

N° 16

International  
Migration  
Law

# Laws for Legal Immigration in the 27 EU Member States

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# **Comparative Study of the Laws in the 27 EU Member States for Legal Immigration**

**Including an Assessment of the Conditions and  
Formalities Imposed by Each Member State  
For Newcomers**





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# Abbreviations

AENEAS	Programme of the European Union for financial and technical assistance to third countries in the area of migration and asylum
CARIM	(Euro-Mediterranean) Consortium for Applied Research on International Migration
CCPR	International Covenant on Civil and Political Rights
CEPS	Centre for European Political Studies
CLPC	Community of Portuguese-Speaking Countries
COM	Communication from the European Commission
DDL	Disegno di Legge (Bill authorizing the Italian Government to draft a law)
DFID	Department for International Development (UK)
EC	European Community
ECHR	European Convention on Human Rights
ECMW	European Convention on the Legal Status of Migrant Workers
EEA	European Economic Area
EEC	European Economic Community
EMN	European Migration Network
ENP	European Neighbourhood Policy
ESC	European Social Charter
ESC rev.	European Social Charter (Revised)
EU	European Union
EUR	Euro
GATS	General Agreement on Trade in Services (WTO)
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
ICCPR	International Covenant on Civil and Political Rights
IGC	Intergovernmental Consultations
IGS	International Graduates Scheme (UK)
ILO	International Labour Organization
IND	Immigration and Naturalization Department (Netherlands)
INIS	Irish Naturalisation and Immigration Service
IOM	International Organization for Migration
JHA	Justice and Home Affairs
MVV	Authorization for temporary stay in the Netherlands (Machtiging tot Voorlopig Verblijf)
MWC	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
NAG	Federal Act concerning settlement and residence in Austria (Niederlassungs- und Aufenthaltsgesetz)
OECD	Organization for Economic Co-operation and Development
OIN	Office of Immigration and Nationality (Hungary)
OJ	Official Journal (of the European Communities)
OSCE	Organisation for Security and Co-operation in Europe

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PIELAMI	Cooperation on Preventing Illegal employment of Labour Migrants with a View to Promoting Legal Employment Opportunities (IOM Report)
SAWS	Seasonal Agricultural Workers Scheme
SIS	Schengen Information System
SMB	Swedish Migration Board
SOPEMI	Système d’Observation Permanente sur les Migrations (OECD’s Continuous Reporting System on Migration)
TK	Parliamentary Documents (Netherlands)
TWES	Training or Work Experience Scheme (UK)
UK	United Kingdom
UN	United Nations
UNAIDS	United Nations Joint Programme on HIV/AIDS
UNESCO	United Nations Educational, Scientific, and Cultural Organization
USA	United States of America

# Executive Summary

This study was commissioned by the European Parliament and aims at providing an overview and analysis of the conditions for legal immigration in the 27 Member States. The analysis has been undertaken with a view to examining the benefits and possibilities of common policies at the EU level for different immigration categories.

Migration is high on both national and EU agendas. The decline and aging of the European population has contributed to an increased awareness concerning the need for immigration. The demographic factor, coupled with its foreseeable implications on the various social welfare systems, has provoked increased debate concerning immigration within EU institutions and EU Member States alike. There is a growing awareness that without migrants, Europe will not be able to maintain the same standard of living. However, as much as European States are competing with other business locations (such as the USA and Japan) for highly skilled third-country nationals, a trend can be seen among some Member States towards more restrictive policies with regard to other forms of legal immigration, such as family reunification. Member States are struggling to find a well-balanced and comprehensive approach to migration that will serve such diverse objectives as attracting highly skilled migrants, preventing irregular migration and safeguarding the human rights of migrants.

The European Commission argues that “in a single market with free movement of persons, there is a clear need to go beyond 27 immigration policies” (Towards a Common Immigration Policy 2007, p. 7) and that further development of a common European Migration Policy is needed. A common policy can render the immigration regulations simpler and more transparent for immigrants and competent authorities alike. Whilst the development of an EU immigration policy for certain immigration types (family reunification, studies and training and researchers) and third-country nationals (long-term residents) is progressing, Member States have for a long time been reluctant to give up competencies in the field of labour migration. With the Policy Plan on Legal Migration, two proposed Directives and further developments to come, this position seems set to change.

It can be noted, however, that even in areas that are subject to EU-wide regulations, significant differences in the national legislation of Member States can be observed. To highlight a few areas, with respect to long-term residents, a substantial number of countries continue to use national permanent residence permits in addition to the EC long-term residence permit. Moreover, Member States draw a distinction between temporary residence and permanent residence; there is, however, no standardized concept of temporary residence. Also, the conceptual distinction between visas and residence permits is ambiguous. Furthermore, in the area of family reunification, Member States have – as outlined in by Council Directive 2003/86/EC on the right to family reunification – significant discretion with regard to certain important aspects, such as eligibility of family members that are not part of the nuclear family (e.g. parents, adult children and unmarried partners), age restrictions for spouses and children, as well as waiting periods before family members can join the sponsor. A trend can be observed in several

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EU Member States towards the restriction of immigration for the purpose of family reunification, for example, through the introduction of integration-related conditions. Interestingly, EU Member States are increasingly offering students the possibility of remaining in the country for a limited period of time after successful graduation in order to search for a job, even though this is not foreseen in Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. This measure facilitates the retention of highly qualified third-country nationals who have the potential to contribute to the national (and European) economy.

There are many areas related to migration that are not regulated by EU law, such as the general conditions for residence permits and, more significantly, labour migration (including employment, self-employment and seasonal work). This study aims to highlight trends that are valid for several or all Member States. As regards general conditions, research shows that while the vast majority of EU Member States do not impose integration-related conditions as general conditions, a trend can be noted towards the inclusion of these conditions into national legislation. Integration-related conditions, in particular examinations on language and civic knowledge, can present an important obstacle for potential immigrants. In relation to immigration for the purpose of work, it can be concluded that the regulations regarding immigration for the purpose of employment in the EU Member States are rather complex. The current regulations are a challenge for employers and third-country national workers alike, as different permits are often required, with the involvement of various authorities. However, labour immigration policies and laws in the different Member States are similar in that they are all very much linked to the protection of national labour markets. With respect to the work permit system, it is noteworthy that in many Member States the foreigner is tied to the employer. The current labour migration discussion and preferential admission policies are focused first and foremost on highly skilled labour. Some Member States have concluded bilateral agreements with third countries that have a more comprehensive approach to migration management; by and large, these agreements offer facilitation regarding labour migration for nationals of a third-country in exchange for the cooperation of that country in the prevention of irregular migration. These agreements go in the direction of the “mobility partnerships” proposed by the Commission. The subject of migration of less skilled labour, however, is not sufficiently covered. It is noticeable that in the foreseen frameworks at the EU level, less skilled labour is only considered with respect to seasonal employment.

It should also be noted that the external dimension of migration (cooperation with third countries) has become an increasingly important item on the EU agenda in recent years. When studying the actual cooperation between Member States and third countries, the gap between the importance attached to this topic at the EU level and the actual measures in place at the national level is noteworthy. However, the issue is gaining importance and is increasingly also included in national agendas. Several initiatives and tools have been proposed by the Commission on this matter. At this stage, it is important that the initiatives proposed by the Commission are put into practice by Member States. The practical experiences gathered will then allow further discussion and refining of those instruments.

# Introduction

## Scope of the Study

In December 2006, the European Parliament's Directorate General for Internal Policies, Citizens' Rights and Constitutional Affairs commissioned the International Organization for Migration (IOM) to conduct a "Comparative Study of the Laws in the 25 EU Member States for Legal Immigration including an Assessment of the Conditions and Formalities Imposed by each Member State for Newcomers."<sup>1</sup> The aim of the study funded by the European Parliament is to serve as a research tool for the Members of the European Parliament in the development of a European Union (EU) policy on migration.

The present study is based on the following observation: at present, a wide variety of approaches to migration management exist, and are being developed, across the 27 EU Member States. The conditions and procedures regarding the admission and residence of foreigners into the receiving States differ from country to country.

The comparative study of the legislation of the 27 EU Member States and its practical impact will therefore facilitate the implementation and development of the emerging EU legal immigration scheme.

The scope of this study, which covers many different immigration categories, is undoubtedly wide. It is firstly framed by the concept of immigration itself, which can be briefly defined as the "process by which non-nationals move into a country for the purpose of settlement" (Glossary on Migration 2004, p. 34). The notion of settlement is important as it implies the exclusion of certain types of international movements, such as those for the purpose of tourism or visits. It can be noted that, despite its wide character, the concept of immigration can still be considered as too narrow in view of the terms of reference. For example, in the case of seasonal workers there is no change of the individual's place of habitual residence, thus such a movement is not considered *stricto sensu* as migration. Consequently, the notion of immigration needs to be extended slightly for the purposes of this study, in order to embrace all the types of foreigners covered by it.

Secondly, the use of the concept of immigration adopted within the European Union also defines the scope of this study. In this context, the notion of immigration is limited to the movement of third-country nationals (persons who are not nationals of an EU Member State), as European citizens are subjected to a specific legal regime according to the principle of free movement of persons.<sup>2</sup> This study consequently focuses on the situation of third-country nationals.

A further way in which to demarcate the scope of this study is its emphasis on legal immigration, implying the exclusion of irregular migration and of involuntary migration issues (which principally refers to asylum policies). The study focuses on the following

<sup>1</sup> Subsequently extended to include the two newly acceded countries, Bulgaria and Romania.

<sup>2</sup> This European legal regime is extended to nationals of the European Free Trade Association (EFTA) Member States.

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categories of legal immigration: family immigration, economic immigration (employment, self-employment and seasonal employment) and immigration for the purpose of studies and training.

The focus of the study is the analysis of the conditions and procedures of admission and residence under different immigration categories. As a result, the social rights granted to third-country nationals are not analysed; furthermore, the right to exercise a professional activity will be analysed, whereas the rights associated with work (such as the right to just and favorable conditions of work) will not.

### Structure and Methodology

The first part of this study aims to contextualize the topic through an analysis of emerging EU law and policy. The ongoing debate on legal migration at the EU level is studied. Thereafter follows the main part of the study: the comparison of the different legal immigration systems within the EU Member States. The comparison follows the same outline as the Country Reports and leads to recommendations that outline the key principles that should govern the conditions and procedures of admission and residence of third-country nationals within the EU territory. The final part of this study is composed of 27 Country Reports that examine in detail the national policy and legislation on migration for each EU Member State, following the structure outlined below. Finally, the Annexes to the study include eight tables that succinctly bring together the main findings of the Country Reports.

The Country Reports include the following elements: each is introduced by an overview of the historical background and contemporary trends regarding migration flows and the national immigration policy, as well as an outline of the different immigration categories envisaged by the national legislation (family reunification, work, studies and training and other). This is followed by a description and analysis of the conditions and procedures applicable in admission (visa policy) and residence matters (residence permits policy). This section of the Country Reports includes an analysis of the general conditions to be fulfilled by the migrant in the country of origin, as well as upon arrival in the country of destination, regardless of the immigration categories (such as financial requirements, medical exams, civic knowledge and knowledge of the language of the host country and the possible grounds for rejection of an application). Procedural aspects of admission and residence are also covered, including a description and analysis of the competent authorities, length of procedures and appeal of decisions to reject an application. A further detailed review of residence permits is conducted according to the specific immigration categories, either on the basis of length of residence (whether temporary or permanent) or on the basis of the purpose of stay (family reunification, work, studies and training). The subsequent section of each Country Report comprises a comparison of conditions in the EU Member States with the norms established at the EU and international levels. It should be noted that this part of the study is not central, as the report is primarily a comparison of national laws. The practical impact of the legislation, such as its consequences on immigration trends, difficulties of implementation and the existence of human rights gaps, is also assessed. Finally, the Country Reports are concluded by



an analysis of the cooperation measures with third countries, such as the existence of bilateral labour migration agreements, highly skilled worker programmes, schemes for circular migration, facilitation of the transfer of remittances and access to social security and pension rights upon return to the country of origin.

This study is based on the description and assessment of the national legislation provided, country by country, by field researchers. For each of the 27 EU Member States, the country study was prepared by an expert in migration law, either an academic or a legal practitioner (see the list of researchers above). On this basis, IOM's research team has edited the country reports to provide a consistent structure and has produced a comparison between the different legal systems. While considerable effort has been invested to ensure consistency between the Country Reports, it is to be highlighted that the editors had to deal with 27 different countries, systems and terminologies. Standardization was hence difficult and only possible to a certain extent.

The present study considers national legislation until August 2007. The Euro is not the currency of all EU Member States. Where applicable, fees and other amounts expressed in local currencies have been converted into Euros. For the relevant exchange rates please refer to the comparative tables annexed to the report.



# Emerging EU Law and Policy on Migration

## 1. Development of an EU Law and Policy on Migration

The free movement of workers forms part of the four freedoms upon which the European Community was founded in 1957. This right, although broadly interpreted by the European Court of Justice, has primarily focused on those who are nationals of the European Community and who are economically active, with special rules applying to their families (Steiner et al 2006).<sup>3</sup> Today, these rights apply to all EU citizens (EC Treaty,<sup>4</sup> Art. 18) and there is no need to show any economic activity on the part of the individual seeking to move from one Member State to another. Third-country nationals in their own right did not fall under these initial regulations, nor do they fall under the regulations as regards free movement of EU citizens.<sup>5</sup> Immigration and asylum issues were handled by the Member States under the Justice and Home Affairs (JHA) pillar, which had been created by the Treaty on the European Union<sup>6</sup> and operated on an intergovernmental basis. The intention was for Member States to coordinate their policies and adopt common positions. Any such decisions were to be decided on a unanimous basis between the Member States, with the EC institutions occupying only a peripheral role (Steiner et al 2006).

Immigration and borders are two issues in relation to which States were reluctant to give up their national competence in exchange for a common approach. It was only with the Treaty of Amsterdam<sup>7</sup> in 1999 that visas, asylum, immigration and other policies relating to the free movement of all persons, including third-country nationals, were moved from the JHA pillar to Title IV of the EC Treaty (EC Treaty, Arts. 61-69), and hence from an intergovernmental approach to policy-making to a common approach. The Treaty required the Council to adopt “measures aimed at ensuring the free movement in accordance with Article 14, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration” within a period of five years after its entry into force (EC Treaty, Art. 61(a)). Articles 61 to 63 of the EC Treaty provide for measures concerning the immigration of third-country nationals.<sup>8</sup> The United Kingdom (hereafter

<sup>3</sup> The free movement of workers from the new EU Member States is currently limited by “transitional Arrangements”. These arrangements authorize Member States to defer the introduction of free movement of workers to new EU Member State workers for a maximum period of seven years following accession. However, it should be noted that quite a few of the former EU15 countries have now lifted the transitional arrangements and that others have liberalized their national rules considerably.

<sup>4</sup> Consolidated version of the Treaty Establishing the European Community, OJ 1997 C 340, 19 March 1997.

<sup>5</sup> The situation is, however, different for Turkish nationals who have been accorded certain rights because of the EEC-Turkey Association Agreements and related decisions of the EEC-Turkey Council of Association, in particular Decision 1/80.

<sup>6</sup> Treaty on the European Union, signed at Maastricht on 7 February 1992, entered into force on 1 November 1993, OJ 2002 C 191/1.

<sup>7</sup> The Treaty of Amsterdam, amending the Treaty on the European Union, the Treaties establishing the European Communities and certain related acts, signed on 2 October 1997, entered into force on 1 May 1999, OJ 1997 C 340/1.

<sup>8</sup> See Article 61(b) of the EC Treaty: “other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63”; Article 63(3)(a): “conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion”; and Article 63(4):

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the UK), Ireland and Denmark do not participate in Title IV. However, Ireland and the UK have the possibility of “opting in” to some of the measures adopted on an ad hoc basis. Denmark only participates in those measures that build on the former Schengen *acquis*, but cannot “opt in” to the other measures in the same way as Ireland and the UK.

The Tampere European Council of 15 and 16 October 1999 created a five-year programme for Justice and Home Affairs, including a common immigration and asylum policy to facilitate the realization of the goal of the Treaty of Amsterdam to create an area of freedom, security and justice. The Tampere Conclusions organized immigration, borders and asylum into four policy categories: a) partnerships with countries of origin; b) a common European asylum system; c) fair treatment of third-country nationals; and d) management of migration flows (Tampere Conclusions 1999). The main legislative achievements during the period of implementation of the Tampere programme as regards legal immigration of third-country nationals have been in the areas of family reunification<sup>9</sup> and EU long-term resident status<sup>10</sup> (for further discussion see section Comparison, 2.3.3.1 and 2.3.2). Regarding relations with third countries, as a result of the Tampere Conclusions, readmission agreements have been concluded with a number of countries<sup>11</sup> and negotiations with several others are ongoing. Moreover, the European Parliament and Council adopted a Regulation establishing a programme for financial and technical assistance to third countries in the area of migration and asylum (AENEAS).<sup>12</sup> However, the Tampere Conclusions were thought to be too ambitious and much work remained to be done upon their termination in 2004, which was addressed by Tampere’s successor: The Hague Programme.

The Hague Programme, created by the European Council in November 2004, set out the immigration policy agenda for the years 2005 to 2010.<sup>13</sup> Its goals are more detailed, but arguably less ambitious than the Tampere Conclusions. The programme emphasizes the need for a comprehensive approach to all stages of immigration. As regards legal migration, the Programme notes: “Legal migration will play an important role in enhancing

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“measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States”.

<sup>9</sup> See Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, entered into force on 3 October 2003, OJ 2003, L 016/12. Member States’ legislation had to comply with this Directive not later than 3 October 2005. For third-country nationals that are family members of an EU citizen, 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, OJ 2004 L 150/77, is of relevance. Provisions related to the family reunion of EU nationals are located in Council Regulation 1612/68/EEC, OJ 1968 L 257/2.

<sup>10</sup> Council Directive 2003/109/EC of 25 November 2003 on a long-term resident status for third-country nationals who have legally resided for five years in the territory of a Member State entered into force on 23 January 2004. Member States had to comply with this Directive not later than 23 January 2006, OJ 2004 L 016/44.

<sup>11</sup> Negotiations have been successfully completed with Hong Kong (November 2001), Macao (October 2002), Sri Lanka (May 2002), Albania (November 2003) and Russia (October 2005).

<sup>12</sup> As of 2007, AENEAS has been replaced by the “Thematic programme of cooperation with third-countries in the areas of migration and asylum”. The programme will run from 2007 to 2013 and has a budget of approximately 380 million Euros.

