better targeted to meet their needs than the Directives on EU level. For example, a number of national BCD and LTR equivalent statuses seem to offer more favourable conditions and thus wider access to potential applicants. Some national schemes may allow faster access to long-term residence, or entail less paperwork than the EU schemes for the highly-qualified, researchers, or long-term residents.⁶³⁹

Some NGOs have expressed their concern with regard to a lack of EU intervention about low-skilled migrants. In fact, only the SWD partially concerns that kind of migrants. This gap has left loopholes in the national legislation, which are sometimes abused and result in either irregular migration phenomena or low working conditions and rights thereby attached.

The fragmentation of the system in terms of the sectoral approach have negatively affected simplification and transparency. Indeed, the great majority of non-EU citizens looking to migrate to the EU consulted as part of the OPC believe that the current conditions for entry/residence/work constitute a disincentive to migrate. The main obstacles identified concern the visa requirements, finding an employment from outside the EU, the recognition of qualifications and the complexity and length of the procedure. Moreover, in the open-ended questions in the OPC, some respondents complained about the lack of clear and practical information coming from official sources on procedural aspects (i.e. types of visa, expected processing times, mandatory insurance, the types of documents that need to be provided and notarised, etc.) or other relevant aspects such as intra-EU mobility.

The limited harmonisation could also undermine legal certainty and constitute an obstacle to EU-intra mobility. For example, it is a positive effect the fact that students have the right to work and be self-employed during their studies, and the large majority of third-country nationals residing or having resided in the EU consulted via the OPC were indeed well aware of having such a right. However, there are currently wide differences in the right to work: e.g. the number of hours permitted, work permit requirements depend on the country and, while some countries require labour market tests, others do not. Measures to help students stay on after graduation to look for work vary EU-wide, as do the requisites for a post-graduation job which allows the holder to obtain a permit. Not all Member States require students to finish their course

⁶³⁹ OECD and EU (2016).

within a certain number of years, and the conditions that students must meet to retain their status as students in good standing (e.g. minimum credit or course-loads) range widely. This has an impact on legal certainty and intra-EU mobility. As for the latter, different study permit and financial requirements also restrict it in practice.

Regarding highly qualified migrants, their recruitment has been made easier for employers. However, although all EU Member States grant permits to highly skilled or highly qualified migrants, the criteria for determining who is highly skilled – educational qualifications, work experience, wages and job offers – and definitions of “highly skilled” vary considerably between countries, also given the fact that the EU Blue Card scheme left parallel national schemes unaffected.

Finally, the coexistence of a multiplicity of residence permits for legal migrants, being not really understood even by many of the direct users/stakeholders makes the system overly complicated. National permits are in several cases preferred and provide a broader spectrum of rights for third country national and are better targeted to meet their needs than the Directives at EU level.

8.2.1.3 Improvement of equal treatment

As mentioned in section 4, several inconsistencies with regard to equal treatment have been identified. The inclusion of specific equal treatment provisions in each Directive, as well as specific restrictions, has introduced a degree of discrimination between the different categories of third-country nationals which cannot be easily justified and rather seem to have been the results of negotiations with Member States in view of the specificities of their national systems and a general concern that migrants may not contribute sufficiently to the national economy but opt for claiming benefits instead. As described in section 4 addressing relevance, there are several transposition issues with regard to equal treatment notably in the case of social security benefits and access to public goods and services. For example, in several Member States⁶⁴⁰ third-country nationals have limited access to social security (e.g. limited access to public benefits in Cyprus or to social assistance in Hungary). Further, in Slovenia and Poland there is limited access to public goods and services for third-country nationals. Also equal treatment in terms of working conditions is limited, specifically in terms of monitoring labour exploitation as only Finland has a separate department to monitor labour exploitation of third-country nationals specifically⁶⁴¹. Other Member States⁶⁴² have mechanisms in place to generally monitor labour exploitation; these are however not tailored to third-country nationals and potentially leading to difficulties to detect abuses of the rights of third-country nationals (see Section 4.3 in Relevance and section 5.1.2.3 in coherence). Where such different treatment is not justified, this may lead to violations of the principle of equal treatment based on administrative status as set forth in the EU Charter of Fundamental rights and international and European human rights instruments and in international labour law and results in fragmentation of the right to equal treatment.

Yet, national permits are in several cases preferred and provide a broader spectrum of rights for third-country nationals and are better targeted to meet their needs than the Directives on EU level.⁶⁴³

During the consultation, civil society representatives criticised the sectoral approach adopted by the European Union in the field of migration, as they claim that difference in rights attributed by each Directive leads to a fragmentation of rights according to skill level. More specifically, the need to ensure a better level of protection of rights of low-skilled workers was highlighted.

⁶⁴⁰ BE, CY, HU, LV, PL, SI

⁶⁴¹ EMN Synthesis Report 2017, p. 22. Illegal employment of third-country nationals in the European Union.

⁶⁴² BE, BG, CY, CZ, DE, EE, EL, ES, FI, LT, LU, MT, NL, RO, SE, UK.

⁶⁴³ OECD and EU (2016).

8.2.1.4 Improving matching systems with demand

The EU already provides support in matching job seekers with vacancies under its explicit mandate to improving the functioning of the EU labour market and foster mobility.⁶⁴⁴ Some existing measures, such as the job mobility platform (EURES), allow passive participation from outside the EU. Further development of such a Platform could allow employers to seek candidates who already hold permits with mobility provisions, since they will be able to take up employment quickly.

8.2.1.5 EQ 12B: What would be the consequences of withdrawing the existing EU intervention?

In this section, the consequences of withdrawing the EU legal migration Directives are briefly summarised, building on the considerations of the previous sections.

The table below gives an overview of the main sources of information utilised and the key conclusions of EQ12B.

Research question	Sources of information	Key conclusions
What would be the consequences of withdrawing the existing EU intervention? (EQ12B)	Task I: Historical overview, Drivers, Statistical overview, Internal coherence, Intervention logics Task III: Synthesis report and synopsis report Additional desk research Findings under the other evaluation questions	The immediate result of withdrawing the existing EU intervention Member States will be the return to national schemes , with in the long term consequent potential different migration policies/approaches adopted by individual Member States.
		This will lead to the recognition of different rights for third-country nationals, different admission procedures and channels, diminished –if not absent – intra-EU mobility and consequent reduction of legal certainty and predictability for both third-country nationals and businesses
		This will reduce the attractiveness of the EU and make impossible for Member States alone to face common challenges , such as aging of population, match of skills shortages, etc.
		Member States will compete amongst each other and with other bigger markets and regional markets

The immediate result of withdrawing the existing EU intervention Member States will be the **return to national schemes**.

As largely discussed, the legal migration acquis has mostly built on existing national schemes, harmonising them and setting minimum standards. With few exceptions (ICT, SWD, S&RD), national permit regimes have been allowed to continue alongside the EU schemes, and even to be introduced in the future. Although, particularly regarding labour migration admission conditions and criteria, the resulting system is still fragmented with national systems evolving through very different processes and priorities, there is convergence, at least in terms of shared objectives and mechanisms.

Indeed, the EU labour migration policy is not the sum of the individual Member States' decisions but a legislative framework to achieve common goals through concerted measures. It is rooted in a long-standing commitment to favouring mobility of workers

⁶⁴⁴ Ibid.

and to ensuring their rights. Broad agreement EU-wide on basic rights and principles of equal treatment have allowed progress in this area.

Withdrawing the EU legal migration acquis would lead to the **adoption of different legal migration policies at Member States level**, according to the political party governing. The current, although still incomplete, level of convergence of the admission procedures, will fast disappear. Third-country nationals will not have recognised the same rights across the EU. Only initiatives at the EU level can create mechanisms for third-country nationals to accumulate rights and enjoy facilitations as they move within the European Union, from one Member State to another. Similarly, only EU action can improve EU-intra mobility, increasing the attractiveness of the EU as a single market, via information-sharing platforms and standard application forms. Member States' legal migration policy will be more fragmented and less consistent, admissions conditions and rights recognised to third-country nationals will broadly differ across countries, with consequent **diminished legal certainty and predictability, both for third-country nationals and businesses**. The avenues for entering and staying will be limited and different from one Member State to another and the costs will be greater.

This will result in **reduced attractiveness of the EU** as a destination from a third-country national perspective. It would be **impossible for Member States alone to face common challenges**, such as aging of population, match of skills shortages, etc. It would be difficult for individual Member States to increase the pool of candidates, enticing them to make the effort to meet migration selection criteria and migrate, be it through a job or another migration pathway, such as studies. Some Member States will build functional channels to cater the category of migrants needed to address the economy shortages.

Member States will compete amongst each other for migrant workers.

The reduced attractiveness of the EU as a whole will diminish its competitiveness. Member States will therefore also compete with bigger market, such as the Asian, the American, and the Canadian.

In view of the increased old-age dependency ratios also in other regions of the world, the EU is also likely to have to compete with these other regions in order to recruit young workers. If Member States were to compete amongst each other and with other regions, this would **decrease the competitiveness of the EU**.

Any form of collaboration between Member States or with third countries will be based on bilateral agreements, with consequent inefficiency, increased administrative burden and difficult coordination.

There would be higher pressure on diplomatic missions in third countries, due to the difficulty to change status for third-country nationals without having to return to their country of origin.

8.2.2 EQ 12C: Are there issues currently not covered at EU level which would require EU action?

This section gives attention to the issues currently not covered at EU level which would require EU action. There are several issues that require EU level action, but are not covered by the current acquis. These include gaps in the coverage of certain TCN categories, as addressed in EQ1B (relevance) and EQ2 (coherence).

Further issues requiring EU action across the different migration phases include: e.g. access to information, assessment and recognition of foreign academic qualifications, differences in fees charged and processing times described below.

The table below gives an overview of the main sources of information utilised and the key conclusions of EQ12C.

Research Questions	Sources of information	Key conclusions
<p>What are the categories of TCN not currently covered by the EU legal migration acquis? See also EQ1B and EQ2</p>	<p>1Ci Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives</p> <p>Contextual analysis : Intervention logic: Directive specific paper</p>	<p>Categories of TCN currently not (or only partially) covered by the EU legal migration acquis, include: certain family members, low and medium-skilled workers (except for seasonal workers) and self-employed, including (innovative) entrepreneurs, start-ups, investors, service providers which fall outside the scope of the ICT, highly mobile workers (e.g. transport workers) and job seekers.</p>
<p>What implications does their exclusion from EU level interventions have?</p>	<p>2A Evidence base for practical implementation of the legal migration Directives: Synthesis report</p> <p>3Ai Public and stakeholder consultations: EU Synthesis Report</p> <p>3Aii Public and stakeholder consultations: OPC Summary Report</p>	<p>The implications might include the following: The lack of common minimum standards, safeguards and rights may lead to substantial differences in the treatment of TCN, which can make the EU less attractive as a migration destination overall, or make some Member States much less attractive than others with more 'interesting' schemes in place.</p> <p>In relation to economic migration, currently excluded categories could potentially address existing and future skills shortages at EU level and contribute to reaching Directive specific objectives (e.g. management of economic migration flows, attracting and retaining certain TCN categories, but also preventing exploitation) and contribute to Directive specific objectives such as management of economic migration flows, attracting and retaining certain TCN categories, but also preventing exploitation.</p> <p>In relation to excluded family members, the lack of any EU legal instrument and uncoordinated national initiatives may cause disparity and reverse discrimination.</p>
<p>What other issues would require (additional) EU action in each step of the migration chain?</p>		<p>Several issues across the migration phases require EU level action, including recognition of qualifications, information provisions, fees charged, processing times etc.</p>

8.2.2.1 Categories currently not covered by the acquis and the implications thereof

As outlined in EQ1B (relevance) and EQ2 (internal coherence), the Directives do not cover certain TCN categories.

Those Directives focussing on **economic migration** do not address categories such as low- and medium skilled workers, with the exception of seasonal workers. Those covered by covered by the SPD, do not benefit from EU harmonised admission conditions (see EQ1B and EQ2A for more detail). Furthermore self-employed, including (innovative) entrepreneurs and start-ups, investors, service providers which fall outside the scope of the ICT, highly mobile workers (e.g. transport workers) and job seekers are only partially covered. Whilst many of these categories are covered by national schemes, there are implications of their exclusion from EU level interventions.

As outlined in EQ2 there is a lack of common minimum standards, safeguards and rights that may lead to substantial differences in the treatment of these TCN and legal uncertainty, especially for those categories which do not fall under the SPD (which explicitly excludes, for example, posted workers and the self-employed). This in turn can make the EU less attractive as a migration destination overall (thus indirectly impacting on trade and other economic development), or make some Member States much less attractive than others with more 'interesting' schemes in place. As explained in EQ1B, extending admission schemes to **low- and medium skilled third-country nationals** working in e.g. agriculture, construction, domestic and care work could potentially support the EU in addressing existing and future skill shortages affecting European competitiveness. With regard to gaps in coverage of **self-employed third-country nationals and investors**, the current lack of coverage has rather negative implications for third-country nationals who face diverging conditions in different Member States. As outlined in EQ1B, a simplification of rules, could contribute to a higher competitiveness of EU markets compared to other destinations attracting these third-country nationals. Consulted stakeholders from the civil society noted that none of the Directives (except for S&RD in relation to researchers) grant self-employed workers admission to the country (in their own right), while some of the Directives (LTR and FRD) grant the holders of the respective permits to be self-employed. Even where TCN holders of certain permits regulated under the Directives are granted the right to work in self-employed activities, their rights (e.g. to certain forms of social protection) can be restricted by Member States.

Similarly, the lack of an overall approach for regulating the entry of **international service providers** may reduce the EU's attractiveness for foreign companies to do business and at the same time there could be negative implications for service providers in terms of pay, health and safety and other rights⁶⁴⁵. Implications due to a gap in addressing issues of third-country national highly mobile workers, mainly in transportation include issues with equal treatment that are only insufficiently addressed at national level. Due to the transnational nature of the problems there would be added value in EU level action, addressing the legality of stay and work in a highly mobile context, as well as in relation to equal treatment (see EQ1B for more detail).

With regard to **family reunification**, third-country nationals who are family members of non-mobile EU citizens are not covered by the FRD (whose family reunification is regulated by national migration laws). There could be added value in addressing the issue at EU level leading to eliminate the possibility of reverse discrimination.

As described in earlier sections addressing EQ1B and EQ2, consulted stakeholders noted that additional TCN categories should be included under the *acquis*. Third-country nationals looking to migrate and those already residing in the EU expressed that third-country nationals planning to launch a start-up and self-employed workers as well as additional family members as part of family reunification should be included in the *acquis*. Other stakeholders noted that that medium and low-skilled workers should be considered (civil society organisations) and representatives of social partners noted the importance to include non-EU workers on different skills level. Member States representatives were less enthusiastic in terms of adding additional categories (as described in the discussions of the contact group on legal migration), although they suggested inclusion of domestic workers, entrepreneurs and start-ups, highly qualified international service providers and non-removable irregular migrants. Consulted experts suggested to include international service providers, certain categories of third-country transport workers (notably in aviation and road transport), medium and low-skilled workers (e.g. domestic workers), self-employed workers, investors, third-country family members of non-mobile EU citizens and short term

⁶⁴⁵ See EQ1B and http://www.migrationdrc.org/publications/briefing_papers/BP4.pdf

business visits. In sum, there was an understanding among stakeholders on the need to create a single permit for innovators with the aim of creating an innovation hub. In the future more emphasis should be on attracting highly skilled entrepreneurs from these countries to the EU. However, Member States representatives differ in their views on considering new EU legislation in the area of migration. While some MS emphasise that there should not be new legislation before more experience and insight into the functioning of the current *acquis* has been gathered, others note that revisions should be possible.

8.2.2.2 Other issues requiring EU action

There are several issues across the migration phases requiring EU action shown below and explained in more detail in EQ1C:

Pre-application (information) phase

As described in EQ1C **information provisions** do not fully meet the demands of third-country nationals across the different phases and a better information provision at EU level would ensure consistency and comparability of information provided by Member States representatives. More up to date information on the EU immigration portal would enhance EU added value in this phase.⁶⁴⁶

Pre- application (documentation) phase

There is a general agreement among stakeholders that there should be an EU-level action to **facilitate the assessment and recognition of foreign academic qualifications**. Recognition of diplomas is a widely posed requirement, especially for work-related permits, but the related guidance are relatively difficult to find. This, together with the complex process of recognition itself and the multitude of requirements especially concerning regulated professions make recognition one of the more burdensome requirements for foreigners. EU level action regarding the facilitation of recognition of qualifications could include structured and harmonised guidance in all Member States on the process of recognition as part of the application documentation.

Application phase

In this phase the main issues requiring continuing EU level action include the different implementation of the Directives' provisions in terms of different **fees charged** across Member States. High fees charged in some Member States may act as a deterrent. This goes against the provisions in the SPD, SWD, ICT and S&RD stipulating that the fees "shall not be disproportionate or excessive"⁶⁴⁷. An EU wide threshold for fees would contribute to better application of the Directives' provisions. The threshold should take into account the maximum amount of fees that can be charged proportionally as a share of the mean monthly gross earnings each Member State, as currently in some Member States, the excessive fees could constitute an application issue (see also EQ7).

Entry and travel phase

In this phase, **entry and transit visas** constitute the most challenging requirement for third-country nationals that requires continuous EU level action. Practical difficulties relate mainly to complex procedures for transit or entry visas (e.g. having to be requested and picked up in person), long processing times for transit or entry visas. EU wide action regulating harmonised timeframes for granting visas and

⁶⁴⁶ For further information about the portal, see here: <http://ec.europa.eu/immigration/>

⁶⁴⁷ Disproportionate administrative fees have been subject of earlier CJEU rulings, such as case C-508/10, where the court ruled that the Netherlands had failed to fulfil its obligations under the LTR by charging third-country national applicants "excessive and disproportionate administrative charges which are liable to create an obstacle to the exercise of the rights under the LTR".

harmonised requirements across the Directives for entry or transit visas would enhance the EU added value of the *acquis* in this phase.

Post-application phase

The main issues requiring EU wide action in this phase relate to the **timeframe to deliver permits**. As explained in EQ1C (relevance) and EQ7 (effectiveness), most Member States do not have a set timeframe to deliver the permits and EU wide rules regulating the timeframe to deliver the permits would contribute to the *acquis* objective of legal certainty, user-friendliness of the procedure and simplification.

Residence phase

Different issues in this phase require EU level action. As regards **residence permits**, the renewal times and fees charged differ across Member States, and an EU wide harmonisation of processing times and a threshold for fees charged for renewal might contribute to legal certainty of third-country nationals and avoid risking of overstay and irregularity.

Furthermore, issues with regard to **change of status** require EU wide action, as currently the information and support available is insufficient to understand the conditions and requirements for status change. EU wide regulation with regard to information and guidance on status changes might contribute to the Directives' objective of legal certainty, user-friendliness and simplification as well as harmonisation (as currently there are indications that procedures differ across Member States, see also EQ7).

EU wide rules on **equal treatment** are crucial, as there are Directives which do not include any equal treatment provisions, such as FRD⁶⁴⁸ and SD. Furthermore, the application study found that many Member States did not comply with equal treatment provisions of the Directive, even though the equal treatment provisions were already 'watered down' by many 'may' clauses (see also EQ7).

Intra-EU mobility phase

As indicated in earlier sections, **intra-EU mobility** continues to require EU level action as it is a specific objectives in several Directives. The right to intra-EU mobility is overall facilitated for third-country nationals and their family members (see EQ1C and EQ7 for a detailed overview).

End of stay phase

The main issue requiring continuous EU wide action in this phase relates to having access to and obtaining clear information on the **exportability of social security benefits** earned during the stay of third-country nationals in a Member State, as these are currently mainly governed through bilateral agreements, thus potentially undermining the Directives' provisions on exporting social security benefits (SPD, ICT and SWD).

⁶⁴⁸ The FRD and SD do not include provisions on equal treatment. However, equality is ensured by the SPD in certain circumstances, for example if third-country nationals, falling within the scope of the FRD and SD, are authorised to work.

9 Conclusion

9.1 Relevance

The relevance section addressed one main question with several sub-questions. The main conclusions per sub-question are listed below.

EQ1. To what extent are the objectives of the legal migration Directives and the way they are implemented relevant for addressing the current needs and potential future needs of the EU in relation with legal migration?

9.1.1 EQ1A. To what extent were the original objectives of the legal migration Directives relevant at the time they were set and to what extent are they still relevant today?

This question focussed on i) the policy developments and how they relate to the relevance of the Directives and ii) drivers and needs within and outside of the EU that impact the Directives' relevance.

Key conclusions

Policy developments and how they relate to the relevance of the Directives

Following the developments in the EU integration process, the adopted Directives responded to the need across the EU to establish a series of minimum standards and guarantees in a number of areas, ranging 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, corresponding to the overarching objective of **creating an equal level playing field**.

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 and **ensuring fair treatment** in the later Directives compared to the earlier ones, which focused more on setting common minimum standards. At the same time, the development shows a focus on a 'sectoral approach' to managing migration, rather than an overarching approach (without distinguishing specifically between high or low-skilled migrants), in spite of the Commission's earlier attempts to put forward the latter.

With regard to the specific objectives, the development shows that the earlier Directives focussed on the **integration** of third-country nationals as well as enhancing **intra-EU mobility**. Gradually more attention was given to **managing economic flows**, but also towards **attracting and retaining certain third-country nationals**, as well as using legal migration to enhance the **knowledge economy** and boost **economic competitiveness and growth** in the EU. In light of the most recent policy developments, most notably the Agenda on Migration⁶⁴⁹ which sets out the need to make the EU an **attractive destination for third-country nationals** and to foster legal migration channels to for TCN to enter the EU, the specific objectives of the Directives continue to be relevant today.

Needs and drivers with regard to legal migration impacting on the Directives' relevance

The Directives continue to be relevant to address the need to regulate legal migration. Legal migration continues to be influenced by external and internal drivers and needs influencing migration patterns towards the EU. There are different needs depending on the type of TCN: family migrants, labour migrants, students/researchers and include a combination of socio-economic (primarily), demographic, environmental and political (security) factors in the origin and destination country or region.

⁶⁴⁹ https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration_en

- The needs with regard to **labour migration** are reflected in the specific objectives of the Directives, notably the objectives focussing on **management of economic migration flows, attracting and retaining certain TCN, boosting competitiveness and growth, addressing labour shortages** as well as **ensuring fair and equal treatment**.

Drivers include labour market trends in light of the economic crisis, impacting the demand and supply of workers at different skill levels, as well as the potential impact on TCN labour demand due to the free movement of EU citizens. Migration from third countries is important in the context of the continuing labour shortages and gaps with regard to high-, medium- and low-skilled labour in the EU. The Directives acknowledge the continuing need for migration as (one of several) possible instrument to tackle labour market and demographic challenges and to foster innovation. However, medium-skilled third-country nationals are not covered as a specific category by the Directives, impacting their relevance in light of the EU labour market needs.

- The Directives remain relevant to address the needs with regard to **education and research**.

The EU aims to attract international students and researchers to foster innovation as well as to encourage the establishment of international scientific and academic networks. This is reflected in the Directives' specific goals to **enhance the knowledge economy in the EU, boost economic competitiveness and growth**, but also **mutual enrichment and better familiarity among cultures**.

- As regards family migration, the relevance of the Directive's objectives are rather ambiguous.

The specific objectives remain relevant, namely to support the EU in addressing needs with regard to mitigating the risks of population decline as well as strengthen the sustainability of the EU welfare system and growth of the EU economy through a growing number of integrated third-country nationals and their families. However, recent developments in Member State policies to restrict family reunification and implement tighter requirements for family members who want to join third-country nationals already in the EU does not correspond with the FRD aims to **promote integration and socio-economic cohesion, protect family life and unity as well as enhance intra-EU mobility**.

- The main external drivers impacting migration towards the EU are primarily related to the socio-economic situation and political instability in the country of origin, with other factors such as demographic and climate change predicted to gain more importance in future.

These are reflected in the specific objectives across the Directives, including the **management of economic and other legal migration flows, attracting and retaining TCN, boosting competitiveness, growth and investment, addressing labour shortages and enhancing the knowledge economy**.

9.1.2 EQ1B. To what extent does the scope of the legislation match current needs in terms of the categories of TCN migrants initially intended to be covered by the legislation?

This question focussed on i) the extent to which the scope of the legislation match current needs in terms of categories; on ii) certain categories not covered as well as on iii) the impact of the exclusion of certain categories.