<sup>13</sup> Council of the European Union, The Hague Programme: strengthening freedom, security and justice in the European Union 16054/04, Brussels, 13 December 2004.

the knowledge-based economy in Europe, in advancing economic development, and thus contributing to the implementation of the Lisbon strategy. It could also play a role in partnerships with third countries. The European Council emphasizes that the determination of volumes of admission of labour migrants is a competence of the Member States” (The Hague Programme 2004, p. 10). Because integration of third-country nationals is viewed as important to social stability and cohesion, the programme envisages the establishment of common basic principles (The Hague Programme 2004).<sup>14</sup> Under The Hague Programme, the Directive for the facilitation of the admission of students (for further discussion see section Comparison, 2.3.3.3)<sup>15</sup> and researchers<sup>16</sup> into the EU was adopted. It is also worth mentioning that following a request in the Hague Programme, the Commission put forward a Communication on the Evaluation of EU Policies on Freedom, Security and Justice.<sup>17</sup>

## 2. Ongoing Debate on Legal Migration at the EU Level

### Policy Plan for Legal Migration

In 2005, the Commission re-launched<sup>18</sup> the debate on the need for common rules regarding the admission of third-country nationals for employment with a Green Paper on an EU approach to managing economic migration.<sup>19</sup> This consultation led to the adoption in December 2005 of a Policy Plan on Legal Migration<sup>20</sup> (Legal Migration Plan 2005), which defines a road-map for the remaining period of The Hague Programme (2006-2009). It is in line with the Lisbon Strategy<sup>21</sup> that was launched during the European Council in Lisbon in March 2000. Labour immigration is seen as “part of the Lisbon Strategy’s comprehensive package of measures aimed at increasing the competitiveness of the EU economy” (Legal Migration Plan 2005, p. 5). The Policy Plan proposes several measures “so as to pursue the coherent development of EU legal migration policy” and sets a time schedule for the actions envisaged by the Commission. A general framework directive guaranteeing a common framework of rights to all third-country nationals in legal employment within the EU, as well as four specific directives on conditions of entry and residence of highly skilled workers, seasonal workers, intra-corporate transferees and

<sup>14</sup> These principles on integration have since been adopted by the JHA Council but they are not binding.

<sup>15</sup> Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, adopted on 13 December 2004 and entered into force on 12 January 2005, OJ 2004 L 375/12. Member States’ legislation had to comply with this Directive by 12 January 2007.

<sup>16</sup> Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purpose of scientific research, 12 October 2005, OJ 2005 L 289/15. Its provisions had to be implemented by Member States not later than 12 October 2007.

<sup>17</sup> COM (2006) 332, 28 June 2006.

<sup>18</sup> The Commission had already put forward a proposal for a Directive on the conditions of admission and stay of third-country workers in 2001 (COM (2001) 386). However, due to Member States’ diverging views on this issue, the negotiations did not lead to the adoption of legislation and the proposal was subsequently withdrawn.

<sup>19</sup> COM (2004) 811, 11 January 2005.

<sup>20</sup> COM (2005) 669, 21 December 2005.

<sup>21</sup> The Conclusions of the Lisbon European Council state that the Lisbon Strategy aims at making the European Union the most competitive economy in the world and achieving full employment by 2010.

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remunerated trainees, have been proposed as legally binding instruments.<sup>22</sup> Moreover, other activities regarding knowledge building and information, integration and cooperation with countries of origin are envisaged.

### Initiatives under the Policy Plan for Legal Migration

#### *Proposal for a Highly Qualified Migrants Directive*

On 23 October 2007, the European Commission presented a proposal for a “Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment”<sup>23</sup> (Proposal for a Highly Qualified Migrants Directive). In line with the Lisbon Strategy, the Proposal seeks to improve the competitiveness of the EU economy, aiming at responding to fluctuating demands for highly qualified labour and off-setting skill shortages by harmonizing the admission of this category of worker and by promoting their efficient allocation and re-allocation within the EU labour market.

However, the Proposal does not create a right of admission; Member States will maintain control over admission to their labour markets. The Proposal also underlines and reinforces the Community Preference Principle.<sup>24</sup> Key elements of the Proposal include a fast-track procedure<sup>25</sup> for admission based on common criteria: a work contract or a binding job offer, professional qualifications, and a minimum salary level that has to be at least three times the level of the existing national minimum wage or, alternatively, three times the minimum income under which social assistance is granted in the Member States in question. Once admitted, workers receive a residence permit called an “EU Blue Card”, which states the conditions under which they are allowed to work. Unless the work contract is of shorter duration, the EU Blue Card is issued for two years. The EU Blue Card entitles the holder to enter, re-enter and stay in other Member States, as well as to transit through other Member States in order to exercise these rights. A three-month unemployment period is allowed; during this time, the holder of the EU Blue Card is allowed to seek and take up employment. The proposal also includes the possibility for the holder of an EU Blue Card, under certain conditions and after two years of legal residence in the first Member State, to move to a second Member State for the purpose of work. Workers are allowed to accumulate periods of residence in two (or at most three) Member States in order to fulfil the main condition for obtaining EC long-term resident status. In addition, the proposal provides for family reunification in cases of temporary

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<sup>22</sup> Even though the Policy Plan focuses on immigration for economic purposes, it should be noted that the concept of legal immigration, as such, embraces all forms of regular immigration and not only that which is work-related. Regular migration is defined as: “Migration that occurs through recognized, legal channels” (Glossary on Migration 2004, p. 54).

<sup>23</sup> COM (2007) 637, 23 October 2007.

<sup>24</sup> The Community Preference Principle serves the protection of the domestic (EU-wide) labour market. It is endorsed by a Council Resolution: “Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State’s regular labour market” (Council Resolution of 20 June 1994), see also section Comparison, 2.3.3.2.1.

<sup>25</sup> In principle, a decision will be taken and notified to the applicant within 30 days.

residence.<sup>26</sup> It also foresees that possible national integration measures should be imposed only once the family members are on the EU territory.

The Proposal can be viewed as a milestone in the process of making the EU more attractive to highly skilled workers and hence more competitive. If adopted, it will be the first step towards a common policy in the field of labour migration and will facilitate the movement of highly qualified migrants. Transparent common conditions, the fast-track procedure and the possibility of immediate family reunification will render the EU more attractive as a whole to highly qualified third-country nationals. An additional advantage is that the proposal includes measures to facilitate mobility for highly skilled third-country nationals between different Member States. Moreover, it should be emphasized that draft Article 15 of the Proposal guarantees equal treatment for the holders of an EU Blue Card with EU nationals on a number of issues. Furthermore, the proposal follows a comprehensive approach and calls for tools to facilitate circular and temporary migration in order not to undermine the capacities of developing countries and progress towards the achievement of the Millennium Development Goals. It can be noted that the minimum salary threshold is largely in line with a number of current national provisions regarding the admission of highly skilled third-country nationals.

*Proposal for a Directive on a Single Application Procedure for a Single Permit and a Common Set of Rights*

Together with the Proposal for a Highly Qualified Migrants Directive, the Commission has also proposed 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” (Proposal for a Single Permit and Common Rights Directive).<sup>27</sup> Through this proposal the Commission seeks to introduce a general framework for a fair and rights-based approach to labour migration (Proposal for a Single Permit and Common Rights Directive, draft Explanatory Memorandum).

The Proposal provides for a single application procedure with the application to reside and a request for work authorization to be submitted in a single application (Proposal for a Single Permit and Common Rights Directive, draft Art. 4). Member States shall designate a single competent authority as responsible for receiving the applications and issuing the combined permits; in principle, the latter should occur no later than three months from the date the application was lodged (draft Art. 5). Member States shall issue a single permit for work and residence and shall not be permitted to issue additional permits of any kind, in particular work permits, as proof of access to the labour market having been granted (draft Art. 6). The latter principle is also valid for residence permits issued for purposes other than work; any information relating to permission to work shall be indicated on the residence permit (draft Art. 7). The single permit entitles the third-country national, inter alia, to enter, re-enter and stay in the territory of an EU Member

<sup>26</sup> The residence permit for family members is granted within six months of the date on which the application was lodged and access to the labour market is to be given to spouses immediately.

<sup>27</sup> COM (2007) 638, 23 October 2007.

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State, as well as passage through another Member State in order to exercise the activities authorized under the single permit (draft Art. 11). Draft Article 12(1) of the Proposal establishes a catalogue of rights in respect of which third-country nationals shall enjoy equal treatment with nationals.<sup>28</sup> Areas where this equal treatment may be restricted are enumerated in draft Article 12(2). It can also be noted that according to draft Article 14 of the Proposal, regularly up-dated information on the conditions for entry of third-country nationals shall be made available to the general public.

This Proposal, if adopted in its current form, would constitute significant progress towards the creation of a common EU immigration policy that safeguards the rights of third-country nationals. The single application to one designated authority and subsequent single permit will facilitate recruitment and immigration for all categories of potential third-country workers and EU employers alike. Through the establishment of a catalogue of rights in respect of which third-country workers have equal treatment with nationals, draft Article 12 of the Proposal contributes to the protection of the rights of migrant workers. However, the Proposal lacks clarity with regard to who is eligible to apply. The draft Explanatory Memorandum suggests that the third-country national or his future employer may apply; however, this is not clear from the wording of draft Article 5 of the Proposal.<sup>29</sup>

#### Global Approach, Mobility Partnerships and Circular Migration

At Hampton Court near London, UK, on 27 October 2005, the EU Heads of States called for a comprehensive approach to tackle migration issues. In answer to this call, the Commission presented the concept of a global approach to the migration phenomena in its communication “Priority actions for responding to the challenges of migration: First follow-up to Hampton Court” of 30 November 2005 (Global Approach 2005).<sup>30</sup> The importance of “a balanced and comprehensive approach, aimed at promoting the synergies between migration and development, and based on a long term strategy to address the root cause of forced migration” is stressed (Global Approach 2005).<sup>31</sup> The approach focused initially on Africa and the Mediterranean region, but was later extended to the Eastern and South-Eastern regions neighbouring the EU<sup>32</sup> (Global Approach 2007).

The global approach can be defined as “an approach that brings together migration, external relations and development policy to address migration in an integrated, comprehensive and balanced way in partnership with third countries. It comprises the whole migration agenda, including legal and illegal migration, combating trafficking in human beings and smuggling of migrants, strengthening protection for refugees, enhancing migrant

<sup>28</sup> It is, however, less extensive than the catalogue established in the Proposal for a Highly Qualified Migrants Directive.

<sup>29</sup> See also a similar lack of clarity regarding draft Article 9, which speaks of “third-country national *and* future employer”, whereas in the draft Explanatory Memorandum it states “third-country national *or* future employer”.

<sup>30</sup> COM (2005) 621, 30 November 2005.

<sup>31</sup> The importance of the coherence between EU migration and development policies was reiterated recently in the Conclusions of the 2831<sup>st</sup> External Relations Council Meeting that took place in Brussels in November 2007.

<sup>32</sup> COM (2007) 247, 16 May 2007.



rights and harnessing the positive links that exist between migration and development. It is underscored by the fundamental principles of partnership, solidarity and shared responsibility and uses the concept of ‘migratory routes’ to develop and implement policy” (Global Approach 2007, p. 18).

In May 2007, the Commission presented its communication on “Circular migration and mobility partnerships between the European Union and third countries”.<sup>33</sup> This builds on earlier Commission initiatives, in particular the Communication on Migration and Development<sup>34</sup> and the Legal Migration Plan 2005, and seeks to give operational substance to the EU’s Global Approach to Migration (Communication on circular migration and mobility partnerships 2007). With the understanding that a sustainable and comprehensive EU immigration policy is only possible through cooperation with third countries, the Commission is seeking to propose the tools for such cooperation.

Mobility partnerships are viewed as overall frameworks for the management of various legal movements between the EU and selected third countries that draw together the possibilities offered by the Member States and the European Community.<sup>35</sup> As regards their legal nature, the Commission proposes: “Mobility partnerships will necessarily have a complex legal nature, as they will involve a series of components, some of which will fall in the Community’s remit and others in the Member States” (Communication on circular migration and mobility partnerships 2007). It can be concluded that mobility partnerships are not envisaged in the form of binding legal instruments. The Commission is, however, more specific as to what the content of such mobility partnerships might be: the commitments expected from the third-country would differ from case to case, but could include, for example, the commitment to effective readmission, initiatives to discourage illegal migration, efforts to improve border control and/or management, cooperation and exchange of information with relevant authorities in EU Member States and specific measures and initiatives to combat migrant smuggling and human trafficking. As regards commitments to be given by the EU and the participating EU Member State, depending on the circumstances, these could include: improved opportunities for legal migration of third-country nationals based on the labour needs of the Member State and, whilst fully respecting the Community Preference Principle,<sup>36</sup> assistance for capacity building to manage legal migration flows, measures to address the risk of brain drain and to promote circular migration or return migration, and improvement and/or easing of the procedures for issuing short stay visas to nationals of the third-country.

Whereas mobility partnerships target cooperation between States, another tool - circular migration - refers to measures taken at the level of the individual third-country national. According to the Communication on circular migration and mobility partnerships 2007, circular migration can be defined as “a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries”.<sup>37</sup>

<sup>33</sup> COM (2007) 248, 16 May 2007.

<sup>34</sup> COM (2005) 390, 1 September 2005.

<sup>35</sup> COM (2006) 73, 30 November 2006.

<sup>36</sup> See footnote 24.

<sup>37</sup> It is arguable that the definition should also contemplate the possibility of legal mobility back and forth between two or more countries (IOM comments on Circular Migration 2007).

Contrary to mobility packages, the Commission envisages the inclusion of measures promoting circular migration in some of the future EU legislative instruments, as well as the adjustment of existing measures to the same end; hence creating legally binding instruments that promote circular migration and thus the facilitation of the admission of individual third-country nationals who have previously resided in the EU. In the Communication, the Commission suggests several measures that could be introduced into the Proposal for a Highly Skilled Migrants Directive, the Proposal for a Directive for the admission of seasonal migrants, and the Proposal for a Directive of remunerated trainees. With regards to pre-existing legislative instruments, the Commission might consider proposing adjustments to the Long-term Residents Directive and the Studies and Training Directive, as well as the Scientific Researchers Directive (Communication on circular migration and mobility partnerships 2007, pp. 10-11).<sup>38</sup> Following a comprehensive approach, the Commission deems that practical conditions and safeguards will be needed to ensure that circular migration is effective and meets its objectives. Those measures shall aim at providing incentives to promote circularity, ensuring effective return, monitoring circular migration, reducing the risk of brain drain, working in partnership with third countries and concluding bilateral agreements as a useful addition to the EU framework and policy to promote secure and sustained circular migration.

The reinforcement of a comprehensive approach to the migration phenomena through these recent initiatives is positive overall, proposing tools with which to implement this approach. As one of the pillars of comprehensive migration management, cooperation with third countries is of the utmost importance. Nonetheless, the concepts of mobility partnerships and circular migration, as proposed by the Commission, need to be discussed further and refined, in particular on the basis of practical experience and the establishment and implementation of pilot projects.

It is noteworthy that some third countries and regions receive preferential treatment from the EU, which has established specific instruments in this regard. The European Neighbourhood Policy applies to the EU's immediate land and sea neighbours.<sup>39</sup> A Strategy Paper on the European Neighbourhood Policy was published in May 2004 (ENP Strategy 2004).<sup>40</sup> The fight against irregular immigration and management of regular immigration are amongst the "priority cooperation sectors" (ENP Strategy 2004). The European Neighbourhood Policy is meant to offer the neighbours of the EU a deeper political relationship and economic integration. The tool to achieve these reforms are the commonly agreed Action Plans scheduled for three to five years with precise commitments to promoting economic modernization, strengthening the rule of law, democracy and the respect for human rights and cooperating on key foreign policy objectives. In a recent Communication,<sup>41</sup> the Commissioner for External Relations and European Neighbourhood

<sup>38</sup> At present, the Long-term Residents Directive stipulates that, as a rule, long-term resident status will be withdrawn in the event of an absence of more than 12 consecutive months from the territory of the Community. This period could be extended to two or three years.

<sup>39</sup> Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libyan Arab Jamahiriya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and Ukraine.

<sup>40</sup> COM (2004) 373, 12 May 2004.

<sup>41</sup> COM (2007) 774, 5 December 2007.

Policy sets out what actions are needed by the Member States and the Commission, particularly in the fields of trade, mobility and tackling frozen conflicts in the EU's neighbourhood. A number of actions are foreseen in 2008 to reinforce sectoral reforms in neighbouring countries. At the Africa-EU Summit, which was held in December 2007 in Lisbon, Portugal, Heads of States and Governments from EU and African countries adopted the Joint Africa-EU Strategy. In the Lisbon Declaration, EU and African leaders manifested their resolution to build a new strategic political partnership for the future, as laid down in the Joint Africa-EU Strategy, based on common values and goals. One of the four main objectives of this long-term strategic partnership is to address common challenges, including migration.

### Communication Towards a Common Immigration Policy

In its Communication of December 2007 "Towards a Common Immigration Policy"<sup>42</sup>, the Commission takes stock of the different initiatives and draws conclusions on what has been achieved to date, as well as what remains to be done. With respect to legal immigration, the Commission states that "the approach taken to legal immigration in the spirit of the Tampere mandate was ambitious, but the policy is still largely incomplete" (Towards a Common Immigration Policy 2007, p. 3). The Commission emphasizes that any immigration policy must go hand in hand with a policy of integration. As regards the external dimension, the Commission refers to the Global Approach to Migration and outlines important points for future policy development. The communication is principally a call for a new commitment towards a common European policy on immigration. The Commission argues that "in a single market with free movement of persons, there is a clear need to go beyond 27 immigration policies" (Towards a Common Immigration Policy 2007, p. 7). Foundations laid should be used to build a common European policy on immigration. According to the Commission, the new commitment would, inter alia: build on an assessment of the situation of migrants in the Member States, including the current and future needs and skills gaps; define a plan leading to a common understanding of the kind of immigration Europe needs and the accompanying measures required to ensure proper integration; ensure policy consistency, at both the national and EU levels and between different sectorial policies; and continue linking EU immigration policy with the external agenda.

This Communication is a call to agree on common policies and underpins efforts for a common EU framework for immigration. Indeed, given the socio-economic context of the EU and the potential of immigration, it is a matter of great importance to the EU. A common EU policy in this area is necessary and consequently the next step that builds on and continues the achievements made so far, such as the single market and free movement of persons within the EU.

### Conclusions

In assessing the developments with regard to immigration and the EU, a strong trend towards the development of a common policy can be noted. Although a common

<sup>42</sup> COM (2007) 780, 5 December 2007.

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immigration policy for certain third-country nationals was already in place under the Tampere Programme, Member States have for a long time been reluctant to give up competencies in the field of labour migration.<sup>43</sup> With the Legal Migration Plan 2005, two proposed Directives and further measures to come, this position seems set to change. The recent communication from the Commission “Towards a Common Immigration Policy” amounts to a strong call for action for a common policy. It should also be noted that the external dimension of migration (cooperation with third countries) has become an increasingly important item on the EU agenda in recent years. Optimizing the benefits from circular migration has been recognized as being critical for countries of origin and destination alike, as well as for individual migrants and their families. To this end, the concept of mobility partnerships has been proposed as a concrete tool for enhanced migration management and socio-economic development. At this stage it is important that the initiatives proposed by the Commission are put into practice by Member States. The practical experiences gathered will then allow further discussion and refining of those instruments.

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<sup>43</sup> This is reflected, to some extent, in the limited role the European Parliament continues to play in field of legal migration, i.e. a consultative role rather than one of co-decision.

# Comparison

## 1. General Immigration Policy and Trends

### Migration and Europe

Immigration is a permanent feature of European society; of the 474 million nationals and legal foreign residents of the EU, European Economic Area (EEA) and Switzerland, some 42 million were born outside their European country of residence. In absolute terms, Germany has by far the largest foreign-born population (10.1 million), followed by France (6.4 million), the UK (5.8 million), Spain (4.8 million), Italy (2.5 million), Switzerland (1.7 million) and the Netherlands (1.6 million) (Münz 2006). In 2005, the proportion of foreign-national and foreign-born persons within the population of the 25 Member States of the EU was 8.3 per cent (Münz 2007). Immigration is still the main element in demographic growth within the EU.<sup>44</sup>

Having been countries of emigration for more than two centuries, over the past 50 years many European countries have become countries of immigration. According to 2005 data, all the countries of Western Europe (the EU's first 15 Member States (EU-15), Norway and Switzerland) have a positive migration balance<sup>45</sup>, as do six of the ten new EU Member States — Cyprus, the Czech Republic, Hungary, Malta, Slovenia and Slovakia. It is very likely that sooner or later this will also be the case in the other countries of Europe (Münz 2006).

### Migration to Europe: A Historical Overview

The need for labour after World War II led many Northern European countries to introduce “guest worker programmes”, recruiting workers mainly from Southern European countries and, to a lesser degree, from the Maghreb. These programmes were intended to meet a temporary labour shortage; little thought was given to the broader implications of the migration, such as integration needs.

In the 1970s, due to the oil crisis and its consequent change in the economic situation, active recruitment through “guest worker programmes” was stopped. Since then, labour migration can be characterized as restrictive in most European countries. Immigration over the last few decades has mostly consisted of family reunification and immigration related to international protection.

The decline and aging of the European population has contributed to a growing awareness of the need for immigration. Research shows that recent European population growth is mainly due to immigration. According to the UN, Europe's population would have shrunk by 4.4 million (-1.2 per cent) from 1995 to 2000 if it were not for the arrival of five million migrants during this period (UN Population Division 2006). Particular consideration should be given to the issue of the EU's ageing population; between 2006

<sup>44</sup> COM (2007) 512, 11 September 2007.

<sup>45</sup> Meaning that the number of immigrants exceeds the number of emigrants.

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and 2050, the number of EU citizens over 60 years of age will have increased by 52 per cent. Consequently, the total number of people aged 60 and over will have risen from 136 million to 208 million (UN Population Division 2006; Communication on the Demographic Future of Europe<sup>46</sup>; Bertozzi 2007).

This demographic factor, coupled with its foreseeable implications on the various social welfare systems, has provoked increased debate concerning immigration within EU institutions and EU Member States alike. In addition, factors such as labour shortages in particular sectors and globalization forces also call for increased legal migration. There is a growing awareness that without migrants, Europe will not be able to maintain the same standard of living; hence attitudes towards legal migration must be adjusted (Bertozzi 2007). The solutions discussed to counter the effects of the demographic factor focus on the facilitation of labour migration. With the idea of furthering their national economic development, States are mainly seeking to attract highly skilled workers; as a result, the need for low-skilled labour migration is often neglected (Fallenbacher 2004).

Today's prevailing approach to immigration is a selective one. The terms of chosen versus imposed immigration, stemming from the French immigration debate,<sup>47</sup> are often used to describe an overall European tendency. As much as European States are competing with other business locations (such as the USA and Japan) for highly skilled third-country nationals, some have also become more restrictive with regard to other forms of legal immigration, such as family reunification. At the same time, the fight against irregular immigration has also intensified.

When looking at the history of European migration, special consideration must be given to the A8 countries (Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary and Slovenia) that acceded to the EU in 2004. In the 1990s, these Central and Eastern European countries developed new migration policies and legislation in preparation for their accession. Thus, these legislation and immigration systems were developed in accordance with the EU *acquis*. Moreover, EU Membership has increased the attractiveness of these countries as destination countries for migrants and, within a short period of time, they have gone from being countries of transit and emigration to countries of destination. The adjustment of legislation has also proved to be particularly important in this regard.

### Migration Legislation in Change: Trends

The European trend of promoting selective immigration has caused changes in policy and legislation in a number of EU Member States. In fact, during the life span of this project (December 2006 to December 2007) as well as during the previous year, significant changes to the migration legislation in almost half<sup>48</sup> of the Member States of the EU have

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<sup>46</sup> COM (2006) 571, 12 October 2006.

<sup>47</sup> See for example, the hearing of Mr N. Sarkozy, then Minister of the Interior and for Regional Development, as regards the proposal for a law on immigration and integration, 29 March 2006.

<sup>48</sup> Austria (January 2006), Belgium, Bulgaria, Denmark, France (July 2006), Germany, Italy (draft law), Hungary, Ireland (draft law), Poland, Romania and Sweden (March 2006).

either been proposed or adopted.<sup>49</sup> Moreover, the ongoing immigration debate coupled with the belief that a coherent European approach is needed (Le Monde, 23 August 2007) has and will continue to result<sup>50</sup> in increased legislative activity at the EU level and, if necessary and agreed, transposition of EU Directives into national law.

EU Member States have come to the conclusion that in order for a migration policy to be successful the improvement of the integration of migrants is indispensable. In this regard, many countries offer integration programmes for migrants legally admitted to their territories, sometimes with a duration of several years. It should be noted, however, that requirements in the legislation of a number of countries concerning the “integration potential” of the migrant have markedly augmented recently. On the other hand, integration potential increasingly has to be proven by the migrant while he is still abroad, for example, through passing a test on knowledge of the language and host society (see section Comparison, 2.3.1).

With a view to the facilitation of labour immigration that is beneficial to national economies, the focus of policy makers in the EU Member States is now centered on how to attract highly skilled workers. Currently, a substantial number of Member States employ special immigration schemes for highly skilled workers. These schemes often entail facilitated procedures and abbreviated waiting times for the acquisition of residence and work permits, as well as enhanced rights for highly skilled workers (for example, easier family reunification). In October 2007, the European Commission presented its Proposal for a Highly Skilled Migrants Directive, with the aim of developing a common policy in this field (see section Comparison, 2.3.3.2.1).

EU Member States are struggling to find a well-balanced and comprehensive approach that can serve such diverse objectives as attracting highly skilled migrants, preventing irregular migration and safeguarding the human rights of migrants. Initiatives at the EU level seek to pursue broader approaches, such as “mobility partnerships” and “circular migration”, counting on the involvement of third countries<sup>51</sup> (see section Emerging EU Law and Policy on Migration, 2). However, research for this study shows that, so far, only a few Member States pursue active cooperation with third countries on immigration matters. It seems that this is a relatively new area that Member States are only now starting to explore. For example, Spain concluded a number of bilateral agreements with third countries as an instrument in the development of a comprehensive national policy on immigration; these agreements cover both the regulation of the immigration of third-country nationals for the purpose of work and the prevention of irregular migration (see section Comparison, 3).

It should be noted that immigration issues are often debated in an emotive public environment and are frequently “sensationalized” for election campaigns. The Netherlands experienced two political murders at the beginning of the 21<sup>st</sup> century. There was also the

<sup>49</sup> For example, with regard to integration-related conditions for admission.

<sup>50</sup> For details on the Commission’s proposals for Directives regarding labour migration, see section Emerging EU Law and Policy on Migration, 2.

<sup>51</sup> COM (2007) 248, 16 May 2007.

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controversy over cartoons in a Danish newspaper, which extended beyond the country's borders and led to protests by Muslims around the world: Danish Prime Minister Anders Fogh Rasmussen described the controversy as Denmark's worst international crisis since World War II (Times Online 2006). It appears that greater efforts ought to be made to render the public debate on immigration more factual, accurate and balanced. Initiatives aimed at affiliating different stakeholders in society, such as the Integration Summits in Germany,<sup>52</sup> are certainly a step in the right direction.

## 2. Comparison

### 2.1 Overview of Immigration Categories

From studying the national legislation of the Member States, it is clear that national laws link the admission of third-country nationals and the granting of the relevant permits to the *purpose* of residence of the foreigner. Hence immigration categories are defined according to the different purposes for immigrating to the host country. This study looks at legal immigration for the purposes of family reunification and work (including employment, self-employment and seasonal work), as well as studies and training.<sup>53</sup> Conditions imposed by the EU Member States for immigration under these categories will be examined in detail later in the study.

Beyond the above mentioned categories, legislation in the Member States provides for a whole range of additional immigration purposes, that is, other categories for legal immigration. Although these categories are not the main focus of this study, for the sake of completeness they are briefly discussed below.

#### Comparison of Other Immigration Categories

The national legislation of all Member States provides for "*other immigration categories*." These categories vary between the Member States; however, a number of categories common to several Member States can be identified.

a) More than one third of the EU Members States have a provision for a residence permit based on former citizenship of the country, or being a descendant<sup>54</sup> of a national of the country.

b) Another important category found in many countries is admission for the purpose of medical treatment. Often, immigrants under this category are not required to satisfy the general conditions for residence permits (sufficient financial means and accommodation).

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<sup>52</sup> Two Integration Summits were held in July 2006 and July 2007. The summits address a wide range of integration policy issues (including language competency, education and urban planning) and are aimed at helping the Government to develop a comprehensive policy for immigrants and their families. Various stakeholders participate in the summits, such as civil society, immigrant groups and community and government representatives.

<sup>53</sup> It should be reiterated that the scope of this study does not include protection related migration. Thus residence permits granted to victims of trafficking or on the basis of subsidiary protection are not considered. Migration related to the free movement of EU citizens also falls outside the scope of this study.

<sup>54</sup> This category refers to persons who are, for example, a descendant of a national of an EU Member State, but who do not have the nationality of that Member State.



c) A few countries explicitly foresee residence permits being granted to people who wish to retire in the Member State. However, this category is usually conditional upon the applicant having sufficient funds at his disposal. Other countries formulate this category more broadly as “stay for private purposes” (Austria, Estonia) or “not-for-profit activity” (Bulgaria).

d) Many Member States provide for admission of persons belonging to a specific profession. For example, pursuant to the Scientific Researchers Directive, some countries issue residence permits for the purpose of research. The Directive was to be transposed by 12 October 2007; hence it is to be expected that this immigration category will gain importance in national legislation in the future. In addition, a number of countries make special provision for specific professional groups such as artists, sportspersons and coaches, journalists and domestic workers. The exercise of religious functions is often included in this category.

e) Furthermore, immigration categories can be found which are very specific to the conditions in a Member State. For example, Greece grants residence permits to persons wishing to practice monastic life on Mount Athos in Greece.

### Conclusions

Legislation in the Member States allows for the admission of third-country nationals for various purposes other than family reunification, work and studies and training.

Most of these categories are not regulated at the EU level and take various forms. However, a comparison shows that immigration for certain purposes (even though with varying detail) are to be found in a number of Member States; the most important ones being “former nationality/ being of origin”, “medical treatment” and “retirement”. While categories such as “former nationality/ being a descendant of a national” depend very much on the specific history of a country and might be difficult to standardize at the EU level, it might be possible and beneficial to do so for the latter two categories.

## **2.2 Visa Policy**

Visas are closely tied to State’s sovereignty and the right of States to regulate conditions of entry and stay in their territories. A ‘visa’ can broadly be defined as the legal title delivered by a State to a foreigner permitting entry, stay, or transit through that State. Within this definition, a distinction between short-term and long-term visas must be made.

According to EU legislation, a short-term visa is “an authorization issued by a Member State or a decision taken by such State which is required with a view to: entry for an intended stay in that Member State or in several Member States of no more than three months in total; entry for transit through the territory of that Member State or several Member States, except for transit at an airport” (Council Regulation 2001/539/EC of 15 March 2001, Art. 2). Conversely, a long-term visa is granted for a period longer than three months.

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The regulation of short-term visas falls within the competency of the EU. This common policy finds its roots in the inter-governmental framework of the Schengen Agreements (1985 and 1990). Since the entry into force of the Schengen Agreements Implementing Convention (1995), visa policy has progressively been removed from the States' competence. Schengen *acquis* on short-term visas includes the following rules: determination of the EU Member State responsible for granting a visa; conditions of delivery of a visa; creation of Common Consular Instructions in order to facilitate consular cooperation and to bring different national administrative practices closer; institution of a database, the Schengen Information System (SIS), that provides consular authorities with information concerning the rejection of visa applications. Furthermore, Article 62(2)(b) of the Treaty of Amsterdam notably contains provisions regarding: a list of third countries whose nationals are or are not subjected to a visa obligation; the conditions and procedures for the delivery of visas; and a uniform format for visas. Mention must also be made of the specific situation of three States (UK, Ireland and Denmark) that benefit from an exemption clause in these matters. UK and Ireland mainly participate to the SIS, while Denmark follows an agreement allowing the country to choose or to reject the implementation of the Schengen *acquis* developments within six months of their adoption. The common short-term visa policy therefore appears as an important and well developed field of EU policy. In contrast, long-term visas remain the exclusive competence of the Member States, hence the focus of the present study on long-term visas. Moreover, it can be noted that the EU short-term visas policy objectives only partially match up with the scope of the present study. These are mostly aimed towards the prevention of irregular migration and therefore refer to the "illegal immigration" component of EU immigration policy, which is not covered by the present study (Permanent Dictionary 2007, pp. 1396-1426).

Furthermore, while long-term visas can be considered as a tool in order to prevent irregular migration, they also have to be viewed as a condition of legal immigration for countries that follow this system. It is actually noticeable that only approximately one third of the EU Member States (including Belgium, the Czech Republic, France, Germany, Greece, Italy, Portugal, Romania and Slovenia) grant long-term visas. These countries consider long-term visas as a condition in order to present an in-country residence permit application. Hence the reason why these visas are sometimes called "immigration visas".

### Competent Authorities

As a general rule, visa applications are presented in the country of origin to the consular or diplomatic authorities of the country of destination. In exceptional situations, such as humanitarian or protection situations, EU Member States foresee the granting of visas at their border. Protection and humanitarian issues are outside the scope of this study and will not be examined further.

With regard to the administrative authorities who grant visas, there are two main systems. In the first, the consular and diplomatic authorities are vested with decision-making power regarding visas. Under this system, only the Ministry of Foreign Affairs is involved in the procedure. Whilst in the second system, the decision includes the involvement of a further

authority: the Ministry in charge of the stay and residence of foreigners. Thus, depending on the country, the decision is either made by consular or diplomatic authorities after the opinion of the relevant Ministry, or the decision is made by the Ministry in charge of the stay and residence of foreigners.

In the context of long-term visas, EU Member States follow the second system. For instance, in Belgium, the competent authority is the Office for Aliens, within the Ministry of the Interior. Embassies and consulates receive applications and deliver the long-term visas, however, the actual decision is made by the Ministry of the Interior. In Romania, the long-stay visa is issued by the diplomatic missions and consular offices. Long-stay visa applications require the consent of the National Centre for Visas, a specialized structure within the Ministry of Foreign Affairs, as well as the opinion of the Romanian Immigration Office, which grants the residence permits. The opinion officially serves only as a recommendation, however, a negative opinion will be likely to lead to the refusal of a visa. In Hungary, short-term visas are issued by the Consular Office in the place of residence of the applicant. The issuance of long-term visas, as well as their withdrawal, invalidation, change, or prolongation, falls within the competency of the Office of Immigration and Nationality and its regional units. Similarly, in France, although in principle the granting of visas is within the competence of consular or diplomatic authorities, in practice, the delivery of long-term visas is dependant upon consultation with the Ministry of the Interior.

In contrast, States that do not deliver long-term visas generally give responsibility to their consular and diplomatic missions to decide on visa applications (i.e. short-term visas). This is the case, for example, in Austria, Denmark and Finland.

The main explanation for the different systems adopted seems to be found in the State's understanding of visas: whether they are mainly considered as an element of foreign policy or as an immigration management and security tool. In the first case, primacy is given to the Ministry of Foreign Affairs; whilst in the second case, the decision is rather left in the hands of the Ministry in charge of the stay and residence of foreigners.

### The Relationship between Visas and Residence Permits

In order to understand the relationship between visas and residence permits, it is useful to start with the main distinction existing between countries that grant permits in the country of origin and those that grant permits "in-country".

When a residence permit is issued in the country of origin, there is normally no need to obtain a visa in order to enter the country of destination. The residence permit should be considered as a legal title to enter, according to Article 5 of the European Parliament and Council Regulation 2006/562/EC of 15 March 2006, establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). Most EU countries that grant permits in the country of origin take this approach. This is, for instance, the case for Latvia and Finland. Spain applies a slightly different system, according to which the visa granted incorporates the stay authorization. In contrast, Germany and Slovenia require a permit application in the country of origin as well as the delivery of a visa.

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As a general rule, countries that deliver residence permits “in-country” require a long-term visa as a preliminary condition for obtaining a residence permit. Long term visas are then considered as an integral part of the immigration process, one of the necessary procedural steps. As an example, the delivery of a long-term visa by a French consulate allows its holder to enter and stay in France for more than three months and to present a temporary stay permit application “in-country”.

Another consequence of this system is the existence of several types of long-term visas depending on the purpose of admission, such as for family reasons or family reunification, salaried employment, studies, etc. The residence permit subsequently granted in the country of destination will follow these specifications. Such a system causes a certain administrative “heaviness”, as the administrative controls are performed twice; once when processing the long-term visa in the country of origin, and once in the country of destination when processing the residence permit.

There may be derogations to the requirement of possessing a long-term visa, for example, where there are bilateral agreements regulating this matter. It is noteworthy that this type of agreement has become rarer with time.