Key conclusions

The extent to which the scope of the legislation matches current needs in terms of the categories of TCN migrants initially intended to be covered by the legislation

Overall, the **scope of the Directives matches the current needs in terms of the categories** initially intended to be covered by the legislation. They address a wide group of third-country nationals, although some categories of third-country nationals fall within the scope of more Directives than other categories:

- Highly skilled third-country nationals (including researchers) i) can apply for more than one status (making it easier for these third-country nationals to enter and reside in the EU) and they seem to enjoy better conditions compared to other third-country nationals in terms of ii) access to long term residency and iii) family reunification. Indeed the EU legal migration acquis overall favours the category of highly skilled third-country nationals.
- Family members of third-country nationals: i) facilitation for family members to enter and reside in the EU, and they enjoy ii) facilitated conditions to access the labour market as well as iii) long term residency. Hence, the acquis seems to favour those categories as well.
- The SPD in principle applies also to the BCD and, as concerns the rights granted, to those allowed to work under the FRD, SD, RD and the S&RD as well as to those third-country nationals allowed to work, but who are not covered by any of the EU Directives. These relationships are however not made explicit and may give rise to confusion.

The share of the TCN categories covered by the Directives compared to the total number of migrants differs. While the share of family migrants remains high, those of highly-skilled is low. Nevertheless, attracting highly-skilled third-country nationals remains relevant to the needs in the EU, which correspond to the **specific objectives of managing migration flows, attracting certain third-country nationals, enhancing the knowledge economy**, while attracting family members is relevant to the specific objectives of **promoting integration and socio-economic cohesion**, as well as to the **protection of family life and unity**.

Some of the Directives may co-exist with parallel national schemes, as allowed by the LTR and the BCD. While such parallel schemes are not allowed in respect to the FRD, SWD, ICT and S&RD, Member States may (and de facto have) national rules covering situations which are outside the personal and material scope of the Directives.

Relevant categories of third-country migrants that are not covered by the legislation

There is a gap for certain categories of third-country nationals such as low- and medium skilled (except for SWD), and self-employed, including (innovative) entrepreneurs.

While some of these categories might fall under the coverage of the SPD, not all enjoy equal treatment as per SPD. For example, low skilled workers do enjoy equal treatment under the SPD, but they do not benefit from EU harmonised admission conditions, procedural guarantees, residence rights, etc. Also the SPD does not apply to seafarers on seagoing ships registered on an EU Member State flag.

With regard to gaps in family reunification, third-country nationals who are family members of non-mobile EU citizens are not covered by the FRD as regards admission and residence conditions, although they might constitute a significant share of third-country nationals entering the EU.

The extent of the impact of such exclusions and its significance in economic social and political terms

In relation to economic migration, currently excluded categories (low and medium skilled workers other than seasonal workers, certain transport workers, and international service providers) could potentially support the EU in addressing existing and future skill shortages and contribute to Directive specific objectives such as **management of economic migration flows, attracting and retaining certain TCN categories**, but also **preventing exploitation**, for instance in relation to highly mobile transport workers or domestic care workers.

The stakeholder consultation confirmed that the legal migration Directives remain relevant to address the needs of various stakeholders, although several issues impacting their relevance remain. Representatives of social partners confirmed the importance of non-EU workers on different skills levels and the need for legislation to focus more on these categories, as opposed to the current focus on highly skilled non-EU workers. This is in line with the existing **demand for low and medium-skilled workers**, which are currently not covered by EU legislation. This is also in line with the findings from the focus groups that which showed that people on other skills level, e.g. craft skills are necessary to attract; these people are often not available at EU labour markets (tourism, construction). Although the SPD guarantees certain rights (including equal treatment) and procedural guarantees, there is no harmonised EU instrument for **admission of medium- and low-skilled workers**. A positive impact could be achieved by extending the scope to migrants working in 'less desirable' areas of the EU economy, such as agriculture, construction, domestic and care work.

In line with the objectives of the EU migration acquis **preventing exploitation of workers** and ensuring decent living and working conditions of third-country nationals through equal treatment provisions would reduce unfair competition between a Member State's own nationals and third-country nationals resulting from the possible exploitation of the latter resulting in significant positive social impact.

Furthermore, excluding **self-employed third-country nationals and investors** might allow the EU to address the objective relating to boosting competitiveness, growth and investment. Negative consequences of the current system have been highlighted in the stakeholder consultations:

- Consequences for self-employed third-country nationals: Less favourable business conditions (e.g. no access to financial credit or to risk insurance) may not allow the full economic potential of such businesses to grow and hinder its success, productivity, longevity. Access to social welfare for self-employed third-country nationals is restricted in some Member States.
- Consequences for Member States: Member States may restrict the access to self-employment for certain categories of third-country nationals covered by the EU migration acquis. Restrictive admission criteria for self-employed third-country nationals may prevent migrant entrepreneurs from contributing to economic growth and job-creation and diversifying the supply of goods and services. On the other hand, although there seems to be little evidence of systematic misuse / abuse of business migration channels across the EU, the lack of more sophisticated mechanisms to detect cases of bogus enterprises⁶⁵⁰ may result in misuse with a negative effect on the market and, as evidenced in national debates, may also raise social tensions.⁶⁵¹

⁶⁵⁰ Aside from the initial control at admission stage, cases of misuse / abuse of the migration channel are only manifest upon renewal of the residence permit or when specific inspections are carried out (European Migration Network, 2015).

⁶⁵¹ European Migration Network (2015).

- Consequences at EU level: There are currently complex admission and stay criteria for self-employed third-country nationals at Member State level. Simplifying these could contribute to bringing greater competition and flexibility to EU markets.

The lack of a harmonised approach at EU level could also have a negative impact on investment. Where Member States are free to attract **investors** in a situation of competition, in the absence of a harmonised regulation, a key challenge is to strike a balance between selective admission criteria able to prevent and reduce abuses and yet provide for favourable channels for genuine third-country investors and business owners.

The lack of an overall approach for regulating the entry of **international service providers** may reduce the **EU's attractiveness** for foreign companies to do business. Furthermore, there could be consequences related to disadvantages for certain categories of service providers in terms of pay, health and safety and other rights⁶⁵².

Addressing the problems related to certain of **third-country national transport workers** is highly relevant to the EU legal migration acquis, since there are shortcomings in how the objectives can be reached for this group as regards **ensuring equal treatment** of third-country nationals, notably as regards pay and working conditions, social security and other areas, thus avoiding their exploitation and preventing discrimination in the EU. While the potentially relevant SPD, BCD, SW and ICT contain equal treatment provisions aimed at providing third-country national workers with the same pay and employment conditions as workers (and, in the case of the ICT Directives, posted workers), these Directives include exemptions from their scope categories of third-country nationals that are particularly relevant to the transport sector and who are vulnerable to unfair employment practices, namely, self-employed workers, seafarers on seagoing ships registered on an EU Member State flag, posted workers and workers for whom it is difficult to determine the home base and in the case of Seasonal Workers intra-EU mobility would mean certain transport workers in for instance intra-EU cruise ships would be excluded from the legislation. The transnational nature of the problems means there would be added value in developing further actions at EU level, both addressing the legality of stay and work in a highly mobile context, as well as in relation to the enforcement of rights, including procedural rights and right to equal treatment.

In relation to **family members of non-mobile EU citizens**, the lack of an EU legal instrument covering admission and residence conditions and uncoordinated national initiatives may cause disparity. There would be added value in addressing the issue at EU level. This would have a positive impact and eliminate the possibility of reverse discrimination.

9.1.3 EQ1C. To what extent does the scope of the Directives, and the way it is implemented, meet the current needs in all the different steps of the migration process, and in all aspects of migration?

This question looks at the implementation of the Directives and whether the needs across the different steps of the migration process are met.

Key conclusions

While overall the provisions of the Directives are fit for purpose, some practical implementation issues have been identified which may hamper the extent to which the Directives fully meet the demands of third-country nationals and other relevant stakeholders (e.g. Member State authorities) in the different migration phases (e.g.

⁶⁵² http://www.migrationdrc.org/publications/briefing_papers/BP4.pdf

with regard to changes of status, equal treatment provisions, or differences in the duration of permits).

Pre-application (information) phase: The provisions in the Directives regarding information remain overall relevant but do not fully address stakeholder needs. The implementation in the Member States has revealed practical problems with regard to the availability as well as quality and completeness of information provided, impacting the relevance of the specific objectives to **attract and retain certain third-country nationals**, who might be deterred of applying for EU permits due to lack of information.

Pre- application (documentation) phase: Most Member States require a single application. However in some Member States applicants have to submit more than one application, which goes against the concept of a single residence and work permit enshrined in the SPD. In addition, a few of the requirements do not meet stakeholder needs and hence diminish the relevance of the Directives (e.g. recognition of diplomas). The relevance of the Directives' specific objectives to **ensure fair treatment** might be impacted by the fact that national equivalent statuses for some permits require less documentation compared to the EU status (BCD, LTR, SD, RD).

Application phase: Application issues have been identified in eight Member States that have not correctly transposed the SPD which means that they also apply the Directive incorrectly in practice by not having a single application procedure. Additionally, high fees charged might not be conform to the Directives. With regard to processing times, there might be scope for the Directives to specify a timeframe for the issuance of the permit and thus ensure **attracting and retaining certain third-country nationals**.

Entry and travel phase: While most Member States have some timeframes for granting entry visas, in those cases where there are no timeframes application problems may arise, as Member States may be held in violation of their obligation to facilitate the issuing of visas, which in turn might impact the relevance of the specific objective to **attract and retain certain third-country nationals**.

Post-application phase: Differences across Member States with regard to the permit duration pose practical implementation issues (mainly for the LTR), an might impact the specific objective of **attracting and retaining certain third-country nationals**, if the duration of the LTR is shorter to e.g. a comparable national scheme.

Residence phase: With regard to residence permits, all Member States comply with the Directives' provisions regarding the format. With regard to access to employment and **equal treatment**, application issues identified with regard to the inclusion of a reference to the right of the card holder to access the labour market reduces the relevance of the respective provisions.

Intra-EU mobility phase: third-country nationals and their families overall are facilitated if they wish to exercise their right to **intra-EU mobility**.

End of stay phase: The main needs refer to the export of social security benefits after moving to a third country and ensuring **equal treatment** with nationals. According to provisions in the SPD, SWD, ICT and BCD equal treatment with nationals applies. However, in some Member States unemployment benefits cannot be exported, unless a bilateral agreement with a third country includes it⁶⁵³, thus possibly undermining the relevance of the Directives' provisions. With regard to possible periods of absences, most Member States comply with LTR provisions, confirming their relevance for those holding a LTR status.

⁶⁵³ DE, EE and FR.

9.1.4 EQ1E. To what extent is the way that Member States implement the Directives relevant to the initial objectives, and to current needs?⁶⁵⁴

This question addresses the implementation of the Directives with regard to 'may clauses' and the extent to which the transposition and application of these clauses by Member States impacted on the relevance of the Directives to meet their initial objectives and the current needs across the migration phases.

Key points

Member States have implemented several more restrictive may clauses across the migration phases (see below), which might impact on the ability of the Directives to meet some of their objectives. However, overall the **implementation in Member States does not particularly impact the relevance of the Directives.**

Pre-application (information) phase: no impact.

Pre- application (documentation) phase: Limiting the scope of the FRD may to some extent hamper the relevance of the Directive to meet the **objectives to protect family life and unity.**

Application phase: 17 Member States have transposed more restrictive may clauses in Art.20 of the SD enabling Member States to require applicants to pay fees for the processing of applications in accordance with this Directive, which might influence the relevance of the Directive **to attract and retain students** especially when these fees are high.

Entry and travel phase: No impact

Post-application phase: May clauses in Art.13 LTR enabling Member States to issue residence permits of permanent or unlimited validity on terms that are more favourable than those in the Directive but which do not confer the right of residence in other EU Member States might reduce the relevance of the LTR to achieve the objective **to enhance intra-EU mobility.**

Residence phase: More favourable may clauses transposed under the SD might contribute to increased relevance of the Directive to meet the objective of **attracting and retaining certain categories of TCN.** Several may clauses transposed under the BCD and SPD, such as those enabling the Member States to conduct labour market tests, might reduce the relevance of the Directives to meet their initial objectives, although they might impact more on their effectiveness. The transposition of several restrictive may clauses may reduce the relevance of the LTR to meet the objectives with regard to **promoting integration and socio-economic cohesion.**

Intra-EU mobility phase: Member States which have transposed the rather restrictive may clauses under the RD and the LTR may be reducing the ability of these Directives to meet the objectives regarding **enhancing intra-EU mobility.** On the other hand, the more permissive may clauses transposed by Member States as part of the BCD (enabling TCN to launch an application for another Blue Card from the first Member State or issuing temporary permits in cases where the BCD expires during the procedure) enhance the Directives' ability to meet this objective.