Very few exceptions to the requirement of a long term visa in the case of “in-country” delivery of residence permits can be identified. In Spain, residence permits are delivered “in-country” on the basis of a residence visa, granted for no more than three months, but that incorporates an initial authorization of residence. Since this visa is foreseen as a condition to the presentation of an application for a residence permit, the Spanish system is nevertheless very close to the ordinary long-term visa scheme. Regarding the situation of the three countries benefiting from an exemption clause under EU law, Denmark grants residence permits in the country of origin and does not deliver long-term visas. The UK requires an entry clearance that takes the form of either a visa or, for non-visa nationals, an entry certificate. Leave to remain (permission to reside in the country) is delivered “in-country”. The Irish system establishes a main distinction between third-country nationals who require visas and those that do not. Non-visa nationals are not required to obtain permission prior to arrival for any purpose. If they wish to stay for more than three months, then they are required to obtain permission to that effect after arrival.

It can be noted that several States foresee the granting of long-term visas while residence permits are granted in the country of origin. Such is the case of Estonia and Poland. Estonia grants long-term visas for a period up to six months to foreign journalists, their family members and to foreigners entering the country for the purpose of short-time employment. Poland grants long-term visas for a maximum of one year and for different purposes, such as studies and temporary employment. In such cases, long-term visas are not considered as a condition to be granted a residence permit. They exist independently and, consequently, can be considered as temporary residence titles granted in the country of origin.

## Conditions of Issuance of Long-Term Visas and the Length of Procedure

### *Conditions of issuance of long-term visas*

Regarding conditions of issuance of visas, particularly long-term visas, it is of utmost importance to underline the wide margin of interpretation possessed by the competent administrative authorities.

Common conditions to all concerned States include the requirement of valid travel documents and proof of purpose of stay; in other words, requirements regarding the residence permit are linked to the long-term visa. Moreover, several States require that applicants give proof of sufficient financial means or accommodation (for example, the Czech Republic, Italy, Portugal and Romania). Finally, some States require that applicants do not have a criminal record and that they hold medical insurance and pass medical tests (for example the Czech Republic, Greece and Portugal).

The various competent authorities have considerable discretion in rejecting applications, which proceeds from the general criteria of the applicant's entry not presenting a threat to public order. The wording and definition of the notion of public order varies from country to country, including specific references to public health, public security, public defense, public interests, public policy and international relations of the State, etc. Moreover, several States have additional criteria such as the commission of certain crimes, the giving of false testimonies or the inclusion of the applicant in SIS.

### *Length of procedure*

Most of the EU Member States do not specify a maximum length of procedure with regard to decisions on visa applications. Moreover, administrative practices can strongly differ depending on the individual situation and the concerned national authorities.

It can be noticed that the legislation that contains provisions regarding the length of the procedure imposes time-limits from 60 days (Portugal) to 9 months (Belgium).

### Review of decisions

Most EU Member States in which immigration legislation relies on the delivery of long-term visas provide for judicial review of decisions rejecting applications. Most of the time, judicial review is performed by ordinary administrative courts. Several States require a preliminary administrative control (by the decision-maker or their hierarchical superior) before the actual judicial appeal can be made (e.g. France). In other cases, such administrative action is not mandatory, and in a few cases administrative action is not foreseen at all (e.g. Lithuania).

Nevertheless, one must note that even though judicial appeal is possible in most EU Member States, competent authorities often do not have to provide the reasons for the rejection of a visa application. In order for the principle of equality of arms to be fully respected, it would be beneficial if Member States were obliged to include reasons for refusing to grant a visa.

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From a more general perspective, the combination of an absence of an obligation to provide reasons and the range of grounds under which an application may be rejected brings into question the effectiveness of review procedures in visa matters. Such a situation leaves the possibility for the competent authorities to substitute the actual grounds for rejection with others that would appear more solid and relevant during subsequent judicial proceedings.

### Compliance with EU and International Instruments

General international law does not contain specific provisions applicable to visa and immigration issues. At the regional level, the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe was signed on 13 December 1957. This convention only applies to visas granted for no longer than three months. Similarly, EU common policy only applies to short-term visas. As a result, long-term visas are largely within the Member States' discretionary competence.

Nevertheless, certain provisions of European directives are indirectly applicable to visa issues. For instance, according to Article 5(3) of Council Directive 2003/86/EC on the right to family reunification,<sup>55</sup> "reasons shall be given for the decision rejecting the application" to benefit from the right to family reunification. As previously mentioned, EU Member States often do not comply with this provision.

Similarly, mention can be made of Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 of the European Convention on Human Rights (ECHR), which guarantees the right to a fair trial. As previously seen, even though most EU Member States foresee judicial controls with regard to visa matters, this practice is not generalized across all Member States. This must be the case in order to completely ensure the right of access to the courts, a fundamental component of the right to a fair trial.

### Conclusions

An analysis of the EU Member States long-term visa policy leads to two main conclusions.

The first one is related to the concept of the long-term visa itself. It must be underlined that the choice by a State to follow a long-term visa-based immigration policy implies the granting of residence permits "in-country". In other words, a double control of immigration conditions is realized: the first in the country of origin, through the delivery of a long-term visa; the second in the country of destination, through the granting of a residence permit.

A further conclusion concerns the wide discretionary power granted to the administrative authorities regarding the delivery or rejection of a visa application. International general and regional law is almost silent on this issue. The broad concept of public order is of the most importance in visas matters; this, coupled with the general lack of an obligation to give reasons for the rejection of an application, brings into question the effectiveness of review possibilities.

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<sup>55</sup> OJ 2003 L 251/12, 03 October 2003.

## 2.3 Residence Rules

### 2.3.1 General Conditions and Procedures, regardless of the Immigration Category

This section examines the conditions and procedures concerning residence regulations in the Member States that are valid for *all* immigration categories considered in the framework of this study (*general conditions and procedures*).<sup>56</sup> The specific requirements per immigration category will be studied in section Comparison, 2.3.3.

For the purpose of this comparison, *residence* refers to the fact of living for a given time in the host country (c.f. Glossary on Migration 2004, p. 56). Conditions for residence are to be studied separately from conditions for *entry*. Note that conditions that apply in addition to the general conditions for *permanent residence* (settlement) will be studied in section Comparison, 2.3.2.

#### General Conditions to be Fulfilled

The general conditions for legal immigration are not harmonized at the EU level. However, this comparative study shows that certain conditions are applied by the vast majority of countries as general conditions. The conditions imposed at the national level with regard to financial means, accommodation, conditions related to health, conditions related to integration and quota systems will be studied below. A brief reference will also be made to the general reasons for the rejection of residence permit applications.

#### *Financial Means*

The legislation of over two thirds of the Member States contains a provision relating to the financial means that the third-country national must have at his disposal in order to obtain a residence permit. In doing so, States are seeking to ascertain that the arrival of the third-country national will not have negative repercussions on the national economy. Hence, proof is requested that the foreigner will not become a financial burden on the State. States often impose a condition requiring the possession of “sufficient financial means”. However, the method by which “sufficient financial means” is determined varies between the Member States. States might require that the foreigner does not have recourse to public funds (e.g. Germany); alternatively, they might require a certain lump sum that must be at the disposal of the foreigner, or a certain monthly income. If expressed as a monthly income, States may require as a minimum, for example, the equivalent of the current national social assistance (Poland), national subsistence level (Czech Republic) or national minimum monthly income (Slovakia). In Austria, a lack of financial means can be compensated by a “declaration of liability” (NAG, Art. 2 No. 15). The “declaration of liability” comprises a statement from a third party undertaking to cover all expenses that the State may incur in connection with the stay of the foreigner. The declaration is made for the duration of five years. An Austrian public notary or court shall certify that the third party is able to fulfil these obligations.

<sup>56</sup> For an overview on fees raised by the immigration authorities for the issuance of residence permits, see the table “General Conditions for Residence” (Table B of the Annex).

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The requirement of sufficient financial means is either expressed as a condition for the granting of the residence permit, or lack of financial means is included in the catalogue of reasons for its rejection.

### *Accommodation*

Another condition through which states are trying to ensure that the individual will not be a burden to the national economy is the requirement of proof of accommodation. For approximately one third of the EU Member States<sup>57</sup> this condition has been incorporated in their immigration legislation. Often, it is required that the accommodation must be adequate in terms of size or even in relation to hygiene standards.

It was reported for the Czech Republic that proof of accommodation can be the most difficult criteria for foreigners to satisfy: due to gaps in the law, it is not possible to deregister a foreigner from the address of his place of residence against his will, thus landlords are reluctant to rent to foreigners. Moreover, much accommodation is leased in breach of the law (for example, for tax evasion purposes or simply sub-letting without the landlord's agreement); hence the landlord is reluctant to, or unaware that he is required to sign any official document proving the rental arrangement. As a result, many foreigners are not living at the addresses at which they are registered and consequently sometimes purchase proof of accommodation from third persons.

### *Conditions Related to Health*

All Member States impose some kind of health related requirements on third-country nationals. These conditions are meant to protect public health and also to prevent excessive demand on the national health care system.

Broadly speaking, health related conditions can be divided into three groups: a) the requirement to hold valid health insurance; b) absence of any diseases endangering public health; and c) the completion of an obligatory health assessment. There are also Member States that will not admit foreigners coming from areas suffering from an epidemic, or will at least require such persons to provide proof of non-infection before entry (e.g. Slovenia).

The requirement of holding valid health insurance is the most common condition amongst Member States. The inclusion of this requirement in a number of EU Directives (namely, each of the three EU Directives of direct relevance to this study)<sup>58</sup> reflects the endeavor of states to avoid charges to the public health budget and the importance attached to the standardization of this obligation at the EU level. Moreover, Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service<sup>59</sup> (Studies and Training Directive) explicitly mentions health insurance as a "general condition".

<sup>57</sup> Austria, Bulgaria, Czech Republic, Italy (might be requested), Latvia, Lithuania, Luxembourg, Poland and Slovakia.

<sup>58</sup> Family Reunification Directive, Long-term Residents Directive, Studies and Training Directive.

<sup>59</sup> OJ 2004 L 375/12, 13 December 2004.



Often, the specific diseases contemplated under the requirement to be free of diseases that could endanger public health are listed in the relevant law.<sup>60</sup> In Hungary, HIV/AIDS infection is listed as a disease that could endanger public health (Decree No. 48 of 27 December 2001).<sup>61</sup> Proof of good health is most often evidenced by a certificate issued by a public health institution of the concerned EU Member State (for example, a public hospital).

A few countries have adopted the condition of an obligatory health assessment for immigrants. The form this health assessment takes varies between States, for example: in France it is applied only with regard to first time applications; in the Netherlands it is applied only to check for certain conditions (for example, tuberculosis); and in Cyprus it is applied only if there are indications that the individual carries a communicable disease.

In a number of States, suffering from a disease that, according to national legislation, endangers public health is a reason to reject an application for a residence permit.

The Country Reports show that where applications for residence permits can be rejected on the basis of a threat to public health, the national legislation also provides for exceptions to this principle.<sup>62</sup> However, it is beyond the scope of this study to examine whether these clauses adequately comply with the standards imposed by European and International Law.

### *Conditions Related to Integration*

This section examines general conditions imposed by Member States relating to integration, such as knowledge of the host country's language, history, society or social and legal system ("civic knowledge"). It is important to note that this section is dedicated only to integration related *conditions*, that is, requirements that must be fulfilled in order to be granted a residence permit. Integration *measures*, such as integration programmes implemented by the States after the foreigner has been admitted, are not studied.<sup>63</sup>

The vast majority of EU Member States do not impose integration-related conditions as general conditions (that is, applicable to all immigration categories) or to non-permanent residence applications. The three States that do are outlined below. Integration-related conditions for settlement or permanent residence permits are more common and will be discussed in the relevant section (see section Comparison, 2.3.2).

A trend can be noted towards inclusion of integration-related requirements as general conditions in national legislation, particularly over the last two years. As of 15 March 2006, with some exceptions, every person between the ages of 16 and 65 who wishes to reside in the Netherlands for a prolonged period and is required to apply for an

<sup>60</sup> See, for example, Section 4 of the Irish Immigration Act 2004.

<sup>61</sup> Other diseases listed are, *inter alia*, tuberculosis and hepatitis B.

<sup>62</sup> In Hungary, HIV infection is sufficient reason to reject an application unless the foreigner proves that he is receiving regular medical treatment.

<sup>63</sup> For the discussion related to "integration conditions" versus "integration measures" (the latter being a notion in the Family Reunification Directive and the Long-Term Residents Directive), see Groenendijk 2004.

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authorization for temporary stay (MVV - Machtiging tot Voorlopig Verblijf) must take the civic integration examination abroad. This test is an oral examination consisting of a language test and questions regarding Dutch society. Questions concerning Dutch lifestyle, geography, transport, history, constitution, democracy, legislation, language and the importance of learning it, parenting, education, healthcare, work and income may be asked. The test must be taken at a Dutch embassy or Consulate abroad and successful completion is a prerequisite for the granting of a temporary permit. The fee for taking the exam is 350 EUR.

On 24 July 2006, under the Law on Immigration and Integration, an integration-related condition became mandatory in France. A “reception and integration contract” is required for adult newcomers and foreigners between 16 and 18 years old who frequently enter the French territory and have applied for residency. Only foreigners who do not intend to settle in France, such as students and seasonal workers, as well as foreigners who have studied at a French secondary school for at least three years, are not subject to this requirement. Within the framework of this contract the foreigner will follow civic training and, if necessary, language lessons. Compliance with the “reception and integration contract” is taken into account by the competent authorities when renewing a temporary stay card or granting a long-term residence permit.

In Austria, an obligation to fulfil integration-related conditions was introduced in 2002. Foreigners who apply for a residence permit are required to fulfil an “integration agreement.” The integration agreement consists of two modules: one focusing on “acquisition of the ability to read and write” and the other focusing on “acquisition of knowledge of the German language and becoming able to participate in the social, economic and cultural life in Austria”. A final exam, rated as “passed”, is required to fulfil the integration agreement. The integration agreement is an obligation required by law. The consequences for failing to fulfil this obligation can be administrative punishment, financial disadvantages or, as a means of last resort, expulsion.

It can be seen from the above that States attach most importance to knowledge of the host country’s language. Furthermore, the Netherlands requires civic knowledge and France requires training in civic knowledge.

The most significant difference between States lies in the way the requirements are applied and the related legal consequences. Austria and France impose an obligation requiring nearly all immigrants (although some exceptions do apply) to follow an integration programme. Moreover, the Austrian law foresees that immigrants must pass the final examination; failure to do so is sanctioned and in the worst case the immigrant faces expulsion. In France, manifest disrespect of the integration programme can lead to the refusal to renew a temporary stay card, or to the rejection of an application for a long term residence permit.

On the other hand, the Netherlands requires that the potential immigrant learns the language and acquires civic knowledge whilst still abroad; otherwise no residence permit will be granted. It has to be reiterated that the condition is of a general nature

and hence applies, in principle, to all immigrants. Fulfilment of this condition requires, in most cases, that the potential immigrant invests money, time and effort into acquiring the demanded knowledge. It should be noted that opportunities to learn and practice German or Dutch outside these countries are far more limited than opportunities to learn English. Moreover, if the potential immigrant comes from a rural area and/or developing country, this requirement becomes even more onerous. The condition hence constitutes an important obstacle to immigration. In the Netherlands, the integration monitor 2006 showed a decrease of MVV, which is most likely the result of the mandatory integration test abroad (TK 2006/07, No. 39; see also Country Report Netherlands). Not surprisingly, therefore, the integration related general conditions for immigration are the subject of heated debate in the public as well as the academic world.<sup>64</sup>

The Justice and Home Affairs Council Meeting on 19 November 2004 in Brussels adopted the European framework on integration, stating *inter alia* that, “Basic knowledge of the host society’s language, history and institutions is indispensable to integration; enabling migrants to acquire this basic knowledge is essential to successful integration.” (JHA Council 2004).

While the JHA Council Conclusion speaks of “enabling migrants,” it can be noted with regard to current integration provisions that there has been a shift away from viewing integration as a positive social measure and towards predominantly viewing it as a repressive immigration measure (Besselink 2006), that is, *integration conditions*. Moreover, it is questionable how efficient these integration conditions are. For example, learning and teaching a language abroad when there is no possibility to practice the language in daily life will require a far greater investment than learning in the host country, and is hence not the most efficient way of ensuring language knowledge (Groenendijk 2007). The level of knowledge that is actually required by the relevant national legislation in order to pass the language test is, in any case, far too low to enable access to the regular labour market (Groenendijk 2007). Also, it is argued that the imposed integration conditions are no panacea in solving integration problems such as housing and urban planning, or social and cultural isolation (Besselink 2006).

### *Quota System*

This section is dedicated to the quota<sup>65</sup> systems applied in some EU Member States. Unlike some of the traditional immigration countries (for example, the United States of America or Australia), in the European context it is rather unusual that immigration is subject to a quota system that applies to all immigration types (as a *general condition*).

<sup>64</sup> For recent examples see: *Spiegel Online*, 11 July 2007; *Radio Netherlands*, 22 August 2007; and *Irish Independent*, 26 August 2007.

<sup>65</sup> Given the nature of “quota” (it being a “numerical limit” rather than “a share of a total that is assigned to a particular group”), the OECD Report 2006 suggests, and rightly so, that use of the term “target level” is more correct. However, for ease of understanding and following the terminology utilized by the EU Member States, this study refers to “quota”. For further reading, see also “Control over Migration Numbers” in OECD Report 2006, p. 115, which divides into two categories: “discretionary” and “non-discretionary” immigration.

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In the European context, a quota is sometimes used for the intake of refugees; the Nordic countries as well as the Netherlands, Ireland and the UK commit to accepting a certain number of refugees referred to them by the United Nations High Commission for Refugees (UNHCR) every year. Moreover, and equally importantly, quota systems are used in a number of EU Member States as a tool to regulate the access of foreigners to their labour markets. Indeed, approximately one quarter of all the Member States employ a quota with regard to immigration for the purpose of work (see section Comparison, 2.3.3.2.1).

Only two countries, Austria and Estonia, subject all immigration to a quota. Thus it can be classified as a *general condition*.<sup>66</sup>

Austria introduced a quota system at the beginning of the 1990s. Thus, for most residence purposes (studies, for example, being an exception) permits can only be issued if a certain quota is not exceeded. Quotas are determined annually by the Austrian Federal Government and divided according to the different kinds of residence permits. Allocations are made for key-employees, self-employed key-staff, family reunification, private stay and holders of a long-term residence permit of another Member State. Permits are allocated among the provinces “in a way consistent with their facilities and requirements” (NAG, Art. 13). It is noteworthy that even though the quota applies to categories other than work, reference is specifically made to the capacities of the domestic labour market as an aspect to take into consideration when determining the quota (NAG, Art. 13).

Estonia introduced a quota system in 1990: the Estonian Aliens Act fixes the annual immigration quota at a maximum of 0.05 per cent of the permanent population of Estonia. The Minister of Internal Affairs is responsible for determining the distribution of the immigration quota. However, the law defines various exceptions.<sup>67</sup> Given this, the efficiency and efficacy of the quota system is questionable (see Country Report Estonia). It is suggested that any reform efforts should start with consideration of the country’s real labour migration needs (Indans et al 2007; see Country Report Estonia).

The application of a quota across all immigration categories is rare in Europe. The most common use of “quota systems” is in the context of labour migration. However, the analysis of the functioning of the above mentioned quota systems shows that even though applied in a general fashion, the actual objective is to regulate access to the national labour market. Thus, Austria’s quota is set depending on the capacities of the domestic labour market and discussions in Estonia seem to presuppose that the quota system should serve the purpose of regulation of labour migration.

### *General Reasons for Rejection*

This section looks at *general* reasons for the rejection of residence applications, applicable to all types of residence permits.

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<sup>66</sup> Meaning that the quota also applies to family reunification. For the application of annual quotas to family reunification see section Comparison, 2.3.3.1.

<sup>67</sup> Even though the quota has applied to family reunification since 1999, it is not applied as a ground for refusing a residence permit in this context due to a ruling of the Estonian Supreme Court (RT III 2000, 14, 149).

The research shows that Member States consistently apply certain reasons for rejecting residence permit applications. These include: danger to public health (discussed above), danger to public security, risk to the international relations of the country, conviction of a criminal offence, provision of false information during the application process or indications that the immigrant is actually pursuing an alternative immigration purpose to that which he claims (for example, Member States specifically mention “marriages of convenience”).

### Applicable General Procedures

This section will consider procedures relating to the granting of residence permits that apply generally to all immigration categories in the various EU Member States. Competent authorities, place of application, length of procedure and appeal rights will be discussed.

### *Competent Authorities*

This section studies the authorities that are competent to issue residence permits in the different EU Member States. The numerous other public bodies that are concerned with migration issues more broadly are not examined here.

As regards the competent authority for issuing residence permits, four main structures can be noted:

- 1) The most common option amongst EU Member States is that permits are issued by an Immigration Office, operating within the Ministry of the Interior. Currently, there are 11 countries<sup>68</sup> that organize the issuance of residence permits in this way.
- 2) In some countries<sup>69</sup> residence permits are issued by the Police Department, also operating under the Ministry of the Interior.
- 3) Another important group is countries<sup>70</sup> where residence permits are issued by Immigration Offices within the Ministry of Justice.
- 4) In the fourth group, permits are issued by the competent regional authorities.<sup>71</sup> This is not only the case for countries that have a federal structure (like Germany and Austria) but also, for example, for France, where the Prefect is in charge of issuing the residence permits.

In relation to the few countries that do not fall within one of the above categories, the following can be noted. In Denmark, an Immigration Office (“Danish Immigration Service”) works under the Ministry for Refugee, Immigration and Integration Affairs, dealing with migration matters. Denmark is the only EU Member State to have a specific and separate Ministry for handling migration issues that does not form part of another

<sup>68</sup> Belgium, Bulgaria, Cyprus, Estonia, Finland, Latvia, Lithuania, Malta, Portugal, Romania and the UK.

<sup>69</sup> Czech Republic, Italy and Slovakia.

<sup>70</sup> Hungary, Ireland, Malta, the Netherlands and Sweden.

<sup>71</sup> Austria, France, Germany, Greece, Poland and Spain (the Foreigners Bureau of the Sub-delegation of the Government in each province).

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Ministry, as is the case for Sweden and the Netherlands (where the Migration Minister is part of the Ministry of Justice). Slovenia has not got a specific immigration office; rather, residence permits are issued by administrative units under the Directorate of Administrative Internal Matters of the Ministry of the Interior. In Italy, depending on the type of residence permit, it is either issued by police authorities or by regional migration offices. However, both authorities operate under the Ministry of the Interior.

Hence, it can be concluded that the vast majority of countries rely on the expertise of specialized offices for the issuance of residence permits. This reflects the importance immigration has on national agendas. Although there are differences regarding to whom these offices are responsible, it appears that in most cases the competent authorities are working under the Ministry of the Interior.

As regards the assessment of the work of these authorities, problems concerning a lack of service provision to the public and the foreigner, as well as a lack of transparency, are reported from various countries. In some countries, such concerns have led to a restructuring of the Immigration Office with the aim of becoming more service orientated (e.g. Denmark). In relation to the Czech Republic, the researcher reported that this lack of performance is to be attributed to under-staffing and limitations in office space and opening hours (see Country Report Czech Republic). Whilst for Slovakia, the research noted a problem with the institutional set up and the absence of appropriate offices and official parliamentary or governmental committees to cover the issue of immigration legally and politically (see Country Report Slovakia).

Reports were received from several countries that the Immigration Offices are not “migrant friendly” or, indeed, that there is “a certain feeling of xenophobia in the department due to the fact that most foreigners are viewed as being trouble makers or as creating unemployment”. It was also reported on several occasions that public authorities are often perceived as discriminating against foreigners according to their countries of origin. Immigrants from Asian, African and Middle Eastern countries on occasion complain of unfair treatment, demonstrated through an unwillingness of the competent authorities to grant them residence and work permits or through the use of artificial obstacles prior to granting a permit, such as problems with visas, health certificates and invitations for family members.

Another reported recurring problem is that often different authorities are involved in reaching a decision on a residence permit application, leading to overlapping competencies and hence duplication and problems of coordination and delay. This is especially the case for permits related to work, as often an agency concerned with employment also has to be consulted. This issue will be discussed in more detail in section Comparison, 2.3.3.2.1.

### *Place of Application*

Another procedural requirement is that, in most countries, residence permit applications must be lodged abroad. This causes practical problems for applicants resident in States where no embassy of the intended host country is situated. In such circumstances, the applicant must travel to another country in order to submit an application, which can be

very expensive and in some cases even impossible due to the visa regulations of the State where the competent embassy is situated. As a result, it is reported that the requirement to apply for residence permits from abroad is a major obstacle to legal immigration, demanding both financial resources and time from the migrant.

Moreover, the procedural requirement can lead to hardship in cases where foreigners are already legally on the territory of a State and would like to change the purpose of their residence (“switching”). For categories where in-country applications are not permitted (and no exception is made to this principle), it means that the foreigner must travel back to his country of origin and apply from there, before re-entering the country of immigration.

### *Length of Procedure*

Unfortunately, little information is available on the maximum processing time regarding applications for residence permits as established by law. Only seven countries<sup>72</sup> reported the existence of a maximum processing time for applications for residence permits. Finland reported that there are no such provisions, while Belgium reported that a relevant provision exists, but only in the case of family reunification. The specified processing times are often those established for general administrative procedures and are the same as for other administrative decisions.

In those countries that do establish a maximum processing time, the specified period varies significantly; namely, from five days to six months. It is to be noted that these time-limits refer solely to the period of time the authority needs in order to decide on the application for the residence permit. In practice, more time is needed in order to collect all the necessary papers and prepare the application. It can be noted, however, that the time-limits established by law are well under that which is prescribed in Council Directive 2003/86/EC on the right to family reunification (Family Reunification Directive), that is, nine months. It is noteworthy that Latvia has established a system whereby the fee paid is tied to the processing time.

Reports were received from several countries highlighting that, in practice, one of the obstacles for immigrants is in fact the long waiting periods, resulting, for example, from the routine application by administrators of exceptional extensions of the permit processing time. In Italy, in response to this situation, the Directive of 5 August 2006 of the Ministry of the Interior extends the rights of foreigners waiting for the renewal of a permit. Likewise, the Disegno di Legge 2007 underlines that, while awaiting the permit renewal, the foreigner will benefit from the rights the permit will grant.

### *Appeal Rights*

This section examines the rights of appeal in the different Member States where the granting of a residence permit is refused.

The research shows that all EU countries have some form of appeal right against decisions issued by the competent authority with respect to residence permits. Worth mentioning

<sup>72</sup> Austria, Hungary, Latvia, Lithuania, Poland, Portugal and Slovenia.



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is the situation in Ireland: in the event of a negative decision on a residency application, it is possible to request an internal review by a more senior official of the immigration authority. Negative decisions cannot, however, be appealed to an independent tribunal. A negative decision can instead be the subject of judicial review proceedings in the High Court. The role of the High Court is, however, different from an appeal: while it can set aside a decision because of illegality, procedural unfairness or irrationality, it cannot re-examine the merits of the decision and cannot substitute its own view for that of the initial decision-making authority. Moreover, the decision of the High Court on these immigration applications is final; there is no appeal to the Supreme Court, unless the High Court itself certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that a further appeal should be heard.

Most countries foresee a two step procedure: firstly an administrative review and secondly a judicial one. Countries where the appeal can be made directly to the courts without having first gone through an administrative appeal are the exception. The administrative appeal is carried out either by the same authority that was in charge of issuing the decision, or by its superior administration; while the judicial review is filed with the appropriate court. In most cases the procedure follows general administrative rules, for example, an Administrative Procedure Act. Deadlines fixed for administrative and judicial review are thus the same as for other administrative acts. The court with which the judicial review is filed is, in most cases, the Administrative Court. Depending on the national Administrative Law provisions, an appeal against the decision of the Administrative Court to a superior Court (Supreme Administrative Court, Constitutional Court or Council of State) is possible.

However, the research shows that certain Member States establish specific bodies for dealing with appeals against decisions on residence permits, such as Belgium's Council of Aliens Appeals (with a specialized administrative jurisdiction) or Malta's Immigration Appeals Board. Another example concerns Sweden, where with the introduction of the Swedish Aliens Act in March 2006, Migration Courts were established. Subsequently, reviews of migration courts' decisions are made in the Migration Court of Appeal. In the UK, on the other hand, there are Asylum and Immigration Tribunals working according to specific Asylum and Immigration Tribunal (Procedure) Rules.

A few countries restrict the right of appeal to decisions in relation to certain permits. The appeal rights as regards permits related to work (including employment, self-employment and seasonal work) seem to be the most affected by limitations.

Moreover, lodging an appeal does not always have the effect of suspending the decision. This has been reported as a gap in ensuring an effective remedy in some countries. Unfortunately, a detailed analysis on this issue goes beyond the scope of this study.

#### Compliance with EU Law and International Law Instruments

Aspects of the above discussion are regulated in certain Directives at the EU level that target a specific group of immigrants and will be discussed in the relevant section.



There are currently no EU law instruments in force with the aim of regulating “general” admission conditions for third-country nationals.

However, the Commission’s recent Proposal for a Single Permit and Common Rights Directive aims at harmonizing the procedure for work and residence permits (see section Emerging EU Law and Policy on Migration, 2). It can be noted that the term “third-country worker” refers not only to those admitted to the territory of a Member State for the purpose of work, but also covers those who were initially admitted for other purposes and were also given access to the labour market on the basis of Community or national provisions (for example, family members, refugees, students and researchers). However, the proposed Directive does not target all immigration categories. As a result, the following groups fall outside the scope of the proposal: third-country nationals who are posted workers in accordance with Council Directive 1996/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services<sup>73</sup> as they are not considered part of the labour market of the Member State to which they are posted; intra-corporate transferees, contractual service suppliers and graduate trainees under the General Agreement on Trade in Services (GATS), following the same principle as posted workers; seasonal workers, given the specificities and temporary nature of their status; and third-country nationals who have acquired long-term resident status, due to their more privileged status and their specific type of residence permit.

As regards its compliance with international law, national legislation that foresees suffering from a disease that - according to national legislation - endangers public health as a reason to reject an application for a residence permit is problematic for two reasons. Firstly, it needs to be carefully assessed whether a threat to public health actually exists. For example, in the case of HIV infections there is no direct danger to public health, since the virus cannot be transmitted by the mere presence of a person with HIV in a country or by casual contact (such as through the air or from use of common vehicles); HIV is transmitted through specific behaviors that are almost always private. Restrictive measures can, in fact, run counter to public health interests, since exclusion of HIV-infected third-country nationals adds to the climate of stigma and discrimination against people living with HIV, and may thus deter nationals and third-country nationals alike from coming forward to utilize HIV/AIDS prevention and care services (UNAIDS/IOM statement on HIV/AIDS related travel restrictions 2004).

Secondly, it has to be ensured that the rejection of an application, in each individual case, is proportionate to any restriction of human rights. International law prohibits discrimination on the basis of health status (UNAIDS/IOM statement on HIV/ AIDS related travel restrictions; see *inter alia*, Commission on Human Rights Resolution 1995/44 and 1996/43). This has been reiterated recently by the 8<sup>th</sup> Conference of the European Health Ministers (Bratislava Declaration 2007). International Human Rights Law also states that all people are equal before the law and are entitled to the equal protection of the law, obliging legislatures to refrain from discrimination in all legislation (ICCPR, Art. 26). Any difference in treatment has to be based on reasonable and objective

<sup>73</sup> OJ 1996 L 18, 16 December 1996.

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criteria (Nowak, Covenant on Civil and Political Rights (CCPR) Commentary 1993). States usually cite protecting public health and avoiding excessive demand on public monies as the primary rationales for imposing HIV-related travel restrictions. Although the aim of protecting public health is a legitimate basis on which to limit certain human rights (Siracusa Principles), as noted above, it is questionable whether HIV-related restrictions are effective in protecting public health given the manner in which it is transmitted.

### Conclusions

There is no EU-wide common policy with regard to general conditions for immigration. However, the research shows most Member States impose such conditions, although they vary significantly. The most common requirements are: sufficient financial means, accommodation and valid health insurance. There is hence scope for the development of a common policy in this regard.

While the vast majority of Member States do not impose integration related conditions as general conditions, a trend can be noted towards inclusion of these conditions into national legislation. Integration related conditions, in particular exams on language and civic knowledge, present an important obstacle for potential immigrants.

It is noteworthy that two countries subject all immigration categories to a quota requirement.

Four main set ups can be observed with respect to authorities competent to deal with residence permit applications. The differences relate to whether residence permits are issued by an immigration office, the police or regional authorities. Moreover, immigration offices can operate within the Ministry of the Interior or the Ministry of Justice.

In general, some form of appeal rights for unsuccessful applicants for residence permits are provided for in EU Member States. With the gaining importance of immigration within EU countries, more States may come to establish appeals bodies specializing in immigration law, such as Migration Courts or Councils of Aliens Appeals.

### **2.3.2 Conditions according to Length of Residence**

This section will study the conditions imposed on newcomers by the EU Member States according to length of residence, in other words, the relationship between length of residence and the type of permit granted.

As regards the length of residence, a distinction can be drawn between short, long and permanent residence. Most Member States do not set exact time-lines or definitions for “short”, “long” and “permanent” residence (or “settlement”). The factors leading to this situation will be examined later in this section.

The *Glossary on Migration 2004* offers the following definitions for these terms: short-term migrant is “a person who moves to a country other than that of his/her usual residence for a period of at least three months but less than one year”; long-term migration is the migration for a period of “at least a year”; and permanent residence is defined as “the

right...to live and work...on a permanent (unlimited) basis". These definitions seem broadly applicable to the categories used by the EU Member States. Moreover, they are in line with concepts established in the EU legislation. For example, the Schengen Agreement foresees visas for up to 90 days, implying that stays for longer than this are in fact residence. The European Commission also makes a conceptual distinction between visa and residence according to the length of stay: a document that authorizes a stay in a country of more than three months is considered as a residence permit by the European Commission, even if named a "visa" under national law (Interview with Officials of the European Commission 2007).

### National Systems

Member States, in contrast to traditional immigration countries (such as Australia and Canada), tend to grant temporary permits upon arrival, even to those who are arriving for permanent residence purposes, such as family reunification. These permits are generally renewed and, over time, converted into longer-term permits, and eventually into permanent residence permits.<sup>74</sup> The underlying principle is "the longer you stay, the more rights you have".

The question then becomes how the gradual granting of longer-term residence permits is regulated. An important conclusion drawn from this research is that the legislation of Member States does not distinguish between "short", "long" and "permanent" residence permits. Rather, a distinction is drawn between temporary residence permits and permanent residence permits. Upon arrival, the foreigner is granted a temporary residence permit for a certain immigration purpose. This permit will be renewed various times, as long as the necessary conditions are fulfilled. The main criterion for the granting of a permanent residence permit in Member States is that the foreigner has lawfully resided for a certain number of years in the country.<sup>75</sup> The duration of residence is also mentioned as the main criterion for obtaining the EC long-term residence permit (Council Directive 2003/109/EC on the status of third-country nationals who are long-term residents<sup>76</sup> (Long-Term Residents Directive)).

It is noteworthy that once the permanent residence permit is obtained, the immigration purpose is no longer relevant. That is, the foreigner's right to residence is no longer subject to the existence of a specific immigration purpose. Permanent residents often enjoy rights similar to those of nationals.

### Analysis According to Length of Residence

This section analyses the conditions imposed by Member States according to length of residence. The analysis will be divided into temporary (comprising short- and long-term residence) and permanent residence.

<sup>74</sup> It is interesting to note that, according to OECD's *International Migration Outlook 2007*, any uncertainty associated with this gradual approach to permanent status does not seem to affect the volume of settlement outcomes. Proportionally, as many immigrants appear to reside in EU countries as in countries such as Australia and Canada (OECD Report 2007).

<sup>75</sup> Other additional conditions that apply will be looked at in more detail further on in this section.

<sup>76</sup> OJ 2004 L 016/44, 25 November 2003.

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### *Temporary Residence*

Temporary residence is linked to an immigration category. Hence, the conditions necessary to be granted temporary residence result from the general immigration conditions, plus the conditions specific to the relevant immigration type.

The duration of the temporary residence permits issued varies significantly amongst the Member States and is first and foremost dependent on the immigration purpose. States grant temporary residence permits for as long as the legitimate immigration purpose exists, for example, for the duration of the work contract or the studies.

Regulations concerning the duration of temporary residence permits are thus very vague. When seeking to assess the minimum duration of such permits in Member States, it can be observed that a minimum duration is determined according to the maximum duration of visas. Temporary residence permits are granted for a period of more than three months. The maximum duration of the temporary permit can be up to five years in the case of, for example, Lithuania. However, the practice in many Member States is to grant temporary residence permits for one year only, if no other indicators are available.

It is noteworthy that in a number of Member States temporary residence permits are called “visas”, even though they are in fact permits that entitle the holder to reside for a certain immigration purpose and for a period longer than three months. This ambiguity shows that a clear conceptual distinction between visa and residence permits (as, for example, drawn by the European Commission, see above) is missing in the national legislation of some EU Member States (see section Comparison, 2.2).

### *Permanent Residence*

A permanent residence permit allows a person to reside indefinitely within a country despite not being a national of the country. Even though this status is not equal to that of a national, it nevertheless grants the holder substantial rights. According to Niessen and Schibel, acquiring a strong residence status and/or nationality are complementary or alternative strategies for governments and individual immigrants in Europe (Niessen and Schibel 2004).