End of stay phase: The more restrictive may clauses in Art.5(3) of the RD, concerning the need for a written statement of a research organisation regarding the responsibility for reimbursing the costs related to return of an illegally staying TCN, do not impact the relevance of the Directive to meet the initial objectives, but might impact the relevance of meeting the needs of stakeholders. The more permissive may clauses in Art.9(2) of the LTR, which indicate that absences exceeding 12 consecutive months or for specific or exceptional reasons shall not entail withdrawal or loss of

⁶⁵⁴ Please note that EQ1D is addressed as part of the EU added value section.

status, might enhance the relevance of the Directive to respond to the objective of **promoting integration and socio-economic cohesion** in the Member States.

9.1.5 EQ1F. To what extent are the provisions of the Directives, and the way these are implemented, relevant in view of future challenges?

The question addresses how the provisions outlined across the EU legal migration Directives are relevant in i) the context of future socio-economic, demographic, security and environmental challenges forecasted to affect both the EU and wider regions globally. Further, ii) particular provisions of the EU legal migration acquis (in addition to the methods through which they are implemented) that are likely to be affected by these projections, are considered.

Key points

Future challenges affecting migration to the EU

The flow of migration to the EU in the short to medium term (2015-2030) is likely to be affected by a number of drivers: socio-economic, demographic, security and environmental. These projected trends are expected to occur in the EU directly, or affect the regions from which migration to the EU will stem; they are important to the relevance of the provisions outlined across the EU legal migration acquis, and the ways in which they are implemented.

- **Socio-economic** drivers are expected to be the dominant factors affecting migration flows to the EU; GDP growth, poverty alleviation and expansions of middleclass populations across regions globally are expected to affect skills shortages, employment levels and labour supply and demand in both origin and destination countries or regions. Forecasted **demographic** trends include global aging populations (most pertinent in the EU), increases and declines in fertility rate and the 'youth bulge' phenomena effecting migrant origin regions. To accommodate these socio-economic and demographic transitions, the current EU legal migration Directives will need to remain accessible in order to attract and retain workers from outside the EU.
- **Environmental** drivers which can stem from immediate, environmental disasters that compel forced migration, or the gradual degradation of domestic living conditions and economic prospects, are likely to affect the flow of migrants seeking protection. Of particular relevance is the anticipated growth in the number of third-country nationals seeking to flee to Europe from agricultural regions experiencing pronounced temperature increases. Projected population growth and change will in turn transfigure the individual needs of Member States in accommodating this population influx, and thus there will be a need to redefine and recalibrate the scope and conditions of the EU legal migration Acquis to accommodate this.
- **Security** factors are embodied by the projection of the continuation of current protracted conflicts. While political, economic and social conditions in the MENA region, sub-Saharan Africa and South Asia will likely remain a source of new conflicts and affect refugee flows out of these areas and into Europe, the impact of forced migration due to conflict will not likely have a significant impact on the labour markets of destination Member States and so is not expected to affect either legal migration flows to the EU, nor the relevance of the EU legal migration Directives. The four categories of factors are outlined below.

Future challenges in the context of the provisions of the EU Directives acquis and their methods of implementation

The key issues affecting the relevance of the Directives are firstly the accessibility (with regard to cost and user-friendliness) and the application procedure. Further, **national equivalent schemes** can offer more favourable alternatives for which

potential TCN applicants might seek to apply, in order to bypass some of the deficits identified in the EU legal migration acquis.

Intra-EU mobility requirements outlined in the BCD, ICT, S&RD and RD are considered to be relevant factors which might affect the attractiveness of the EU labour market for high skilled workers when compared with other geographical regions such as the US or Canada.

Social security protection in the context of intra-EU mobility is outlined but considered not to be relevant in the context of the future implementation of the EU legal migration acquis.

Finally, **the potential for TCN exploitation** is considered to be a future challenge that as yet, the provisions outlined in both EU legal migration Directives (and other Directives concerning exploitation more specifically) are not able to sufficiently account for.

9.2 Coherence

The coherence evaluation criterion was assessed through three separate evaluation questions, some of which further broken down into sub-questions. The main conclusions per question and sub-question are summarised below.

EQ2: To what extent are the objectives of the legal migration Directives coherent and consistent and to what extent are there inconsistencies, gaps and overlaps? Is there any scope for simplification?

Based on a comparative legal analysis of the EU Directives in force, this question identifies and analyses the main gaps, overlaps and inconsistencies in the current acquis, as well as explores synergies and cumulative impacts. It examines the effects of the issues identified as well as explores possible ways to address these. Two sub-questions have been analysed:

EQ2.A (Internal coherence). Based on a comparative legal analysis of the EU Directives in force, identify gaps, overlaps and inconsistencies (if any). Are the legal acts coordinated and complementary? Identify synergies and cumulative impacts.

EQ21B. To what extent does the scope of the legislation match current needs in terms of the categories of third-country migrants initially intended to be covered by the legislation? Are certain relevant categories of third-country migrants (in terms of migration flows, labour market needs, etc.) not covered by the legislation? If so, what is the impact of such exclusion?

Gaps and overlaps in the personal scope of the legal migration Directives

Two different types of gaps have been identified in the EU legal migration acquis, namely a) certain migrant categories covered by the Directives do not benefit from the same rights and b) certain categories are not covered at all or only partially. These gaps have led to differences in standards, safeguards and rights between third-country nationals covered or not (fully) covered by the EU acquis, which goes against the general objectives of the EU acquis in relation to creating an equal level playing field, ensuring transparency, simplification and legal certainty and ensuring fair treatment of third country nationals, as well as the specific objectives to attracting and retaining certain categories of third-country nationals and equal treatment.

The gaps in the legal migration acquis, are having an impact on the extent to which the Directives meet the needs of third-country nationals, given that especially those who are currently excluded completely from the acquis may be treated differently, for example, by being granted less rights and procedural guarantees. This in turn could also have an impact on the extent to which these categories can realise their economic potential and contribute to the economic growth. The EU could also become a less interesting destination for both migrants and investments, which could impact on

trade and wider economic development. In addition, third-country nationals may be more attracted to Member States which have more favourable schemes in place, thus effecting the level playing field that the EU sought to create.

As discussed in detail under Effectiveness, the exclusion of certain categories of third-country nationals from the legal migration acquis is also hampering the achievement of in particular the specific objectives. For example, the gaps hamper the extent to which Member States can effectively manage economic migration flows and address shortages of in particular medium skilled labour, not covered by the acquis today.

Different categories of inconsistencies have been identified in the legal migration acquis, as well as different options to address these

The comparative legal analysis of the eight Directives has identified different types of inconsistencies, which can be broadly categorised as follows:

1. Inconsistencies in terminology used in the Directives for the same concepts
2. Inconsistencies in provisions which cannot be (fully) justified by the nature of the Directive / migrant category covered (e.g. differences in time limits for decision-making, for notification, etc.).
3. Differences which can be justified by the nature of the Directives and/or the categories of migrants covered (and which are therefore not considered as an internal coherence 'problem' as such).

While there are historical and contextual developments which explain the inconsistencies between the Directives, there is scope and stakeholder consensus to address in particular those listed under point 1., as well as room to explore possible improvements to those listed under point 2., through a combination of

- Harmonisation of terminology;
- Clarifying / further specifying certain concepts
- Providing indications how certain provisions are to be applied in practice
- Streamlining rules and standards which are different for no substantive reasons
- Incorporating ECJ case law in the text of the Directives.

The inconsistencies identified in the legal acquis contribute to inefficiencies throughout the different migration phases, as several have 'imported' these into their national legislation (contrary to a few which have adopted 'horizontal' migration framework which already streamlined some of the inconsistencies in the EU acquis), meaning for example, slightly different admission procedures, on-arrival processes and differences in the treatment of third-country nationals. The inconsistencies furthermore go against the general objectives of the EU acquis in relation to ensuring transparency, simplification and legal certainty.

The external coherence section addresses two main questions with several sub-questions, assessing how the legal migration Directives were complementary or overlapping with national level migration legislative frameworks (national policy coherence) and other EU policies (EU policy coherence). The main conclusions per main question are listed below.

EQ3 To what extent are there inconsistencies, gaps, overlaps and synergies between the existing EU legislative framework and national level migration legislative frameworks? Is there any scope for simplification?

9.2.1 EQ3A. (National policy coherence) Which national policy choices have played a key role in the management of migration flows?

This question was addressed through several sub-sections focussing on a) the adoption of more restrictive 'may' clauses by the Member States, b) the

'operationalisation' of some of the provisions in the Directives and c) the existence of national parallel schemes which have led to further divergences in practice.

Key conclusions

The existence of different national policy choices has caused inconsistencies throughout the EU, primarily due to a combination of 'may' clauses, the different ways in which 'shall' clauses have been put in practice, making use of the sometimes high level of discretion left to the Member States, and the existence of national parallel schemes.

a) The adoption of more restrictive 'may' clauses by the Member States

The adoption of more restrictive or more permissive may clauses in the Member States impacts on the coherence of the legal migration Directives across the EU. Specifically, the possibility for the Member States to opt for more stringent or favourable regimes (i.e. by choosing to transpose 'may' clauses or not), although in accordance with the Directives, creates de facto substantial differences in Member States' practices and frameworks, which in turn can lead to inconsistencies in the implementation of the EU acquis throughout the EU. For instance, in the pre-application phase, 12 Member States have restricted the scope of the FRD through may clauses in Art.15(1), which state that the issuance of an autonomous residence permit may be limited to spouses or unmarried partners in cases of breakdown of the family relationship. These different choices create de facto divergences in the way Member States protect family life and unity, especially for couples with children.

b) The 'operationalisation' of some of the provisions in the Directives

The way in which Member States have 'operationalised' the legal migration acquis has also caused several divergences in practice. The divergences in terms of transposition and practical application have led for instance to a 'patchwork' of slightly different admission conditions and related requirements; different timeframes to deliver the permit, different durations of the permit, etc. across the EU.

For instance, in the application phase, divergences include the use (or not) of a single application procedure (where this is not a requirement under the SPD), the significant variations in the application fees and the varying length of time to process the application. In the post-application phase, different timeframes to deliver the permit have been identified, as well as divergences in the duration of the first permit issued and the procedures followed to issue the permit across the EU.

Moreover, these differences are further exacerbated by a series of conformity and practical application issues identified in several migration steps, leading to an overall inconsistent approach. In particular, the lack of a single procedure, at least for migrants applying for entry into the EU for the purpose of work, has led to incoherencies as well as a less streamlined and efficient approach across the EU.

c) The existence of national parallel schemes which have led to further divergences in practice

The existence of diverse national parallel schemes in the Member States has further contributed to incoherence between EU Member States with regard to admission, entry and stay of third-country nationals. The vast majority of Member States (with the exception of Cyprus, Greece, Luxembourg, Poland, Romania and Slovakia) have one or more parallel national statuses in place which are considered as an equivalent to the EU Directive(s), mostly for the BCD and the LTR.

National schemes overlap with the provisions of the legal migration Directives – some offer more favourable conditions and rights than the EU equivalent, others a mix of favourable and less favourable treatment. This also impacts on their practical use: these schemes are often preferred by Member States and third-country nationals alike, as they often offer more simplified procedures and more favourable rules for third-country nationals.

9.2.2 EQ3B. To what extent are there synergies, gaps, inconsistencies, incoherencies, overlaps with national policies that are either going further than what is required by the EU legal migration directives or exist in parallel (parallel schemes)? Are there excessive burdens as a result of national implementation choices?

This question was addressed through two main sub-sections focussing on a) national parallel schemes and b) the accumulation of national policy choices.

Key conclusions

a) Difference between the EU legal migration acquis and the national parallel schemes

The analysis has found significant overlaps between the EU legal migration acquis and the national schemes, which might lead to a preference towards those national schemes which often offer more favourable provisions and simplified procedures.

The main differences with the legal migration Directives, mainly concerning the BCD and the LTR, have been observed in the documentation phase, application phase, entry and travel phase, and post-application phase. For instance, in the documentation phase, the main difference between the requirements of the BCD and the equivalent national statuses concerns the lack of or reduced minimum income requirements, applied in several countries (IT, NL, PT, SE), which seems to result in a higher use of the national equivalent status. On the other hand, in the application phase, some countries have put in place less favourable conditions and rights with regard to the admission procedure (HU); but also more favourable conditions with regard to the personal scope in HR, EE, DE, NL, PT, ES, SE).

b) The accumulation of national policy choices

The analysis has also found that, although some divergences between Member States exist, it is mostly the accumulation of different national policy choices which contribute to create serious discrepancies between Member States and consequent issues for both third-country nationals and employers. For instance, for employers for whom time and speed are of essence, there are specific aspects which they find particularly difficult, e.g. the combination of a) different approaches towards documentation requirements in relation to birth certificates or certification of diplomas, and b) a general lack of information on the specific documentation requirements.