The Long-Term Residents Directive creates a permanent status for long-term residents and provides such persons with certain rights equal to those of nationals (Long-Term Residents Directive, Art. 8; Art. 11). All Member States except for Denmark, Ireland and the UK are bound by the Directive. The transposition of the Directive has led to a situation where, in a number of Member States, two types of permanent residence permits exist: a national permanent residence permit and the EC long-term residence permit, after transposition of the Directive into national law. As a result, nine Member States<sup>77</sup> have just one type of permanent residence permit, and thirteen Member States<sup>78</sup> have two. The Luxembourg Immigration Law of 1972 does not explicitly provide for the possibility

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<sup>77</sup> Bulgaria, France, Italy, Lithuania, the Netherlands, Romania, Slovakia, Slovenia and Spain.

<sup>78</sup> Austria, Belgium, Cyprus, Czech Republic, Finland, Germany, Greece, Hungary, Latvia, Malta, Poland, Portugal and Sweden.

of a permanent resident status for foreigners.<sup>79</sup> For Estonia, a third type of permit was reported: the “long-term residence of EU/EEA nationals”.<sup>80</sup> The three Member States that are not bound by the Long-Term Residents Directive (Denmark, Ireland, and the UK) have only national permanent residence permits. Ireland is peculiar in that, if adopted, the Immigration, Residence and Protection Bill 2007 will introduce a national long-term residence permit (not a transposition of the EU Directive), in addition to the already existing national permanent residence permit.

The following section will firstly compare the (national) permanent residence permits of the EU Member States, and then compare the EC long-term residence permits of the different EU countries.

### *1) (National) Permanent Residence Permits*

#### *Required Duration of Residence*

A permanent residence permit is typically granted after the immigrant has been residing on the territory of the State on the basis of temporary permits for a certain length of time. As seen above, permanent resident status is, in general, not connected with the immigration purpose; rather, the main condition is the length of time the immigrant has already resided in the country.

Six<sup>81</sup> of the countries that have a national permanent residence permit, require that the migrant has lawfully resided in the country for at least five years. For the rest of the countries, the number of years required ranges from three (Hungary) to fifteen years (Cyprus). In certain cases, some countries do not require previous residence, for example, for certain family members (e.g. Hungary). For Malta no requirement related to previous residence was reported. In the UK, the immigration purpose is not a condition for obtaining a permanent residence permit. However, there are different requirements as regards the duration of residence for the different immigration categories. For example, persons in employment and business usually need five years of prior residence, whereas no specific regulations are made for students and trainees. Another interesting case is Denmark, where permanent residence may be granted after five instead of the usual seven years if the immigrant has, inter alia, “significant ties” to the labour market and an “essential attachment” to Danish society.<sup>82</sup>

<sup>79</sup> The draft immigration law currently being discussed foresees the transposition of the Long-term Residents Directive.

<sup>80</sup> The permit of EC long-term residents that obtain the nationality of one of the Member States of the EU/EEA will be converted into a “long-term residence of EU/EEA nationals” permit.

<sup>81</sup> Belgium, Czech Republic, Estonia, Germany, Latvia and Ireland.

<sup>82</sup> “Significant ties” to the labour market implies that the foreign national is in a job that is not time-limited or is self-employed, and the business is not under liquidation or bankruptcy (Danish Settlement Order, Art. 2). It is also possible that the foreign national must declare that he will be employed for a year after the issue of the permanent residence permit (Danish Settlement Order, Art. 2). “Essential attachment” means that the foreign national has achieved a high level of contact within the Danish society, that the foreign national promotes his own integration through various activities, or that the foreign national has concluded a longer education in Denmark (Danish Settlement Order, Art. 3).

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### *Exception to the Rule: Immigration Category Matters for Permanent Residence Permits*

The main criterion for granting a national permanent residence permit is the duration of lawful residence in the EU Member State. This can, however, in certain circumstances, be dependent on the immigration category.

Some States foresee that in family reunification cases the residence requirement (having resided in the country for a certain length of time) does not apply under certain circumstances. For example, if the partnership (Sweden) or the marriage (Hungary) has existed for two years prior to submission of the application for family reunification, a permanent residence permit is granted immediately. Another example is the Czech Highly Skilled Workers Programme, where participants in the programme can apply after two and a half years (instead of five) for a permanent residence permit. Austria also has a specific settlement permit issued to “key employees”<sup>83</sup> under certain conditions, although not earlier than 18 months after settlement.

For Cyprus, it was reported that access to national permanent residence permit is denied for some groups of migrants. Only the following categories maybe granted a permanent residence permit: persons intending to be self-employed in agriculture or livestock-farming, in mining or in a business, persons with a certain amount of financial capital at their disposal and persons offered non-temporary work, as well as persons receiving a certain yearly income.

### *Integration Conditions*

A number of the Member States that grant a national permanent residence permit do not impose any integration-related conditions as a precondition to issuance.

Seven countries<sup>84</sup> impose a requirement related to knowledge of the local language. A beginner’s level is sufficient, however. It is interesting to note that the required level is not higher than that required as a general condition for residence, even though the foreigner has already lived in the country for a number of years.<sup>85</sup> Whilst Ireland’s national permanent residence permit does not require any language knowledge, if adopted, the Immigration, Residence and Protection Bill 2007 will introduce the requirement of having “reasonable proficiency in the Irish or English language” in order to obtain the national long-term residence permit.

Proof of civic knowledge is required by Germany and the UK as conditions for the national permanent residence permit. Germany requires basic knowledge of the legal and social order of Germany. The knowledge can be verified by the successful attendance of an integration course. In the UK, applicants for indefinite leave must possess knowledge of life in the UK.<sup>86</sup> In Denmark, civic knowledge is not required as such, but persons

<sup>83</sup> Whether a worker is a “key employee” is determined according to his salary. A minimum income of 2304 EUR is necessary or 1536 EUR, if the employment is in the sector of elderly and patient care.

<sup>84</sup> Austria, Denmark, Estonia, Greece, Latvia, Portugal and the UK.

<sup>85</sup> For countries that apply language requirements as a general condition and have national permanent residence permits, i.e. Austria and Germany.

<sup>86</sup> Exceptions are made for persons not aged between 18 and 65, former members of the armed forces and

covered by the Integration Act<sup>87</sup> must have completed the integration programme, which may contain elements of civic knowledge.

Out of the States that grant a national permanent residence permit, only Denmark imposes further integration-related conditions. The granting of a permanent residence permit is dependent upon the foreigner signing both an integration contract and a declaration of integration and active citizenship in the Danish society. Whereas the former is a contract related to participation in an integration programme, which is specifically designed for each foreigner, the latter is a declaration of willingness to integrate and be an active Danish citizen. If these conditions are not fulfilled, the granting of the unlimited residence permit is postponed. If adopted, the Irish Immigration, Residence and Protection Bill 2007 will introduce the requirement of having made “reasonable efforts to integrate” in order to obtain the Irish long-term residence permit.

### *Other Conditions*

The research shows that, other than length of residence and integration requirements, very few additional conditions are imposed by Member States. The most common of those that are imposed are: sufficient financial means, appropriate housing (Hungary specifies that six square meters for each person living under the same roof is required) and health insurance. Some States also require a clean criminal record. Additionally, Germany requires that the immigrant has paid 60 months of social security contribution or possesses private insurance providing equivalent protection.

### *Length of Procedures*

The information collected shows that the length of procedures varies between one (UK) and fourteen (Ireland) months.

## *2) EC Long-Term Residence Permit*

### *The Directive*

The Long-Term Residents Directive creates an EU-wide standardized status for third-country national long-term residents. Rights related to this status are expressed in Article 11 of the Directive. Long-term residents in the EU Members States shall enjoy equal treatment with nationals with regard to access to employment and self-employment, education and vocational training, recognition of professional diplomas, certificates and other qualifications, social security, social assistance and social protection, tax benefits, access to goods and services, freedom of association and affiliation and membership, as well as free access to the entire EU territory. Moreover, the rights of the third-country national to reside in another Member State are regulated in Chapter III of the Directive.<sup>88</sup>

those admitted in the category “other relatives”.

<sup>87</sup> The Act covers refugees and their family members lawfully residing in Denmark, with the exception of EU and EEA nationals. The Act foresees an “Introduction Programme” including, for example, Danish language classes.

<sup>88</sup> A third-country national holding an EC long-term residence permit in one EU Member State shall acquire the right to reside in the territory of the other Member States. This is subject to certain conditions, for

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It is the first time that the conditions for the movement and residence of third-country nationals in a second Member State have been established (Papagianni 2006).

### *Conditions and Procedures Established by the Directive*

The Long-Term Residents Directive defines EU-wide conditions for obtaining the EC long-term residence permit. The main condition for the acquisition of the permit is the duration of residence of the third-country national in the EU Member State. Article 4 stipulates that the status is granted after 5 years of legal and continuous residence. Furthermore, Article 5 requires that the third-country national must provide evidence that he has stable and regular resources, which are sufficient to maintain himself and his family members without recourse to the social system of the concerned State. Article 5 also requires that third-country nationals must provide evidence of “sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned”.

According to Article 5(2) of the Long-Term Residents Directive, discretion is given to the Member States to establish integration conditions for third-country nationals, in accordance with national law. In addition, Article 6 permits refusal of the permit based on grounds of public policy or security.

Procedures for the acquisition of long-term resident status are established in Article 7 of the Directive. The competent national authority shall give the applicant written notification of the decision as soon as possible and, in any event, not later than six months from the date the application was lodged. This time limit may be extended in exceptional circumstances.

According to Article 8 of the Directive, the status granted by the permit shall be permanent. The status is certified by an EC long-term residence permit that may be issued in the form of a sticker or as a separate document. The permit shall be valid for at least five years. On application, it shall be automatically renewed on expiry (Long-Term Residents Directive, Art. 8(2)).

### *Transposition of the Directive and its Conditions and Formalities*

Article 26 of the Long-Term Residents Directive required its transposition into national law by 23 January 2006. As noted, Denmark, Ireland and the UK are not bound by the Directive. As of 2 July 2007, the state of transposition notified by the Member States was as follows:<sup>89</sup>

Full transposition: Bulgaria, Czech Republic, Cyprus, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Slovakia, Slovenia and Sweden.

Partial transposition: Belgium<sup>90</sup> and Romania.

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example, possession of stable and regular resources and health insurance.

<sup>89</sup> According to information received by the European Commission on 2 July 2007. No information was received for Austria.

<sup>90</sup> The findings of this research, as of 23 November 2007, show that Belgium has meanwhile made amendments



No transposition: Germany,<sup>91</sup> Spain and Luxembourg.

### *Compliance with EU Law*

This section will study whether conditions established at the national level with regard to obtaining the EC long-term resident's permit are in line with EU law, in particular with the Long-Term Residents Directive.

#### *a) Five Years Residence*

All of those states that provide for an EC long-term residence permit have included the eligibility requirement of five years of residence in their national legislation.

#### *b) Stable and Regular Resources*

All States have included in the relevant conditions the requirement of stable and regular resources. The exact formulation varies from country to country; however, all require evidence that the individual will not be a financial burden to the social system of the State.<sup>92</sup>

#### *c) Health Insurance*

Twelve Member States<sup>93</sup> reported that health insurance is required under national legislation in order to obtain the EC long-term residence permit.<sup>94</sup>

#### *d) Integration Conditions*

Article 5(2) of the Directive states that Member States may require that third-country nationals comply with integration conditions established under national law. This is applied in various ways (if at all).

The research shows that whilst the majority of the countries do not require knowledge of the local language, 11 Member States<sup>95</sup> require a beginner's level of knowledge. It is noteworthy that the language requirement is often reflected in the national legislation of the former Eastern European countries that recently developed new migration legislation.

Five countries use the requirement of civic knowledge as a condition for granting an EC long-term residence permit. States use slightly different parameters to verify the foreigner's knowledge of the country and hence his integration. Germany asks for "basic knowledge of the legal and social order". In Greece, knowledge of "elements of Greek

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to the relevant legislation.

<sup>91</sup> The findings of this research, as of 23 November 2007, show that Germany has meanwhile made amendments to the relevant legislation.

<sup>92</sup> No information is available on this condition for Austria, Czech Republic, Latvia, the Netherlands, Slovenia and Spain.

<sup>93</sup> Belgium, Cyprus, Estonia, France, Germany, Greece, Hungary, Malta, Poland, Portugal, Romania and Slovakia.

<sup>94</sup> No information is available for Austria, Bulgaria, Czech Republic, Finland, Italy, Latvia, Lithuania, the Netherlands, Slovenia, Spain and Sweden.

<sup>95</sup> Austria, Estonia, France, Germany, Greece, Latvia, Lithuania, the Netherlands, Portugal, Romania and Slovakia.

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history and Greek civilization” are required; whilst applicants for an EC long-term residence permit in Lithuania must pass a basic examination on the country’s constitution. In the Netherlands, the civic integration examination applies: during an oral examination, applicants must answer questions regarding Dutch society.<sup>96</sup> Questions about the Dutch lifestyle, geography, transport, history, constitution, democracy, legislation, language and the importance of learning it, parenting, education, healthcare, work and income may be asked. In France, applicants must prove that they have followed a civic training, covering an introduction of French public institutions and the values of the Republic, including the equal status of men and women and the “*laïcité* principle”. The situation in Slovakia as regards civic knowledge is not yet clarified. In making a decision on an application, the level of the foreigner’s integration in the society is taken into account. However, the legislation does not specify what is examined in the determination.

As regards further integration conditions (i.e. other than language and civic knowledge) the situation in France and Slovakia should be highlighted. The vague legislation in Slovakia could be interpreted to include integration conditions other than language and civic knowledge. In France, the 2006 Law on Immigration and Integration introduces the requirement of “republican integration”. This requires fulfillment of the integration contract that the foreigner signed on receiving the residence permit for the first time; that is, proof of sufficient knowledge of the French language and public institutions, as well as the values of the Republic. In addition, effective respect for the guiding principles of France is assessed.

As described in section Comparison, 2.3.1, Austria, France and the Netherlands require integration-related conditions as general conditions in order to obtain a residence permit. The situation of a foreigner applying for a permanent residence permit is different to a foreigner applying for a first time residence permit. A foreigner applying for a permanent residence permit has usually been living in the country for five years. A better language and civic knowledge can therefore be expected. Hence, it is interesting to note that, despite this, Austria and the Netherlands apply the same integration-related conditions to both situations. The “republican integration” condition for a permanent residence permit in France requires the fulfillment of the “reception and integration contract” that the foreigner signed for the first residence permit, but also assesses the level of integration beyond these criteria. Other aspects, such as personal engagement to respect the principles governing France and effective respect for these principles, are also taken into consideration.

#### *e) Length of Procedure*

Article 7(2) of the Long-Term Residents Directive states that the national competent authority “shall give the applicant written notification of the decision as soon as possible and in any event no later than six months from the date on which the application was lodged”.

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<sup>96</sup> Language skills are tested in the same examination.

For four countries,<sup>97</sup> it was reported that a six month deadline is included in national legislation. For six countries,<sup>98</sup> the deadline foreseen is even shorter.<sup>99</sup>

### *Comparison of EC Long-Term Residence Permits and National Permanent Residence Permits*

The Long-Term Residents Directive seeks to standardize the rules governing permanent residence at the EU level and replace the national permanent residence permits (Interview with Officials of the European Commission 2007). However, under the current set up Member States may also keep their national permanent residence permits.

Conditions for the granting of national permanent residence permits are diverse. Nevertheless, the conditions for acquisition of the EC long-term residence permit and the national permanent residence permits are comparable. For both permits, the duration of residence in the Member State is the most important criterion. The conditions for the EC long-term residence permit focus on the possession of stable and regular resources and health insurance. These two are also amongst the most common conditions for the granting of national permanent residence permits. Furthermore, integration-related conditions are established for both national and EC permanent residence permits.

The situation whereby within one country, two permanent residence permits with similar conditions are available, is somewhat confusing. However, the main difference is that the national permit is only valid for one EU Member State, while the EC long-term residence permit will also be recognized in other EU Member States and even guarantees a right of residence in a second Member State under certain conditions. The national permit is hence often used by Member States to grant permanent residence if the conditions for the EC long-term residence permit are not fulfilled, but it is nevertheless in the interest of the country to grant permanent residence to a foreigner (for example, family members not yet having fulfilled the five-year continuous and lawful residence requirement).

### Conclusions

Member States draw a distinction between temporary residence and permanent residence. There is, however, no standardized concept of temporary residence. Also, the conceptual distinction between visas and residence permits is ambiguous.

The Long-Term Residents Directive has developed a common policy in the field of permanent residence. A substantial number of countries, however, continue to use national permanent residence permits in parallel with the EC long-term residence permit. For both national permanent residence permits and EC long-term residence permits, the main condition for granting permanent residence is the applicant's previous lawful residence in the Member State. A number of countries also require basic knowledge of the local language.

<sup>97</sup> Finland, Greece, Lithuania and the Netherlands.

<sup>98</sup> Bulgaria, France, Italy, Latvia, Poland and Slovenia.

<sup>99</sup> No information was received on the length of procedure for EC long-term residence permits for the remaining countries.

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From the information received, it can be concluded that the Long-Term Residents Directive has generally been transposed into national law, with the main conditions (five years of residence and possession of stable and regular resources and health insurance) being reflected. For a number of countries, no information on the inclusion of the requirement of health insurance and stable and regular resources was received. However, in most cases, these conditions will, in any event, be covered as it is required as a general condition for obtaining all kinds of residence permits.

### **2.3.3 Conditions for Specific Immigration Types**

#### **2.3.3.1 Family Reunification**

This section considers the conditions imposed on third-country nationals immigrating for the purpose of family reunification. While the Country Reports include some information on the right to family reunification for nationals and EU nationals, the comparison focuses solely on the right of third-country nationals already residing in an EU Member State to have their family join them. Thus, reunification of third-country national family members with EU nationals will not be discussed.

Council Directive 2003/86/EC on the right to family reunification regulates family reunification at the EU level and defines family reunification as “the entry into and residence in a Member State by a family member of a third-country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident’s entry” (Family Reunification Directive). The French *Termes Juridiques* defines the objective of family reunification as: “to live a normal family life (according to Article 8 of the European Convention on Human Rights)” (Glossary of Legal Terms 2006).

The EU Member States have developed quite specific immigration legislation with regard to family reunification. Under which circumstances a third-country national can be a sponsor for family reunification, as well as which members of his family are eligible for immigration under a family reunification scheme, is often defined in great detail (as outlined below). Moreover, States have set conditions that need to be fulfilled in order for the family reunification to take place. These conditions may include: sufficient financial means, available housing and income, and integration requirements.

Before entering into a general comparison, particularities in the national legislation of some Member States are noteworthy. National legislation in the Netherlands distinguishes between family reunification (where the family ties already existed abroad) and family formation (where the family is only formed through the immigration process and did not exist abroad beforehand).<sup>100</sup> For the purpose of this study, the term family reunification is used to describe both of these forms of reunion.

It is noted that admission of family members of non-EEA nationals into Ireland is not addressed systematically.<sup>101</sup> Express provision is made for only two categories – family

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<sup>100</sup> For example, the marriage takes place in the host country.

<sup>101</sup> Also note that Ireland has not opted into the Family Reunification Directive and is hence not bound by it.

members of workers and those of refugees. Other sponsors must rely on the exercise of ministerial discretion on a case-by-case basis. The Irish Government has twice published Information Notes on “Family Reunification for Workers”: first in 2005 and, more recently, in January 2007 (INIS 2007). These publications only offer guidelines and do not limit the discretion of the visa officer in determining applications (see Country Report Ireland). Luxembourg’s current legislation does not include provisions regarding family reunification. Consequently, the legal basis for family reunification is to be found in Article 8 of the ECHR. This unusual situation may be explained by the fact that when the Immigration Law of 1972 was passed, bilateral agreements on family reunification had already been concluded with the primary countries of origin of immigrants to Luxembourg, i.e. Portugal and former Yugoslavia (Kollwelter 2005; see Country Report Luxembourg).

National immigration legislation in the different EU Member States reflects differences in relation to eligible sponsors and family members, as well as other conditions imposed. However, when looking at family reunification in the EU, the Family Reunification Directive and its impact on harmonization of national legislation has to be considered.<sup>102</sup> Groenendijk notes that through the introduction of minimum standards, “several Member States, for the first time, have a clear and detailed set of rules on the right to family reunification in their national legislation” (Groenendijk et al. 2007).

In the following sections, the conditions and procedures with respect to the right of third-country nationals to family reunification are considered. Moreover, the compliance of national law with EU instruments, such as the Family Reunification Directive, and international law instruments are also examined.

### Conditions Concerning Immigration for Family Reunification

This section will examine conditions imposed on third-country nationals by EU Member States with respect to immigration for the purpose of family reunification. This includes: who can act as a sponsor and who is considered a family member, as well as conditions set by Member States with respect to quotas, financial means, accommodation, health insurance and integration.

#### *Eligible Sponsor*

A sponsor can be defined as “a third-country national residing lawfully in a Member State and applying, or whose family members apply, for family reunification to be joined with him or her” (Family Reunification Directive, Art. 2(c)).

<sup>102</sup> Another important piece of EU legislation with respect to family reunification is 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, OJ 2004 L 158/77. It is, however, outside the scope of this comparison, which focuses on the reunification of third-country nationals residing in the EU with their third-country national family members. Council Regulation 1612/68/EEC of 15 October 1968, OJ 1968 L 257/2, regulates the freedom of movement for EU workers and their families.

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Whether or not a lawfully residing third-country national can be a sponsor for family reunification purposes is often made dependant on his immigration status in the Member State.

It was reported for five Member States<sup>103</sup> that only third-country nationals with a permanent residence permit are eligible for family reunification. In most EU countries, however, it is sufficient that the potential sponsor holds a temporary residence permit. For some countries it was reported that a temporary permit valid for at least one year is required (e.g. Cyprus, France). The UK has a rather complex system under which not all categories of temporary residence (“limited leave”) permit holders may sponsor family members. For those categories that may, there are differences as to the family members that may be sponsored (for details see Country Report UK).

Other EU Member States grant different family reunification rights according to the type of residence permit. For example, holders of a temporary residence permit can bring nuclear family members,<sup>104</sup> while holders of a permanent residence permit are entitled to bring family members in a broader sense. In Estonia, for example, third-country nationals with a permanent residence permit are allowed to reunite with their parents and grandparents, which is not permitted for third-country nationals with a temporary residence permit. Likewise, in Slovakia, only foreigners with a permanent residence permit or a temporary residence permit for business or employment can be reunited with single parents who are dependent on the care of the sponsor. Reunification with parents is not possible for persons falling under other categories of temporary residence.

In addition to the legal status of the sponsor, a waiting period may be required. This means that sponsors cannot apply for family reunification immediately after the granting of a residence permit, but must have resided legally in the EU country for a certain period of time. Eleven countries<sup>105</sup> reported such a waiting period. The time of legal residence required before the third-country national is entitled to family reunification varies between the Member States. Spain requires that the foreigner has been lawfully residing in the country for 12 months. In the special case of Ireland, the guideline for workers requires that they have been employed for at least 12 months. With regard to family reunification for spouses in Denmark, it is required that the sponsor has been lawfully residing in the country for at least three years. Most of the remaining countries request a waiting period of two years.

### *Eligible Family Members*

Of crucial importance for third-country nationals is what – according to the relevant national legislation – constitutes a “family member”. In line with the Family Reunification Directive, spouse and minor children (members of the nuclear family) are admitted under the family reunification schemes in all EU countries. The situation is more difficult and

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<sup>103</sup> Austria, Denmark, Estonia, Germany and Latvia.

<sup>104</sup> The Preamble of the Family Reunification Directive defines nuclear family as spouses and minor children.

<sup>105</sup> Cyprus, Czech Republic, Denmark, Estonia (in some cases), France, Germany, Greece, Ireland (a worker must have been in employment for at least 12 months), Lithuania (for some cases), Poland and Spain.

regulations more diverse in cases of other family members, such as adult children, parents, grandparents and unmarried partners.

### *Spouses and Minor Children*

This study found that, as a general rule, all EU countries accept spouses and minor children of an eligible sponsor. However, some countries impose certain conditions on immigrants falling within this group.

#### *1) Spouses*

As regards the immigration of spouses, several Member States require that the spouse, or both sponsor and spouse, must have reached a minimum age. States argue that this kind of legal provision helps to prevent forced marriages. This reasoning was also introduced into Article 4(5) of the Family Reunification Directive, whereby “Member States may require the sponsor and his or her spouse to be of a minimum age, and at a maximum 21 years, before the spouse is able to join him or her.” In Germany, the Netherlands, the UK and for some categories in Slovakia, both the spouse or partner and the sponsor must be, at a minimum, 18 years of age. Greek immigration legislation foresees that the spouse must be at least 18 years old, while in Belgium and Lithuania the spouse or partner must be at least 21 years old.

Denmark is not bound by the Family Reunification Directive and has quite a sophisticated set of provisions, which are stricter than those laid down in the Directive. For spousal reunification, the individual living in Denmark must have held a permanent residence permit for at least three years. In addition, spousal reunification is subject to the requirement that both the sponsor and his spouse or partner are over 24 years of age, and that the combined attachment of the sponsor and his spouse or partner to Denmark be greater than their attachment to any other country. It quickly became clear after the latter “attachment requirement” was introduced in 2002, that it would impact many Danish citizens who had married and lived for long periods abroad. In order to avoid including such marriages, the 28-year rule was added, which exempts from the “attachment requirement” those partnerships whose sponsors have held Danish citizenship for more than 28 years (Danish Aliens Act, Art. 9). “Special consideration” is made if it is in Denmark’s interest to ensure that a qualified worker remains resident in Denmark.

Another requirement related to the family reunification of spouses is the duration of the relationship. Cyprus’ legislation requires that the marriage took place one year before submission of the application for family reunification.

#### *2) Minor Children*

With respect to family reunification of the third-country national sponsor with his children, States usually allow family reunification for those children who are minors under the national legislation. Some States, however, apply further restrictions as regards the maximum age of children. In Germany, the system is arranged at different levels: children under 16 years of age are admitted if the parents have a right of residence in

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Germany and their livelihood is assured; older children, up to the age of 18, are obliged to have good German language skills or their successful integration must be expected after finishing their education, although exceptions are made in cases of hardship. Children who are older than 18 years of age may move to Germany for the purpose of family reunification only in cases of extraordinary hardship. In Lithuania, a foreigner with a permanent residence permit and who is incapable of working due to being of pensionable age or suffering from a disability, can sponsor his children to immigrate to Lithuania. No age level is fixed in such cases. Danish legislation fixes the maximum age for children applying for family reunification at 15 years.

A common requirement amongst Member States is that minor children have to be unmarried in order to be eligible for family reunification.

### *Other Eligible Family Members*

Some EU Member States also admit other family members for family reunification under certain conditions. Other eligible family members include: adult children, direct relatives in the ascending line and unmarried partners. Furthermore, other categories specific to national legislation can be found.

#### *1) Adult Children*

For several countries it was reported that adult children of an eligible sponsor can be admitted under certain conditions.<sup>106</sup> Immigration laws in several countries name as an example health reasons or disability. Germany and Sweden<sup>107</sup> accept adult children in cases of hardship and other exceptional circumstances.

If the above mentioned conditions are fulfilled, adult children are admitted and there are no further limitations regarding their age.

#### *2) First-Degree Relatives in the Ascending Line*

Another noteworthy group is first-degree relatives in the ascending line. For fourteen Member States,<sup>108</sup> the possibility of family reunification with parents of the sponsor was reported. In addition, sometimes the parents of the sponsor's spouse are also entitled to be admitted. Only Estonia reported that grandparents of the sponsor may be eligible family members.

The national legislation in EU Member States requires an element of dependency, that is, in order to be an eligible family member for family reunification, the parent has to be dependent on the sponsor. Moreover, other conditions may be imposed: some immigration laws set a minimum age for parents of 65 years (Czech Republic, Netherlands) or pensionable age (Latvia). Furthermore, it may be a precondition that the parent is single

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<sup>106</sup> Estonia, Italy, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain admit adult children if they are dependent on the sponsor.

<sup>107</sup> The relevant Swedish regulation refers to "close relatives over 18 years".

<sup>108</sup> Cyprus, Czech Republic, Estonia, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovakia, Spain and the UK.



(Czech Republic, Netherlands) or that it is not appropriate for the parent to live in the country of origin (Estonia, Italy). The Dutch legislation provides that a single parent older than 65 can be reunited with the sponsor in the country if all (or most) his children live in the Netherlands and there are – as determined by the Dutch *Staatssecretaris of Justice* – no children in the country of origin to provide him with care.

It should be noted that Cyprus, Slovakia and the UK grant a right of family reunification with parents only to certain categories of third-country nationals. For example, in the UK only individuals who are settled or eligible for settlement have this entitlement; family reunification for parents is not an option in the case of individuals that have a limited leave permit.

### 3) Partners

For eight Member States<sup>109</sup> it was reported that unmarried partners (i.e. registered, non-registered or co-habiting partners, depending on the country) are considered as family members.<sup>110</sup>

Some countries impose additional conditions with respect to the character of the relationship. As an indicator of an endurable relationship its duration is evaluated. Under Danish immigration law, for family reunification of co-habiting partners a “permanent relationship of lasting nature” is required. Usually, applicants must be able to document that they have lived at a shared address for at least 18 months. For reunification of co-habiting partners in Finland, it is required that cohabitation has lasted for two years before arriving in Finland.

### 4) Other Family Members

Besides the above-mentioned groups, national legislation in some EU Member States admits additional persons under the family reunification scheme. Those family members can be, for example: siblings of the sponsor (Hungary); a person over whom the sponsor has parental custody or care (Hungary, Czech Republic, Denmark, Estonia); or the legal guardian of the sponsor if the sponsor is a minor (Finland).

### *Conditions Relating to Quotas*

Only Austria applies a quota to family reunification.<sup>111</sup> The number of residence permits to be granted for the purpose of family reunification is determined annually by the Austrian Federal Government in settlement regulations. In 2007, 4540 permits out of a total of 6500 permits were allocated for family reunification (Settlement Reg. 2007). In cases of family reunification, if the number of quota spaces in a province has been exhausted, the respective authority postpones the ruling until quota space becomes available, provided the

<sup>109</sup> Belgium, Denmark, Finland, Lithuania, the Netherlands, Portugal, Sweden and the UK.

<sup>110</sup> As regards regulations concerning family reunification for same sex partnerships, it was reported that the national law in Finland, the UK and the Netherlands permits the family reunification of same-sex partners.

<sup>111</sup> Estonia operates a general immigration quota that, in principle, applies to all immigration categories. However, it can be disregarded in the context of family reunification since most family members entering the country following the family reunification procedure are exempted from the quota requirement.

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concerned authority does not reject or refuse the application for other reasons. However, three years after submitting the application, further postponement of the decision is not permitted and the quota requirement no longer applies to that particular case.

In practice, this may cause problems. The Federal Government is not entitled to provide a higher number of permits than proposed by the provinces. It was reported that the province of Carinthia often makes proposals for a very low number of permits for family reunification, and hence applicants are confronted with waiting times of up to three years (see Country Report Austria). The compatibility of the quota requirement with EU and international law instruments is discussed below.

### *Conditions Relating to Sufficient Financial Means*

For a number of countries, “sufficient financial means” is a mandatory condition for family reunification.<sup>112</sup> However, as previously noted, in many countries possessing sufficient financial means (and thus not having recourse to the national social welfare system) is a general condition for all immigrants.

Commonly, it is requested that financial resources are “adequate to cover the needs of the family” (e.g. Greece, Cyprus) without “recourse to the social assistance system” (e.g. Cyprus). A more sophisticated system is in place in the Netherlands: the financial requirement changes according to the type of family reunification. For family reunification (where family ties existed before immigration) the sponsor must have a net income that equals 100 per cent of the social welfare norm for the size of family (with or without children). In the case of family formation (where family ties did not exist before immigration) the person residing in the Netherlands must have a net-income that equals at least 120 per cent of the minimum wage (including holiday allowance).

For Sweden, it was reported that sufficient financial means are not required under the family reunification scheme. In Belgium, the sponsor is only required to prove stable, regular and sufficient financial resources if he is a student.

### *Conditions Relating to Accommodation*

It was reported for a number of countries that proof of adequate accommodation is a necessary pre-condition for family reunification.<sup>113</sup> However, as with financial means, many countries impose the condition regarding accommodation as a general condition for all immigrants.

The requirement for accommodation can either be formulated very broadly as “adequate accommodation” (e.g. Greece) for the family, or expressed precisely, for example, by the number of square metres required per family member (for example, 12 square metres per person are required in Romania). Cyprus makes reference to “accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards”.

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<sup>112</sup> In the framework of this study, information on this issue was not received for all Member States.

<sup>113</sup> Information on this point was not received for all countries.

*Conditions Relating to Health Insurance*

For several countries it was reported that adequate health insurance for all family members is a pre-condition for family reunification.<sup>114</sup> However, as with financial means, Member States require this as a general condition for all immigrants.

*Conditions Relating to Integration*

For Germany, the Netherlands and France, certain integration conditions are to be fulfilled prior to granting family reunification. Those conditions have to be met before the third-country national family member enters the Member State.

In Germany, it is required that the immigrating spouse can speak the German language with a low level of proficiency. An exception to the language requirement is made for those third-country nationals who have the right of family reunification without a visa. Because of this exception, Turkish nationals claim ethnic discrimination, since Turkish nationals do not fall under the visa exception (see Country Report Germany). The law also foresees an exception to the language requirement if there is a recognizably “low integration need”,<sup>115</sup> if the marriage existed when the spouse entered Germany, or in cases where the immigrating spouse cannot prove simple linguistic proficiency due to a hindrance.

In the Netherlands, with some exceptions,<sup>116</sup> persons aged between 16 and 65 who wish to reside in the Netherlands for a prolonged period, including applicants for family reunification, must take the civic integration examination abroad. The test is an oral examination consisting of a language test and questions regarding Dutch society. Questions about Dutch lifestyle, geography, transport, history, constitution, democracy, legislation, language and the importance of learning it, parenting, education, healthcare, work and income may be asked. The test must be taken at a Dutch embassy or consulate abroad.

Under French Immigration Law, the sponsor for family reunification must confirm his respect for the fundamental principles recognized by the laws of the Republic (primarily the principle of equality between genders, the principle of secularity and the rejection of discrimination on the basis of origin).

As has been noted, the integration-related conditions applied in Germany and the Netherlands both pose substantial practical obstacles to applicants for family reunification. Significant efforts with regard to finances, time and motivation are required from the family member in order to learn the language and acquire the necessary civic knowledge

<sup>114</sup> Information on this point was not received for all countries.

<sup>115</sup> This notion is not further defined in the relevant law.

<sup>116</sup> The following persons are exempted from the requirement of an “MVV” (authorization for temporary stay) and thus from taking the civic integration examination abroad: Immigrants originating from: Australia, Canada, Japan and the United States of America; Immigrants for whom it is not safe to travel due to their health condition (in cases where the migrant is already in the Netherlands and a physician declares the migrant unfit to travel long distances due to possible health risks); Victims of human trafficking; Immigrants who qualify for a residence permit under Decision 1/80 of the EEC-Turkey Council of Association.

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while still residing abroad. Depending on the country of origin and the home town or village of the applicant, it might be difficult to find the infrastructure to study the required subjects. Furthermore, it should be noted that learning a language is certainly more difficult for elderly and/or those who are less educated or even illiterate. However, those persons have the same right to family reunification as more literate persons (see Groenendijk 2007).

In addition, these conditions are questionable from a legal perspective. Groenendijk argues that Article 7(2) of the Family Reunification Directive (to which the Netherlands and Germany are bound) only permits “integration measures” and not “integration conditions”. The Directive permits a State to require that prospective immigrants participate in a language course if there are such courses in the country of origin, but not to pass an exam as a condition for admission (Groenendijk 2007). Furthermore, Groenendijk states that the requirement to pass an integration test before entry can amount to a violation of Article 8 of the ECHR if the family member is unable to pass the test and there is no other country where the spouses can reasonably be expected to live, or the spouse in the EU Member State cannot be expected to give up the life he has built (Groenendijk 2007).

### Procedures Concerning Immigration for Family Reunification

#### *Residence Permits Granted to the Family Members*

The type of residence permit granted to the family member often depends on the category of the family member and the legal status of the sponsor. In some cases, family members are provided with a permanent residence permit upon entry. For example, under certain conditions, children of a foreigner holding a permanent residence permit in Slovakia will also receive a permanent residence permit. However, it is more common that the family members are granted a temporary renewable residence permit, often for the duration of one year.

In some countries, family members are granted a residence permit independent of the sponsor after a specified period of residence in the Member State.<sup>117</sup>

#### *Length of Procedure*

The length of procedure or waiting time ranges between EU Member States from two months (Poland, Slovenia) to a maximum of nine months (e.g. Belgium, Finland, Greece). The average length of procedure or waiting time is about five months. For Ireland (not bound by the Family Reunification Directive) it was reported that no maximum length of procedure is laid down in the laws and that in some cases authorities need up to 20 months to decide on the application (see Country Report Ireland).

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<sup>117</sup> For example, in the Netherlands, a family member holding a residence permit is eligible for an independent residence permit after three years. At this point, it is irrelevant whether the relationship with the sponsor still persists.