EQ4: To what extent are the Legal migration Directives coherent with other EU policies and to what extent are there inconsistencies, gaps, overlaps and synergies with such policies?

9.2.3 EQ4A (EU Policy coherence): Building on the analysis of EQ2, which other EU interventions (policies and legislation) have a role in the management of migration flows? Are there synergies, gaps and incoherencies, overlaps?

The evaluation has identified several external coherence issues in a number of policy areas, which have been linked to the different phases of the migration process and assessed by their severity.

The most serious coherence issues identified include the areas of and education and the recognition of qualifications, asylum acquis, the employer sanctions, and human trafficking. These issues were mostly found in the application, residency and intra-EU mobility phases, and in particular in the areas of equal treatment, labour exploitation, asylum and family reunification. No coherence issues were found in the other steps of the migration process, namely the preparation and post-application phases.

For instance, one of the most serious coherence issues in the recognition of professional qualifications occurs during the application phase, since at this stage no EU legal provisions cover the efforts of third country applicants to obtain recognition of

the professional qualifications they may have obtained in a third country or in another EU Member State (equal treatment with regard to recognition of qualifications is only granted once a permit has been issued and only by some Directives). Depending on the laws of the country of destination, third-country nationals may therefore face more onerous requirements for recognition of their qualifications than EU citizens holding a similar EU or non-EU qualification.

Moreover, in the application phase, some (not severe) coherence issues were identified with regard to the asylum acquis. In particular, the FRD only refers to refugees as sponsors and not to beneficiaries of subsidiary protection (BSPs), defined in art 2 (f) of the Qualification Directive. The scope of application of the right to family life does not always seem coherent and logically consistent, given the approximation of refugee status and subsidiary protection status pursued within the asylum acquis in the last years. However, this difference, as well as some other differences which are still included with regard to the two categories in the asylum acquis, can at least be justified by the presumably more temporary need of protection of BSPs as opposed to refugees.

The analysis also found several synergies and complementarities between the EU legal migration acquis and other EU policies and legislation. These include the EU skills agenda and external education policy, recognition of professional qualifications, temporary agency workers, and free movement. For instance, during the residence phase, the Directive 2005/36 on the recognition of professional qualifications outlines the right to equal treatment with regard to recognition of professional qualifications; moreover, seven EU legal migration Directives (LTR, RD, BCD, SPD, SWD, ICT, S&RD) enable equal treatment of third-country nationals as regards "recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures".

As regards the temporary work agency, the SPD foresees that third-country nationals admitted for the purpose of work, or who enjoy the right to work, and who have a permit that authorises work in a temporary agency (if national rules specific), have access to the minimum level of protection afforded to temporary agency workers by the Directive 2008/104/EC on Temporary Agency Work.

Taking both the gaps and inconsistencies, as well as the synergies and complementarities into account, overall the EU legal migration Directives are well embedded in wider EU policies and legislation and well linked to key policy priorities around jobs and growth, justice and fundamental rights.

9.3 Effectiveness

The Effectiveness section addressed four main questions (EQ5, EQ6, EQ7 and EQ8) and the conclusions are listed below.

EQ5. To what extent the objectives of the legal migration Directives have been achieved?

This question addresses the extent to which each of the overarching and specific objectives of the Directives have been achieved. A mapping of the objectives is presented in Section 3.2 and Annex 1.

9.3.1 EQ 5 To what extent the objectives of the legal migration Directives have been achieved?

Key conclusions

Three overarching objectives applicable to all EU legal migration acquis and ten specific objectives applicable only to some Directives have been identified. Overall, the evaluation showed that the achievement of the objectives is underway. When comparing with the legal baseline and the situation prior to the adoption of the

Directives, although similar statuses existed in some Member States, the Directives contributed to legal certainty and approximation by introducing common provisions. However, factors that may hinder the attainment of objectives include the uneven practical application (partly due to 'may' clauses and partly to shall clauses that leave ample room for interpretation); the overall complexity and fragmentation of the current system and the existence of parallel national schemes for some Directives. Furthermore, several external factors as examined under EQ8 also impact on the achievement of objectives. For example, attractiveness of the EU Member States as destinations may be impacted by available job opportunities, economic climate and social-cultural links.

9.3.1.1 Overarching objective 1: Creating an equal level playing field to manage migration flows in the EU through the approximation and harmonisation of Member States' national legislation and establishing common admission criteria and conditions of entry and residence for categories of TCNs subject to EU legal migration acquis

All Directives aim to ensure equal level playing field in terms of three main aspects: (i) admission conditions; (ii) procedures and procedural safeguards and (iii) rights acquired after obtaining the status/residence permit.

The provisions of the Directives have been largely transposed into national legislation. This has ensured that the statuses covered by EU legal migration acquis can be granted in all Member States, under the same conditions and providing the same rights, thus increasing approximation and harmonisation of national legislation.

However, the equal level playing field has not been fully achieved in practice, due to a number of factors. Firstly, the existence of many 'may clauses' as well as 'shall clauses' which leave ample room for interpretation in the Directives allow for differences in standards across Member States. Secondly, the practical application of the provisions of the Directive varies significantly across Member States and harmonisation across Member States in that respect is still lacking. There is a significant variation, for example, in terms of application timeframes, fees, provision of information, documentary evidence required, equal treatment, etc. Thirdly, historically Member States have very different migration systems and some countries have 'adapted' and 'fitted' the EU Directives to pre-existing national statuses which have resulted in discrepancies. Finally, the complexity and fragmentation of the current system, including the sectoral approach of the EU legal migration acquis and the existence of parallel national schemes for some Directives presents an obstacle in achieving a level playing field.

9.3.1.2 Overarching objective 2: Ensure transparency, simplification and legal certainty for categories of TCNs subject to EU legal migration acquis

A well-functioning, transparent, speedy and user-friendly admission system is an explicit aim of all EU legal migration acquis. Overall, the Directives have contributed to ensure greater transparency, simplification and legal certainty by including uniform provisions. Legal certainty has been achieved not only by the existence of common statuses covered by EU legal migration acquis and common admission conditions but also through ensuring procedural aspects and guarantees, such as for example, providing exhaustive grounds for withdrawal and refusal of status and guaranteeing the right to appeal.

However, there are certain factors that have hindered to an extent the achievement of this general objective. Firstly, the practical implementation of the Directives: while overall Member States are compliant with the provisions of the Directives, there are some problematic issues in some Member States, such as lengthy appeal processes and legal timeframes for authorities to issue decisions on applications. Non-EU citizens surveyed have encountered similar problems when applying for a residence permit,

across the EU. The most common issue identified is the length of the procedure, followed by the high costs of permit, the documents required and the lack of clear and practical information coming from official sources on procedural aspects (i.e. types of visa, expected processing times, mandatory insurance, the types of documents that need to be provided and notarised, etc.) or other relevant aspects such as intra-EU mobility.

Secondly, the fragmentation of the system in terms of the sectoral approach and existence of parallel national schemes for some categories of TCNs has negatively affected simplification and transparency. There are also some important gaps in the Directives, such as the right to equal treatment not being guaranteed in the FRD. It is worth noting that more recent Directives include much more detailed and explicit provisions which facilitate the legal certainty and leave less room for interpretation and discretion, especially with regard to procedural safeguards.

9.3.1.3 Overarching objective 3: Ensure fair treatment for categories of TCNs subject to EU legal migration acquis comparable to those of citizens of the European Union (subject to restrictions)

Ensuring fair treatment is a cross-cutting objective for all EU legal migration Directives. The Directives aimed at guaranteeing fair treatment of TCN in terms of application, residence and renewal procedures, such as legal safeguard as well as the rights granted attached to the residence permits. Differences in practical application, as highlighted above, have impacted on the fair treatment of TCNs. The majority of the consulted third-country nationals respondents to the OPC are on the view that they have received fair treatment. Representatives of civil society expressed the view that there is not sufficient protection in EU legal migration acquis as regards low-skilled workers, which are vulnerable to exploitation and result in either irregular migration phenomena or low working conditions and rights.

9.3.1.4 Specific objective 1: Managing of economic migration flows

The Directives provide for a set of instruments for managing flows of migration of different categories of migrant workers, such as the possibility to apply quotas; regulation of professions, Union preference principle and labour market test, at the discretion of Member States. Many Member States impose education, occupation or salary requirements which can be barriers to recruitment, while others manage migration largely through numerical limits or volumes of admission. Still others rely on labour market tests or trust the market to regulate itself as long as conditions are respected. A number of Member States deny entry to all less skilled labour migrants, while others only admit them for seasonal activities.

Based on evidence from the application study, Member States do make use of instruments to manage economic migration flows. There is very limited evidence in the context of this evaluation to comment on how effectively these instruments are being applied at national level. However, the differences in the practical application of the instruments in the Member States impacts negatively on the objective of harmonisation, as well as the objective of simplification, as different approaches across Member States may be confusing for applicants.

9.3.1.5 Specific objective 2: Attracting and retaining certain categories of TCNs

Attracting and retaining certain categories of TCNs is an objective for three categories of TCNs: highly qualified workers (BCD); researchers (RD and SRD) and intra-corporate transferees (ICT). Overall, this objective is strongly linked to economic conditions and climate, business growth and job opportunities as well as cultural ties and socio-economic factors rather than being the result of the statuses based on EU and national legislation. However, the admission criteria and rights attached to the permit may still influence both the individual decision as to the choice of destination

country, as well as the decisions of businesses with a global outreach on where to recruit foreigners. The EU Blue Card has not been effective in its primary objective of attracting and retaining TCNs, with the notable exception of Germany. With regard to RD, the number of residence permits issued to researchers has more than doubled from 2008 to 2016 (from 4220 in 2008 to 9672 in 2016). However, it is difficult to establish whether the increase was due to the attractiveness of the RD permit or due to other factors, such as increased attractiveness of EU Member States for international researchers.

9.3.1.6 Specific objective 3: Boosting competitiveness and economic growth and enhancing the knowledge economy of the European Union

Numerically, a relatively low number of Blue Cards have been issued with a significant share issued by one Member States – Germany. Given the low number of Blue Cards issued it is unlikely that the BCD has contributed to a significant extent to the boosting of competitiveness, economic growth and enhancing the knowledge economy. Although too early to assess their effects, the ICT and S&RD are expected to make a positive contribution to this objective (also considering that contrary to the BCD, no parallel schemes are allowed under these Directives).

9.3.1.7 Specific objective 4: Addressing labour shortages

Addressing labour shortage is a specific objective of the Directives regulating admission for the purposes of economic migration (BCD, SWD and ICT). Based on practices in the Member States and numerical evidence for the EU Blue Card, it can be concluded that the relevant EU Directives have not contributed to a significant extent (yet) to address labour shortages.

9.3.1.8 Specific objective 5: Ensure equal treatment for categories of TCNs subject to EU legal migration acquis comparable to those of citizens of the European Union (subject to restrictions)

Seven Directives (LTR, RD, BCD, SPD⁶⁵⁵, SWD, ICT, S&RD) include provisions on equal treatment of third-country nationals with respect to nationals of the Member States. The FRD and SD do not include provisions on equal treatment. However, equality is ensured by the SPD in certain circumstances, for example if third-country nationals, falling within the scope of the FRD and SD, are authorised to work.

The Directives brought uniformity across Member States in ensuring the right to equal treatment: while the legal baseline analysis for LTR, BCD and SPD have shown that prior to the adoption of the Directives some equal treatment was granted, there were some notable exceptions across the different rights. In terms of the experience of TCNs, the majority of TCN respondents to the OPC seem to agree that TCNs generally receive equal treatment as compared to nationals of the EU country in which they reside, especially with regard to tax benefits, freedom to join organisations representing workers or employers, advice services provided by employment services, access to education and vocational training, and access to good and services.

However, many Member States have made use of derogations on certain equal treatment rights and several do not fully comply with the equal treatment provisions of the Directive, which has resulted in certain equal treatment rights not being (explicitly) guaranteed. This may lead not only to uncertainty for TCNs but also to exclusion of TCNs from certain equal treatment rights that are guaranteed by the EU acquis.

⁶⁵⁵ Under the SPD i) any holder of a residence permit who is allowed to work and (ii) those who have been admitted for the purpose of work, are covered, which can thus also include TCN falling under the FRD and SD.

9.3.1.9 Specific objective 6: Preventing exploitation of workers and ensuring decent living and working conditions of third-country

Preventing exploitation and ensuring decent living standards are explicit aims of the SWD, FRD and ICT. Related to exploitation is also ensuring decent living and working conditions of third-country nationals. To this aim, equal treatment provisions are meant to serve as a safeguard to reduce unfair competition between a Member State's own nationals and third-country nationals resulting from the possible exploitation of the latter. There are a range of implications including challenges to the full enjoyment of fundamental rights and political, economic and social challenges. A particularly vulnerable group to labour exploitation is seasonal workers and abuse and exploitation of TCNs while doing seasonal work have been widely reported.

Overall, by including specific provisions and safeguards, the Directives have aimed to enforce the protection of TCNs and prevent exploitation. However, as exploitation is mostly a hidden phenomenon, it is difficult to measure its size and to link it to the effects of the Directives.

9.3.1.10 Specific objective 7: Improving monitoring and control of overstaying and other irregularities

Improving the monitoring and control of overstaying is a specific objective in the SWD and SRD. Furthermore, the SPD has the objective of "better control of the legality of work and residence". One avenue to achieve this as envisaged in EU legal migration acquis is by facilitating controls of the legality of third-country nationals' residence and employment (through single permits) (SPD). Through specific provisions in the Directives, the controls of the legality of third-country nationals' residence and employment have been facilitated. However, estimations show that the phenomenon of overstay and irregularity is still rife in the EU which suggests that the practical implementation and the coherence between EU legal migration acquis and instruments tackling irregular migration can be strengthened.

9.3.1.11 Specific objective 8: Mutual enrichment and promoting better familiarity among cultures

Mutual enrichment and promoting familiarity among cultures is a specific objective for SD and SRD. At both EU and national levels, efforts have been undertaken to attract international students and EU is performing well as an attractive destination although this varies across Member States. It is however very difficult to establish the extent to which mutual enrichment has been achieved. Numerous programmes and initiatives have been put in place to facilitate cultural exchange, including through bilateral agreements and mobility programmes. Important factors to facilitate cultural exchange include language knowledge, intensity of exchange between the international students and fellow students and local population and, to a lesser extent, the duration of stay.

9.3.1.12 Specific objective 9: Promoting integration and socio-economic cohesion

Promoting integration and socio-economic cohesion has been mentioned as an explicit objective in the FRD and LTR. Eurostat integration indicators show that across different areas, such as employment rate and education attainment, third-country nationals are worse off than EU citizens in terms of employment, education, and social inclusion outcomes. The Directives do not prescribe the ways in which integration is to be achieved. The provisions on equal treatment in the LTR may contribute to better integration, however there is overall an indirect link between the legal instruments and the socio-economic outcomes for third-country nationals.

9.3.1.13 Specific objective 10: Protection of family life and unity

The protection of family life and unity is an objective for FRD, LTR, BCD, RD, ICT and S&RD in relation to researchers. Research has shown that the protection of family life is beneficial not only to migrants, but also to the wider societies hosting them and consequently to the Member State as this is seen to facilitate the integration and settlement into the community.

The EU acquis has served to guarantee family unity and family life through providing a harmonised framework for residence permits based on family reunification in line with the EU Charter of Fundamental Rights and with the standards set in international human rights instruments. However, the right to reunite with family could be further strengthened by avoiding setting the income requirement at an exceedingly high level, and giving more weight to individual circumstances in the process of examining family reunification applications

9.3.1.14 Specific objective 11: Facilitation and promoting intra-EU mobility

Although intra-EU mobility is mentioned as an explicit objective in a number of Directives, in practice many obstacles to intra-EU mobility remain. Challenges for TCNs to exercise intra-EU mobility include lack of information, requirements for documentation same or similar to first applicants and difficulties in transferring social security rights.

EQ 6: What have been the effects of the legal migration Directives, and to what extent can such effects be attributed to the EU intervention?
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This question addresses the observed effects of the legal migration Directives and to what extent can such effects be attributed to the EU intervention. An overview of the legal baseline is presented in Section 3.2 and Annex 1. As per the Terms of Reference, due to the recent adoption of the following Directives, no assessment of their effectiveness will be carried out: Seasonal Workers (2014/36/EU), Intra-Corporate Transferees (2014/66/EU) and Students and Researchers Directive (2016/801/EU).

9.3.2 EQ 6: What have been the effects of the legal migration Directives, and to what extent can such effects be attributed to the EU intervention?

9.3.2.1 FRD

By establishing a common set of conditions, the Directive guarantees a universal right to family reunification and established an equal playing field in all Member States. It abolished discretionary interpretation of admission conditions and quotas which was in place in some Member States.

Nonetheless, the right to family reunification is subject to several "may clauses" and "shall clauses" that provide a certain degree of discretion and result in wide differences between Member States practices. There are no provision on the right to equal treatment (albeit family members who have the right to work are covered under the SPD) and no detailed provisions on procedural safeguards as in later Directives.

9.3.2.2 LTR

The Directive introduced a common status for long-term residents, while however still allowing for equivalent national schemes. Statistics show that EU-25 Member States issued twice as many long-term residents permits under their national law than under the LTR Directive.

Although some Member States had similar national permits prior to the adoption of the Directive, the Directive brought greater legal certainty for third-country nationals, as well as harmonisation across the EU. Furthermore, , a discretionary element on

granting the LTR was abolished with the Directive in the Member States where this previously existed.

In particular, the LTR has brought in an important element in terms of uniformity across Member States by ensuring the right to equal treatment. While this was already in place in most Member States, not all areas were covered. However, in some Member States practical application issues have been identified resulting from non- or partial transposition of the equal treatment provisions, leading to legal uncertainty.

9.3.2.3 SD

Taking into account the legal baseline, it can be concluded that the adoption of the SD did not bring a significant change, as most of the Member States already had similar schemes in place. The Directive overall contributed to establishing greater harmonisation and legal certainty. However, the Directive does not include any provisions on equal treatment.

The increase over time observed in take-up of international students is likely mostly due to other external factors – such as the image and quality of education in the EU Member States and is consistent with the increase of number of students studying abroad worldwide.

9.3.2.4 RD

Taking into account the legal baseline, it can be argued that the RD did not bring a significant change to the Member States' legislation, since they already hosted researchers before transposing the Directive. However, not all of them had researcher-specific residence permits and in this way third-country researchers' access to the EU has been improved. An important element of this Directive is the reinforced role of the research organisations to the approval of third-country researchers to the European Union in contrast to the traditional role of the migration authorities in the years prior to the adoption of the Directive.

9.3.2.5 BCD

As shown by the recent evaluation of the BCD and subsequent recast proposal, due to the numerous 'may' clauses and also the existence of parallel national schemes in many Member States, the effects of the Blue Card as a legal instrument has been weakened. Numerical evidence also shows that the take up of EU Blue Cards has not been significant.

9.3.2.6 SPD

The SPD established a single application procedure for third country nationals to acquire work and residence permits, with the purpose of simplifying the administrative burdens associated with such admission procedures. Prior to the adoption of the Directive, only 10 Member States had some form of single application procedure for a joint resident and work permit in place.

Especially important effect of the SPD is that it also introduced equal treatment provisions to third-country nationals who were authorised to work (with some exceptions). Prior to the adoption of the SPD, third-country workers could be excluded from a range of social security rights. There are however at present several legal transposition and practical application in some Member States, which limit the intended effects of the Directive.

9.4 Efficiency

The efficiency criteria section addressed questions EQ 9 on the types of costs and benefits of the legal migration directives, and EQ10 on the extent did the implementation of the Directives led to differences in costs and benefits between Member States.

EQ 9: Which type of costs and benefits are involved in the implementation of the Legal migration Directives?

9.4.1 EQ9A: How are the main costs and benefits related to the implementation of the legal migration directives distributed among Stakeholders? How is this distribution affected by the implementation choices made by Member States? and EQ10D Compare the costs and benefits between Member States for implementing legal migration Directives, including administrative costs, taking into account the implementation choices made and compare, if relevant, costs and benefits with other countries not implementing the Directives.

The legal migration acquis resulted in a number of benefits to the EU economy and societies, employers, and migrants. The acquis positively affected, the EU economy and labour markets, improving employment rates, competitiveness, and research and development capacity. There is insufficient data to assess the extent of these benefits. In the short term it also contributed to improved demographic structure. Equal treatment provisions introduced with four of the directives represented a benefit both to third country migrants and EU societies.

The EU directives resulted in fiscal benefits (tax contributions by third country migrants) and costs (government expenditure to fund equal treatment provisions). In most countries the net effect of these contributions was most likely positive.

The directives resulted in administrative costs and benefits to government administrations, as well as cost to applicants (migrants and employers). The costs to administrations represented insignificant share of government spending, and in some Member States, for which sufficient data existed, were shown to equal the income generated by permit fees. Costs to migrants to obtain permits for the different directives were estimated to be between EUR 396 million and EUR 832 million, and between EUR 66 million and EUR 132 million to employers (in 2016), depending on the various assumptions used in the calculations.

9.4.2 EQ9B: What factors drive the costs and benefits and how are the factors related to the EU intervention?

The main factors that impact on the costs and benefits of the legal migration acquis are linked to the national implementation choices (including admission procedures and conditions, deadlines, availability of information) and institutional setups (the number of agencies involved in the migration management process). Available information that is easily accessible, 'user friendly', and understandable in more than one languages could be a major factor in reducing the costs of migration. The specific institutional setup for migration management in Member States may result in more complex application procedures, permit issuance, or arrival registration procedures that increase costs both for the administration and the migrants. The more institutions are involved in the processing of applications or in the issuance of permits, the slower and the costlier the procedure is.

Various external drivers may also have impact on the levels of migration (economic and labour market policies, taxation policies, social welfare policies, international relations, environmental policies, etc.), and indirectly on the wider economic and fiscal costs and benefits that are linked to the overall migration process.

EQ 10: To what extent did the implementation of the Directives led to differences in costs and benefits between Member States? What were the most efficient practices?

9.4.3 EQ10A: For each step of the migration chain, are there elements where there is scope for more efficient implementation? To what extent have the implementation options provided by the Directives and as chosen by MS influenced the efficiency of their implementation?

The analysis of steps of the migration process shows that Member States often make implementation choices that hinder efficiency. The implementation options provided by the legal migration Directives include a range of options that increase costs to third-country nationals and the administration in the implementation of the *acquis*. At each step, there is scope for increasing efficiency, in terms of optimisation of application condition, fees, duration of permits, or various deadlines that administrations need to adhere to, during the migration process.

In **pre-application phase** access to online information is of key importance. In terms of **documentary requirements**, there is plenty of scope for simplification and streamlining, such as requirements linked to proof of 'accommodation' or 'sufficient resources', or 'sickness insurance', 'birth certificates', all of which are formalistic, and do not substantially improve the risk assessment of migrants. In the **application phase** there are three areas where there is scope for more efficient application of the directives: modus of submission of the application, application fees, and times for processing application. In the **entry and travel phase** besides the facilitation of entry visa requirement, there are not too many opportunities, for optimisation of the process.

In the **post application phase**, three aspects could be outlined that provide opportunity for further optimisation: time to deliver the permit; additional fees being charged, and duration of residence permits issued. There is one key aspect **in the residence phase** where there may be scope for efficiency and reducing the costs to third country nationals as well as the administration: the **renewal of residency permits**. The key aspect **of intra-EU mobility**, where there is scope facilitation concerns the possible facilitations to the procedures and documentation requirements (e.g. proof of sickness insurance) that Member States may provide to mobile third country nationals. The only aspect that raises issues of efficiency during end of legal stay phase concerns the procedures around absences from Member States: shorter periods of permitted absence, means a less flexible approach that potentially may lead to the third-country national (and employer) reapplying for a permit and incurring again application costs.

9.4.4 EQ10B: Based on the legal migration *acquis* as implemented in the MS (for the three main Directives): - What factors influenced the efficiency with which the way legal migration is managed by the Member State? - If there are significant differences in costs (or benefits) between Member States, what is causing them?

The analysis of implementation choices in regards to admission procedures and intra-EU mobility, shows that that most of the time most Member States choose implementation options that increase their processing costs and the costs to third-country nationals. Some Member States have an overall conservative approach, and that results in a costlier overall migration process and experience to third-country nationals.

In terms of admission procedures, two factors that impact efficiency are examined: (1) institutional setup in the processing of applications and issuance of permits and (2) impact of national implementation choices, or 'may clauses', on efficiency. In 10 Member States one authority is responsible, whilst in 14 Member States, different Member State authorities are involved in the processing of applications, going up to five different authorities in Malta and four in Lithuania and Germany.

The analysis of implementation choices showed a mixed picture. The 'may clauses' whose transposition increases the costs to third-country nationals and the administration (e.g. requiring various additional documents, sickness insurance, evidence, or conditions) were **not** adopted only by a minority of Member States. Therefore, the **majority opted for the costlier options**. The only exceptions are the clauses concerning integration measures (FRD Art.7(2) and the requirement to submit Blue Card application from outside the country (BCD, Art.10.4), which the majority of Member States did not transpose.

In terms of **intra-EU mobility**, the majority of Member States continue to apply a conservative approach, requiring the same procedures, conditions (including market tests) or proof of residence as first time applicants, both under the EU and national schemes. Differences in adoption of equal treatment provision amongst MS, and failure to transpose equality provisions means that third-country nationals face different market conditions when moving between Member States. Similarly, such a conservative approach is also applied to family members.

9.4.5 EQ 10C: Is there potential for further streamlining of the current EU legal framework taking into account administrative burden?

There is potential for streamlining EU legal migration legislation for the purpose of increased efficiency and reduced costs and administrative burden in all phases of the migration process. There are opportunities to streamline legal directives in the direction of adopting clearer rules on various deadline and fees, as well as reducing the range of obsolete admission conditions.

In **pre-application phase** (information) the main opportunities for streamlining of legislation are extending the information requirement beyond the more recent EU legal migration directives to FRD, BCD, and SPD, which should all have clauses on 'Access to Information'. In the pre-application phase (documents) the following admission conditions could be eliminated: proof of adequate accommodation' (FRD, BCD); interviews with sponsor (FRD); proof of sufficient resources (FRD, RD, LTR); proof of sickness insurance (FRD, BCD, SD, RD, LTR); birth certificates (not specific requirement, but should be excluded if valid travel document is presented). In the **application phase** the main areas where there is scope for streamlining of legislation, include: submission of application (the use of electronic applications) or the possibility for application, whenever the third country national is already inside the country. In the **entry and travel phase** the main areas where there is scope for streamlining of legislation, include the elimination of requirement to register with local authorities.

In the **post application phase** the main areas where there is scope for streamlining of legislation, include the introduction of common deadlines to deliver the permit across all directives, thus minimizing the opportunities for prolonged or excessive delays. In the residency phase the main areas for improvement is streamlining the duration of renewed resident permits. In the **intra-EU mobility** the main areas where there is scope for streamlining of legislation, include the introduction of further mandatory facilitating application conditions that would clearly differentiate between first time applicants and mobile third country nationals. In the **end of legal stay phase** the main areas for optimisation include introducing a lower threshold for allowed minimum periods of absence of permit holders.

9.5 EU-added value

The EU added value section addressed two main questions (EQ11 and EQ12) and the conclusions are listed below.

EQ11. What have been the positive effects and results brought in by the EU legislation compared to what could have been achieved at Member State or international level?

This question addresses what the positive effects and results brought in by the EU legislation have been, compared to what could have been achieved at Member State or international level. It includes two sub-questions.

9.5.1 EQ 11A. What would the situation have been today without the EU intervention, compared to interventions only at national level?

Key conclusions

EU-level action in legal migration has been implemented through a series of Directives⁶⁵⁶ proposed by the Commission and negotiated / approved by the Council⁶⁵⁷ and - after the Lisbon Treaty (2009) - the European Parliament,⁶⁵⁸ from 1999⁶⁵⁹ to 2016⁶⁶⁰, a period of considerable economic, legal and political changes. This has shaped the resulting Directives, in terms of the approach adopted by the Commission, compromises reached during the negotiations, number of 'may clauses' contained in the texts, and overall on the ambition of the Directives, and ultimately on their EU added value.

Most of the Directives have built on existing national schemes where these were already in place, harmonising them and setting minimum standards. With few exceptions (ICT, SWD, S&RD), national permit regimes have also been allowed to continue alongside EU schemes, and even to be introduced following transposition. The main Directives in managing legal migration cover students and researchers (SD, RD and S&RD), highly-qualified employees (BCD), a single residence permit combining stay and employment and harmonising certain rights (SPD), seasonal workers (SW) and intra-corporate transferees (ICT). Each of these Directives requires Member States to grant certain rights and structure the admission and stay of a respective category of migrants. Other Directives cover the acquisition of long-term residence (LTR) and the right to family reunification (FRD). The Directives have brought several changes that would have not been possible otherwise. These include:

- **FRD:** Prior to the adoption, Member State had a system in place varying from a right to family reunification to a discretionary power to allow it under certain conditions. With the transposition of the Directive, all but four Member States⁶⁶¹ have a specific procedure in place for family reunification. The FRD provides a general, common framework to Member States with positive effects in terms of **increased legal certainty** and **improvement of the rights of family members**.
- **LTR:** Prior to the introduction of the LTR, the grounds for obtaining LTR status did not vary significantly across Member States. However, LTR brought several changes, including enhancing **intra-EU mobility** and **ensuring equal treatment**.
- **SD:** At the time of the SD adoption, the Member States already had study permits broadly in line with the Directive and admission requirements were quite consistent throughout the Member States and few adjustments to their legislation were necessary. However, added value of the SD is found in the

⁶⁵⁶ Directives are transposed into national legislation and implemented by each Member State.

⁶⁵⁷ Consultation procedure: Council deciding by unanimity with the European Parliament giving only non-binding advice.

⁶⁵⁸ In co-decision with the Council.

⁶⁵⁹ Date of the proposal for FRD, finally adopted in 2003.

⁶⁶⁰ The S&RD was adopted in 2016, while its proposal was put forward by the Commission in 2013.

⁶⁶¹ CZ, HU, LV and PL.

introduction of **intra-EU mobility** rules as well as the right to work and self-employment for students.

- **RD:** At the time of transposition, only two EU Member States⁶⁶² had already a specific residence permit for researchers as part of a national scheme,⁶⁶³ therefore there is evidence of **greater harmonisation**. Further added value of the RD compared to solutions at national levels include, exemption from work permit requirements, possibility to apply for LTR while in the Member State, facilitation of family reunification and more favourable intra-EU mobility rights.
- **BCD:** prior to the BCD there were few national equivalents to such a permit, although 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 required. While the BCD brings clear added value, such as facilitated intra-EU mobility, it has struggled to compete with national schemes whose fewer documentation requirements make them simpler to access and in countries where the general framework is very open. The BCD is currently being revised.
- **SPD:** At the time the SPD was passed, numerous EU Member States already had a single permit and a single application procedure in place⁶⁶⁴. Hence, Member States national permit procedures and rights were brought in line with the SPD, without having to make radical changes in most Member States. However, as Member States secured ample room for manoeuvre for interpretation, involving national law and restricting the rights of third-country nationals,⁶⁶⁵ the harmonisation effect of the Directive is likely to be limited.⁶⁶⁶
- **SWD:** Prior to the adoption of the SWD, the admission procedures, the duration of the permit, the rights of the seasonal worker, even the definition of "seasonal workers" itself, all varied significantly across Member States.⁶⁶⁷ The SWD sets minimum standards, **harmonising admission procedures and establishing basic rights**, and here resides its added value.
- **ICT:** Before the ICT, the requirements for admission of ICTs varied significantly across Member States, despite a generalised recognition of the category of ICTs in their immigration laws.⁶⁶⁸ Procedures varied greatly from one Member State to another. The application process was associated with lengthy waiting periods and administrative complexity.⁶⁶⁹ The most notable aspect of the ICT Directive is the set of ground-breaking **intra-EU mobility rights** that simplify the

⁶⁶² FR and UK.

⁶⁶³ Although 9 Member States had adopted measures to facilitate the admission of third-country researchers.

⁶⁶⁴ 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.

⁶⁶⁵ Brinkmann, G. (2012), "Opinion of Germany on the Single Permit Proposal", *European Journal of Migration and Law*, Vol. 14, Issue 4, pp. 351-366; Groenendijk, K. (2013) "Social Assistance and Social Security for Lawfully Resident Third-Country Nationals: On the Road to Citizenship?", in E. Guild, S. Carrera and K. Eisele (eds.), *Social Benefits and Migration: A Contested Relationship and Policy Challenge in the EU*, Centre for European Policy Studies, Brussels; Peers, S. (2012), "Single Permits and Workers' Rights", in S. Peers et al. (eds.), *EU Immigration and Asylum Law (Text and Commentary)*, Second Revised Edition, Vol. 2: *EU Immigration Law*, Martinus Nijhoff, Leiden.

⁶⁶⁶ Pascouau, Y. and S. McLoughlin (2012), "EU Single Permit Directive: A small step forward in EU migration policy", *Policy Brief*, European Policy Centre, Brussels, 24 January.

⁶⁶⁷ See the legal and practical application study, under Task 1B of this assignment.

⁶⁶⁸ For example, 4 Member States (CZ, DE, NL, AT) required certificates attesting previous academic and professional skills; 3 Member States (ES, NL and IE) required previous experience in the same activity; three Member States (IE, NL, FR) set annual minimum salary thresholds; 1 Member State (RO) set annual quotas for ICTs.

⁶⁶⁹ E.g. in SK and RO.

formalities for transferees performing work for different entities of their employer in multiple Member States. The Directive is more likely to change existing practices in European countries and help formalise ICTs in Member States where the category is still undeveloped, whilst in countries where current practice is to use local hiring provisions, the practice is likely to continue.

- **S&RD:** The final version of the Directive, adopted in May 2016, admission conditions are generally facilitated, and some of the previously optional categories⁶⁷⁰ have become binding. The S&RD offers students greater opportunity to work while studying. It allows both students and researchers to stay on for an additional nine months after completion of studies or research in order to seek work or to start a business. The SRD is expected to bring in further legal clarity and certainty, including on the categories which were not mandatory under SD.

Thus the legal migration Directives have brought positive effects in contributing to the creation of a '**level playing field**' across the EU for legal migrants from third countries, in key areas such as the recognition of the rights of third-country nationals across the EU; harmonisation of minimum rights and conditions; legal certainty and predictability; opportunities for intra-EU mobility; and simplified administrative procedures for some Member States (see EQ11B below). Without the added value of EU intervention, the labour migration policies of Member States would be more fragmented and less consistent, at least in terms of mechanism and shared objectives, resulting in unequal access to rights and conditions, and unequal treatment of third country nationals⁶⁷⁰ across Member States. Opportunities for intra-EU mobility would be limited and potentially dependent on bilateral agreements between Member States, resulting in unequal treatment and potentially unequal administrative and personal cost burdens for those third-country nationals obliged to return to their country of origin to take up employment in a second Member State.

Overall, without the intervention of the EU legal migration Directives, the proliferation of non-harmonised national schemes shaping access to EU member states by labour migrants and their families could have resulted in increased competition between Member States in attracting labour, and would potentially impact on the attractiveness of a the EU as a whole, and thus limit its overall competitiveness.

9.5.2 EQ 11B. What have been the qualitative and quantitative positive effect/results brought in by EU legislation?

Key conclusions

The legal migration Directives have **added value at the EU level** that would not have been realised without them, including:

The recognition of rights of third-country nationals across the EU

- Provisions on equal treatment of third-country nationals with respect to EU nationals cover, inter alia, working conditions, terms of employment and freedom of association, social security, statutory pensions, goods and services, education and vocational training, tax benefits and the recognition of diplomas and qualifications.⁶⁷¹ Equal treatment has ensured that third-country nationals

⁶⁷⁰ E.g. remunerated and unremunerated trainees, and volunteers under the European Voluntary Service Scheme.

⁶⁷¹ See Task IC for in-depth analysis on internal coherence of equal treatment provisions. The FRD and SD do not include provisions on equal treatment. However, as per Article 12(1) of the SPD, equal treatment applies to all third-country workers, who consist of (i) third-country nationals who have been admitted to a Member State for purposes other than work in accordance with Union or national law, who are allowed to work and who hold a residence permit in accordance with Regulation (EC) No 1030/2002 (Art. 3(1) (b)); and (ii) third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law Art. 3(1) (c). This means that FRD status holders are now covered in as far as they fall within the scope of the SPD based on the provisions above.

enjoy comparable rights to EU nationals, albeit with some differences due to the transposition of 'may clauses'. As certain equal treatment rights have not been (explicitly) guaranteed, e.g. in relation to access to social protection, this diminishes the level of legal certainty for third-country nationals⁶⁷².

- Further, the rights of third-country nationals family members have been significantly improved, not only through the FRD, but through the majority of Directives that contain provisions on the right to family reunification⁶⁷³.

Harmonisation of rights and conditions, helping to create a 'level playing field'

- Several admission conditions have been harmonised due to the implementation of the Directives, including the request of evidence of sufficient resources, sickness insurance, adequate accommodation and proof of address and proof of a valid travel document. This has had the positive effect of reducing differences and thus complexity across Member States, and in some cases, **improving equal treatment** between EU citizens and third-country nationals.
- Another positive effect of the EU action is the introduction by the EU legislation of permits that did not exist previously in some Member States, such as the ICT, the highly skilled schemes (RD and BCD), and more limitedly the SD, with consequent harmonisation and greater legal certainty. Overall, legal migration policy across Member States has become less fragmented and more consistent; however, the levels of discretion afforded to Member States through the use of 'may' clauses has resulted in substantial diversity of policy across Member States at the time of transposition.

Legal certainty and predictability

The Directives aimed to ensure legal certainty by introducing the respective statuses and common standards for each Directive in all Member States, and have achieved a reduction in the areas of Member State discretion. Overall, they have brought about an increase in legal certainty for applicants from third countries, and this is a clear EU added value. Introducing new statuses that did not previously exist in national legislation has also had a positive effect in providing specifically for these groups and in terms of ensuring legal certainty for them too.

Intra-EU mobility

Intra-EU mobility is a clear added value of the EU legal migration acquis. Before, no national migration policy had ever factored third-country nationals' entry and stay in another EU Member State into its decision to grant a permit. The reason why EU action enhancing intra-EU mobility can achieve more in scale and scope than at the national level is first of all that the larger EU-wide labour market is more attractive for (some) third-country nationals than the individual Member States' labour markets.

However, there are limits to the freedom of movement enjoyed by third-country nationals through the legal migration Directives. Specific provisions that enhance intra-EU-mobility exist in the LTR, BCD, SD, ICT, S&RD and RD. However, when compared to EU citizens, who may be subject only to a "registration regime", the procedures and application support documents required by mobile third-country nationals are part of a "permit regime", i.e. the Member State still retains the discretion to decline an application (see also EQ12A below).

⁶⁷² See, for further information, Task II-First EU synthesis report on the practical application of the Directives and section on effectiveness.

⁶⁷³ RD, BCD, LTR, ICT and in the S&RD (for the category of researchers).

Simplified administrative procedures for some Member States and third-country nationals

The Directives have simplified administrative procedures for some Member States, merging the various national procedures or reducing the duration of such procedures. This has the possibility to facilitate entry of third-country nationals and thus increase the attractiveness of the EU for them when taking the decision to migrate, whilst not creating new channels of entry.

EQ 12: To what extent do the issues addressed by the legal migration Directives continue to require action at the EU level?

This question analyses to what extent do the issues addressed by the legal migration Directives continue to require action at the EU level through three sub-questions.

9.5.3 EQ 12A. Based notably on the statements on subsidiarity in the initial proposals for the Directives, which issues still require interventions at the EU level?

Key conclusions

Although the clear positive effects resulting from the EU legal migration Directives, issues have been identified as still requiring action at EU level. In particular, there is evidence of a need for the following:

A better management of intra-EU mobility

Although **intra-EU mobility** is a key added value (see EQ11B above), its full potential remains limited because, for certain categories (e.g. LTR and highly skilled workers), is conducted through bilateral arrangements with no reporting outside communication between the two Member States involved.⁶⁷⁴ TCN mobility is not comparable to EU citizens' mobility, as most third-country nationals are bound to the first Member State for a considerable amount of time.⁶⁷⁵ Further, the stipulations on intra-EU mobility are considered to be very complicated and require intensive cooperation and exchange of information between Member States who are not obliged to accept decisions made by the first Member State on entry checks and requirements. Hence, in practice the TCN workers' utilisation of intra-EU mobility in practice is limited⁶⁷⁶, although stakeholders confirmed that greater intra-EU mobility would be beneficial for third-country nationals and national labour markets in the same way that it is beneficial to EU citizens, and would help to improve equal treatment of third-country nationals when compared with EU citizens.

An increased coverage of minimum standards (harmonisation) and gaps in coverage

There is substantial **variation in the rules** concerning admission procedures across the Directives, e.g. with regard to access to information, submission of application, timeframe to process the application.

National permits are in several cases preferred and provide a broader spectrum of rights for third-country nationals and are better targeted to meet their needs than the Directives on EU level. For example, a number of national BCD and LTR equivalent statuses seem to offer more favourable conditions and thus wider access to potential applicants. Some national schemes may allow faster access to long-term residence, or

⁶⁷⁴ OECD and EU (2016).

⁶⁷⁵ Beyond the principle of equal treatment, the mobility of third-country nationals has been restricted to at least certain minimum periods spent in the initial first Member State (this is due to concerns of some Member States of abuse of intra-EU mobility channel).

⁶⁷⁶ Ibid.

entail less paperwork than the EU schemes for the highly-qualified, researchers, or long-term residents.⁶⁷⁷

Stakeholders have expressed their concern with regard to a lack of EU intervention about low-skilled migrants (with exception of SWD). This gap has left loopholes in the national legislation, which are sometimes abused and result in either irregular migration phenomena or low working conditions and rights thereby attached.

The fragmentation of the system in terms of the sectoral approach have negatively affected simplification and transparency. Third-country nationals consulted believe that the current conditions for entry/residence/work constitute a disincentive to migrate, focussing mainly on: the recognition of qualifications and the complexity and length of the procedure.

The limited harmonisation could also undermine legal certainty and constitute an obstacle to EU-intra mobility (e.g. differences in the right to work of students, might restrict their possibilities in terms of intra-EU mobility and might bind them to Member States where this right is implemented favourably).

Further, there are differences in defining 'highly skilled' third-country nationals – educational qualifications, work experience, wages and job offers – and definitions of "highly skilled" vary considerably between countries, also given the fact that the EU Blue Card scheme left parallel national schemes unaffected.

Finally, the coexistence of a multiplicity of residence permits for legal migrants, being not really understood even by many of the direct users/stakeholders makes the system overly complicated.

Improving equal treatment

Several inconsistencies with regard to equal treatment with other third-country nationals and with EU nationals have been identified. The inclusion of specific equal treatment provisions in each Directive, as well as specific restrictions, has introduced a difference in treatment between the different categories of third-country nationals which may not be justified. This may lead to violations of the principle of equal treatment based on administrative status as set forth in the EU Charter of Fundamental Rights and in international and European human rights instruments and in international labour law and results in fragmentation of the right to equal treatment.

Improving matching systems with demand

The EU already provides support in matching job seekers with vacancies under its explicit mandate to improving the functioning of the EU labour market and foster mobility.⁶⁷⁸ Some existing measures, such as the job mobility platform (EURES), allow passive participation from third-country nationals seeking to work in the EU. Further development of such a Platform could allow employers to seek candidates who already hold permits with mobility provisions, since they will be able to take up employment quickly.

9.5.4 EQ12B. What would be the consequences of withdrawing the existing EU intervention?

Key conclusions

Several consequences can be summarised:

⁶⁷⁷ OECD and EU (2016).

⁶⁷⁸ Ibid.

The immediate result of withdrawing the existing EU intervention Member States will be the return to national schemes

The legal migration acquis has mostly built on existing national schemes, harmonising them and setting minimum standards. With few exceptions (ICT, SWD, S&RD), national permit regimes have been allowed to continue alongside the EU schemes, and even to be introduced in the future.

In case the current EU Directives are withdrawn, Member States will return to national schemes.

Withdrawing the EU legal migration acquis would lead to the adoption of different legal migration policies at Member States level, according to the political party governing

The current, although still incomplete, level of convergence of the admission procedures, will fast disappear.

Third-country nationals will not have recognised the same rights across the EU, as only initiatives at EU level can create mechanisms for third-country nationals to accumulate rights and enjoy facilitations across the EU.

Only EU action can improve EU-intra mobility, increasing the attractiveness of the EU as a single market, via information-sharing platforms and standard application forms

Member States' legal migration policy will be more fragmented and less consistent, admissions conditions and rights recognised to third-country nationals will broadly differ across countries, with consequent diminished legal certainty and predictability, both for third-country nationals and businesses. The avenues for entering and staying will be limited and different from one Member State to another and the costs will be greater.

This will result in reduced attractiveness of the EU as a destination from a TCN perspective

It would be difficult for Member States alone to face common challenges, such as ageing of population, match of skills shortages, etc.

Member States were to compete amongst each other and this would **decrease the competitiveness of the EU**.

It would be difficult for most individual Member States to increase the pool of candidates, enticing them to make the effort to meet migration selection criteria and migrate, be it through a job or another migration pathway, such as studies. Some Member States will build functional channels to cater the category of migrants needed to address the economy shortages.

Member States will compete amongst themselves for migrant workers.

The reduced attractiveness of the EU as a whole will diminish its competitiveness. Member States will therefore also have to compete individually with bigger labour markets, such as the Asian, the American, and the Canadian labour markets.

Any form of collaboration between Member States or with third countries will be based on bilateral agreements, with consequent inefficiency, increased administrative burden and difficult coordination.

9.5.5 EQ 12C. Are there issues currently not covered at EU level which would require EU action?

Key conclusions

There are several issues that require EU level action, but are not covered by the current acquis. These include gaps in the coverage of certain TCN categories, as addressed in EQ1B (relevance) and EQ2 (coherence). The implications of their exclusion might include:

- The lack of common minimum standards, safeguards and rights may lead to substantial differences in the treatment of third-country nationals, which can make the EU less attractive as a migration destination overall, or make some Member States much less attractive than others with more 'interesting' schemes in place.
- In relation to economic migration, currently excluded categories could potentially address existing and future skills shortages at EU level and contribute to reaching Directive specific objectives (e.g. management of economic migration flows, attracting and retaining certain TCN categories, but also preventing exploitation) and contribute to Directive specific objectives such as management of economic migration flows, attracting and retaining certain TCN categories, but also preventing exploitation.
- In relation to excluded family members, the lack of any EU legal instrument and uncoordinated national initiatives may cause disparity and reverse discrimination.

Further issues requiring EU action across the different migration phases include: e.g.

- Access to information - does not fully meet the demands of third-country nationals across the different phases and a better information provision at EU level would ensure consistency and comparability of information provided by Member States representatives
- Assessment and recognition of non-EU academic and professional qualifications - Recognition of diplomas is a widely posed requirement, especially for work-related permits, but the related guidance are relatively difficult to find. This, together with the complex process of recognition itself and the multitude of requirements especially concerning regulated professions make recognition one of the more burdensome requirements for foreigners. EU level action regarding the facilitation of recognition of qualifications could include structured and harmonised guidance in all Member States on the process of recognition as part of the application documentation.
- Differences in fees charged - the provisions in the SPD, SWD, ICT and S&RD stipulating that the fees "shall not be disproportionate or excessive"⁶⁷⁹. An EU wide threshold for fees would contribute to better application of the Directives' provisions.

⁶⁷⁹ Disproportionate administrative fees have been subject of earlier CJEU rulings, such as case C-508/10, where the court ruled that the Netherlands had failed to fulfil its obligations under the LTR by charging third-country national applicants "excessive and disproportionate administrative charges which are liable to create an obstacle to the exercise of the rights under the LTR".

Annexes

Annex 1A: Contextual analysis: review and stock-take of existing sources of relevant literature at EU, national and international levels

Annex 1Bi: Contextual analysis: overview of the evolution of the EU legal migration acquis

Annex 1Bii: Contextual analysis: overview and analysis of legal migration statistics

Annex 1Biii: Contextual analysis: drivers for legal migration: past developments and future outlook

Annex 1Ci: Contextual analysis: Intervention logics: Internal Coherence of the EU legal migration Directives

Annex 1Cii: Contextual analysis: Intervention logics: External Coherence of the EU legal migration Directives

Annex 1Ciii: Contextual analysis: Intervention logic: Directive specific paper

Annex 2A: Evidence base for practical implementation of the EU legal migration Directives: Synthesis Report

Annex 2B: Evidence base for practical implementation of the EU legal migration Directives: National Summaries

Annex 3Ai: Public and stakeholder consultations: EU Synthesis Report

Annex 3Aii: Public and stakeholder consultations: OPC Summary Report

Annex 4A: Fitness check / REFIT evaluation: Evaluation Framework

Annex 4B: Fitness check / REFIT evaluation: Analysis of gaps and horizontal issues

Annex 4C: Fitness check / REFIT evaluation: Economic analysis

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