## Compliance with EU and International Law Instruments

### *EU Law*

The most important instrument for family reunification is Family Reunification Directive, which codifies the right to family reunification of third-country nationals at the EU level, sets conditions for admission, gives a certain amount of protection against expulsion and grants admitted family members a certain number of rights (Groenendijk 2004).

Article 20 of the Directive obliges Member States to transpose the Directive into national law by 3 October 2005. However, Denmark, Ireland and the UK are not bound by the Directive. According to the European Commission, the following countries had notified full transposition by 2 July 2007: Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and Sweden. Only partial transposition was notified by Germany and Romania. No transposition was notified by Bulgaria and Luxembourg (European Commission 2007).<sup>118</sup>

This section has examined the conditions and procedures for family reunification in Member States, which, as the commentary shows, are broadly in line with the provisions of the Family Reunification Directive. However, the following issues are noteworthy and merit further discussion.

It has been reported for several EU Member States that national legislation considers only a restricted circle of family members as eligible for family reunification. Many researchers noted with regret that the possibilities in Article 4(2) and Article 4(3) of the Directive, namely family reunification for first-degree relatives in the direct ascending line, adult unmarried children and unmarried partners, are not utilized. However, Article 4 clearly leaves the entitlement for those family members to be admitted to the discretion of the Member States. It has also been noted that national legislation in several countries foresees age limitations with regard to spouses and children. Article 4(5) of the Directive establishes that Member States may require a spouse to be of a minimum age, but that the maximum limit for this restriction is 21 years old. Article 4(6) provides that States may request that applications concerning family reunification of minor children have to be submitted before the age of 15 years. None of the age limitations introduced by the States for spouses and children go beyond the limitations established by the Directive.

It is questionable whether the integration related conditions to be met by family members before admission imposed by some Member States are permissible under Article 7(2) of the Family Reunification Directive. Groenendijk holds that the obligation to fulfil these conditions cannot be based on the Directive as the Directive does not foresee integration *conditions*, but rather integration *measures*. Moreover, the efficiency of these conditions for the facilitation of integration must be examined. It is certainly easier and more efficient for the immigrant to learn the language of the host EU Member State in that country.

<sup>118</sup> A research focusing solely on the Family Reunification Directive and whether it has been correctly transposed into national law in 25 EU Member States has been published recently, see Groenendijk et al 2007.

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The fact that Austria subjects all family reunification to a quota requirement is noteworthy. According to Article 8(1) of the Directive, the waiting period should not be longer than two years; although, by way of derogation it can be up to three years (Family Reunification Directive, Article 8(2)). Given, however, that the quota requirement no longer applies to eligible family members who have been waiting unsuccessfully for an available quota space for a period of more than three years, no violation of the Directive occurs in this regard.

### *International Law Instruments*

Various international law instruments make reference to the protection of the family as a fundamental unit of society, for example; the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social, and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the European Convention on Human Rights (ECHR); the European Social Charter (ESC) and the European Social Charter (Revised) (ESC Rev.); and the European Convention on the Legal Status of Migrant Workers (ECMW).

The following brief analysis considers the question of whether the above mentioned regulations imposed by EU countries (restriction of family members, age limitations, integration-related conditions and quotas) comply with international law and, in particular, with Article 8 of the ECHR, Article 19 of the ESC and Article 12 of the ECMW.

The European Court of Human Rights has interpreted Article 8 of the ECHR as imposing a positive obligation on Member States under certain circumstances. The Court assesses whether the State has, to a sufficient degree, fulfilled a positive obligation to protect the right to respect for the family life of one or more persons already living on its territory (Vedsted-Hansen 2007). In the case of *Gül v Switzerland*, the Court stated that a “fair balance” has to be struck between the interest of the individual and that of the community as a whole. The State’s obligation will depend on “the particular circumstances of the persons involved and the general interest”. Moreover, the Court declared: “Where immigration is concerned, Article 8 cannot be considered to impose on a State a general obligation to respect a choice by married couples of the country of their matrimonial residence and to authorize family reunion in its territory. In order to establish the scope of the State’s obligation, the facts of the case must be considered” (*Gül v Switzerland*). See also the judgment *Boultif v. Switzerland*, where the Court examines whether the decision made by the immigration authority meets the requirements of Article 8(2) of the ECHR; that is, whether, given the concrete circumstances of the case, the interference is “in accordance with the law”, “pursues a legitimate aim” and is “necessary in a democratic society” (*Boultif v. Switzerland*). According to Article 8(2) of the ECHR, the interests of national security, public safety or the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals and the protection of the rights and freedoms of others may all justify interference with the right to respect for family life. Hence, imposing the types of conditions on family reunification mentioned above does not, of itself, constitute a violation of Article 8 of the ECHR; however, a fair balance, considering the circumstances of the particular case, must be struck.

Another relevant norm in the context of family reunification for third-country nationals residing in EU Member States is Article 19 of the ESC Rev.<sup>119</sup> It can be noted that the ESC Rev. is limited in scope as it only applies to lawfully resident foreigners who are nationals of other contracting parties. All EU Member States are parties to the ESC or ESC Rev. As of 30 January 2008, 12 non-EU Council of Europe Member States had also ratified either the 1961 Charter or the 1996 revised Charter, along with EEA countries Norway and Iceland. Of relevance to this study are the conditions established by EU Member States applicable to third-country nationals that are nationals of a contracting party of the ESC. The European Committee of Social Rights has concluded that family reunification must be possible for children between 18 and 21 years of age or, alternatively, evidence should be provided that this right is granted in practice (ESC Report Austria and Greece 2006). As regards an extended waiting period before the family reunification can take place, the Committee has concluded that a waiting period of two years is not in conformity with the ESC (ESC report Greece 2006). In the specific case of Austria (where the application of a quota can lead to an extended waiting period), the Committee had previously concluded that this situation is not in conformity with the ESC. However, in its 2006 report it concluded that the situation is in conformity with the ESC, based on the information provided that no application for an initial establishment permit was rejected on the grounds that the annually determined quota had already been filled. If the quota had been filled, the decisions on applications still pending at that date, as well as applications received thereafter, were to be deferred until they could be dealt with under a subsequent establishment Order (ESC Report Austria 2006).

An analysis of family reunification also requires the examination of Article 12 of the ECMW. Article 12(1) stipulates that the waiting period shall not exceed 12 months. The scope of application of the convention is, however, relatively limited: as of 29 January 2008, the convention was only ratified by six EU Member States,<sup>120</sup> as well as Norway and four third countries.<sup>121</sup>

## Conclusions

Given the limited avenues for legal immigration to Europe, family reunification remains an important subject in the immigration debate.

Regulations for family reunification are more harmonized in EU Member States than for other important areas, such as employment. Whilst there are still important differences in how EU Member States are regulating family reunification for third-country nationals residing in their territory, some minimum standards have been set and, as a result, several countries have developed clear and detailed regulations on the issue.

Nonetheless, some aspects are still left to the discretion of the Member States. The first aspect is family reunification with family members that do not belong to the nuclear family, in particular: parents, adult children and unmarried partners. This merits further

<sup>119</sup> Article 19(6) explicitly grants the rights related to family reunification to self-employed migrants as well.

<sup>120</sup> France, Italy, the Netherlands, Portugal, Spain and Sweden.

<sup>121</sup> Albania, Moldova, Turkey and Ukraine.



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discussion, especially taking into account the fact that societies in European countries tend to understand the concept of “family” in a broader sense. A second important aspect that is regulated differently in the EU countries is the age restrictions for spouses and children, whilst a third is the waiting period before family members can join the sponsor.

As with other immigration categories, a trend can be observed towards the restriction of family reunification, for example, by introducing integration-related conditions. Since 2000, nearly all foreigners entering the Netherlands must pass an exam on the Dutch language and civic knowledge before they can be admitted. Germany and France, on the other hand, introduced such conditions only fairly recently. Denmark constitutes another example of a country with a restrictive family reunification policy. Danish legislation foresees a whole set of conditions that must be met, especially for family reunification with spouses. Conditions relate to a high minimum age requirement for spouses as well as an integration condition (the “attachment requirement”).

The individual conditions for family reunification examined in this study cannot be said to violate the Family Reunification Directive. Likewise, the conditions do not *per se* violate Article 8 of the ECHR. In order to assess whether Article 8 of the ECHR is in fact respected, a fair balance test between the interests of the individual and those of the community as a whole must be conducted for each concrete case. Some of the conditions imposed at the national level, such as extended waiting periods before the family reunification can take place and restrictive age limitations with regard to family reunification for children are, however, problematic in view of the ESC.

Further development of a common EU policy and liberalization of national regulations with regard to family reunification have the potential to render family reunification more transparent and equitable.

#### **2.3.3.2 Work**

In this section the conditions for one specific immigration category, immigration for the purpose of work, are examined. This study highlights that at the national level three main categories of work can be distinguished: employment, self-employment and seasonal work. Each of these categories will be considered here.

Contrary to certain other immigration categories, for example family reunification and studies and training, there is currently no measure in force at the EU level concerning immigration for work from third countries. Given the demographic concerns and labour market needs in Europe, it might seem inconsistent that this important issue has not yet been addressed at the EU level. This situation is mainly due to the reluctance of Member States to cede sovereignty in this matter and their desire to keep their capacity to adjust their labour migration policy according to the situation of the national labour market (Permanent Dictionary 2007; Groenendijk 2005).

Discussions on the Commission’s 2001 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<sup>122</sup> were fruitless and the proposal was eventually

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<sup>122</sup> COM (2001) 386, 11 July 2001.



withdrawn (see also section Emerging EU Law and Policy on Migration, 2). However, through the launch of the Green Paper on an EU approach to managing economic migration,<sup>123</sup> coupled with a public hearing in June 2005, a new political momentum was created (Carrera 2007). The Commission's Policy Plan on Legal Migration of December 2005<sup>124</sup> (Legal Migration Plan 2005) laid down a road map for the development of a common policy in this field. And as Commissioner Franco Frattini pointed out in his speech at the High-Level Conference on Legal Immigration in Lisbon in September 2007: "in the past three years, EU leaders have recognized the importance of concerted action in this field" (Frattini 2007). In this regard, on 23 October 2007, the Commissioner put forward two legislative proposals: a general Framework Directive on the basic socio-economic rights of all third-country workers and a Directive on the admission of highly skilled migrants.<sup>125</sup> The proposals for these two Directives are discussed in the section Emerging EU Law and Policy on Migration, 2.

The following section of the study provides an overview and analysis of the situation as regards labour migration of third-country nationals in the 27 EU Member States and can therefore contribute to the forthcoming discussions of the two proposals, as well as on legal migration more broadly.

### 2.3.3.2.1 Employment

This section will look at the first of the three subcategories of work: employment (including employment of highly skilled workers).

In *Lawrie-Blum v. Land Baden-Württemberg* (Case 66/85), the European Court of Justice noted that: "The essential feature of an employment relationship... is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration." This form of work is different from self-employment (working for oneself). A differentiation also has to be made between employment and seasonal employment, as the latter is concerned with occupation only during limited parts of the year.

It should be noted that current labour migration debates at the EU level focus increasingly on employment, with highly skilled workers at the centre of the discussion as their immigration is politically less controversial than that of other workers. The first of the four sector-specific EU Directives to be proposed by the European Commission is on the admission of highly skilled workers (Legal Migration Plan 2005).

For an overall picture of the situation at the national level, it should be kept in mind that the needs of the national labour market are not only satisfied by individuals who are immigrating explicitly for the purpose of work, but also by other types of immigrants entering under humanitarian obligations of the State, such as persons entering as refugees or for family reunification. Only immigration for the purpose of work can be managed by the State so as to be tailored to the national labour market situation.

<sup>123</sup> COM (2004) 811, 11 January 2005.

<sup>124</sup> COM (2005) 669, 21 December 2005.

<sup>125</sup> COM (2007) 638 and COM (2007) 637, 23 October 2007.

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All of the EU Member States have established national legislation regulating the admission of third-country nationals for the purpose of employment. The underlying objectives can be summarized as ensuring the availability of needed work force, while at the same time protecting employment for workers already in the labour market. See, for example, Section 70 of the Finnish Aliens Act: “The purpose of the system of residence permits for employed persons is to support the availability of labour in a systematic, prompt and flexible manner, with consideration for the legal protection of employers and foreign employees and the employment opportunities for labour already in the labour market.”

At the EU level, protection of the domestic (EU-wide) labour market is laid down in the Community Preference Principle (see also section Emerging EU Law and Policy on Migration, 2). It is endorsed by a non-binding Council Resolution: “Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State’s regular labour market” (Council Resolution of 20 June 1994).<sup>126</sup> Thus, based on the Community Preference Principle, the “domestic labour market” comprises nationals of that EU country, other EU nationals and lawfully residing third-country nationals. The labour market tests in EU countries aim to verify that no suitably qualified candidate is available in the domestic labour market.

### Procedures Concerning Immigration for the Purpose of Employment

This section examines admission procedures, including: the number of required applications and permits, who has to apply to obtain these permits (the prospective employer or employee), where the application(s) should be made, which authorities are competent to issue the permits and how long the procedure usually takes.<sup>127</sup>

#### *Permits and Applications*

EU Member States use different systems to regulate immigration for the purpose of employment. There is no unified procedure; hence different permits for the employer and employee are required across the EU. Some Member States require up to three permits<sup>128</sup> for employment related immigration. The difficulties of such requirements can be exacerbated by the possible involvement of different agencies.

Member States attach great importance to the protection of the local employment market and are obliged to adhere to the Community Preference Principle. Hence, generally, foreigners are required to possess not only a permit to reside in the country, but also a specific permission allowing them to work.

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<sup>126</sup> OJ 1996 C 274/3, 20 June 1994.

<sup>127</sup> All the 27 EU Member States are covered here, however, the work-permit scheme of Estonia, primarily used for those who have been admitted for other reasons and are already on the territory, e.g. family reunification, students, etc. is not considered here since it does not cover immigration for the primary purpose of employment.

<sup>128</sup> A work permit, residence permit and employer authorization.

When analyzing the different permits granted, an important difference is whether the approval for immigration for the purpose of employment is certified through one permit only, or whether two permits are necessary. If only one permit is required, the third-country national will be granted a residence permit for employment that enables him to reside in the territory and to work. Where two permits are needed, a residence permit and a work permit must be applied for separately. More than two thirds of EU Member States have a system in place whereby two permits are required. It is noteworthy that there are also differences as to who has to apply for the permits and to whom the permits are issued – the potential employer or employee.

As regards residence and employment permits (two-permit system) and residence permits for employment (one-permit system), in the vast majority of EU Member States, these permits have to be applied for and are issued to the third-country national. However, in Finland, for example, the application for a residence permit for employment can be made either by the third-country national or by the employer on his behalf. With respect to work permits (under the two-permit system), a variety of possibilities are established at the national level: the permit can be applied for by the prospective employee and issued to the employee (e.g. Denmark); it can be applied for by either the employer or the prospective employee and is issued to the employee (e.g. Ireland); or it is applied for by the employer and issued to the employer (e.g. the Netherlands).

As mentioned above, in addition to residence and work permits held by the foreigner, some countries require a third authorization, in the form of an employer authorization. This additional permit requirement serves the purpose of protecting the employment market. The Belgian system is “job vacancy oriented”: before the prospective employee can apply for a work permit, his employer must apply for an “occupation authorization”, which will only be issued if it is not possible to find a worker in the local labour market that is able to occupy the vacant position (labour market test).<sup>129</sup> The Czech Republic also foresees a triple permit system: both the authorization for the employer and the work permit are issued only if a suitable resident candidate cannot be found. Moreover, the application for the employer’s authorization must contain, *inter alia*, the exact number of foreign employees required (including the percentage of female employees) and a document confirming the entrepreneur’s authorization to engage in business. In this sense, the Czech system goes beyond controlling only the access of a single foreigner to the labour market to look at the different characteristics of the company as well.

The above analysis shows that existing systems are complex. It was often noted in Country Reports that the existing systems are perceived as an obstacle to labour migration. For example, for the Czech Republic it was reported that the complexity of the system “conflicts with the government’s approach to support immigration into the country and attract more migrant workers” (see Country Report Czech Republic).

Moreover, there have been various concerns about the work permit system and the lack of protection for the migrant worker. One of the disadvantages mentioned is that work

<sup>129</sup> Labour market tests are discussed below.

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permits are sometimes granted to the employer and not to the third-country national. Baruah and Cholewinski argue that “if the employer holds too much authority over the worker, this may lead to abusive situations, particularly if it is difficult or impossible for the migrant to change employment, while he or she is within the country” (Baruah and Cholewinski 2007, p. 19).

### *Place of Application*

Following the usual practice, in the case of immigration for employment, as for any other immigration purposes, the third-country national must apply for a residence permit or an entry visa abroad, before entering the host country.

Similarly, the individual must apply for the work permit while he is still abroad. That is, the third-country national must have secured a job before entering an EU Member State. An exception to this is the “job seeker permit” (for example, utilized in Spain) which is discussed in detail below. It is noteworthy that in Poland and Italy a system is in place whereby the final permission for residence for the purpose of employment is given only once the foreigner is present in the country. However, before entry a promise to issue the work permit (Poland) or the approval of the proposed “residence contract” (Italy) has to be obtained.

### *Competent Authorities*

In the EU, as with the granting of other immigration permits, residence permits are issued by the national authority competent for immigration (see section Comparison, 2.3.1). More interesting is the question of which national authority is in charge of issuing the work permit for a third-country national. Is this within the competence of the authority in charge of immigration or the authority in charge of employment? In the vast majority of EU countries, authorities responsible for employment are involved in the process of granting work permits. Depending on the national set up, these authorities are, for example, the National Employment Agency (France), the Ministry of Labour and Social Insurance (Cyprus) and the Border and Immigration Agency (a division of the UK Home Office). In addition, the responsibility might lie with a regional authority; for example, in Belgium the regional authority in charge of employment issues the work permit. In countries that employ a quota for the admission of workers, employment authorities tend to have less involvement in the actual issuing of a permit to the individual. Usually, they have examined the needs of the national labour market and given their input in the establishment of the national quota.

Where the employment authorities are involved, their involvement takes one of two forms: either the employment authority itself issues the work permit, or the immigration authority requests its opinion before the work permit is granted. A slight preference for the first option can be observed in EU Member States.

Such systems lead to the difficulty that third-country nationals (and occasionally employers) have to deal with two different authorities, which exacerbates the complexity and length of the process. In Finland, the system has been criticized as being too complex

and not easily understandable; employers have complained about the complexity of hiring foreign workers and have asked the Directorate of Immigration to simplify the process (Interviews with Finnish Migration Officials 2007). This problem has been addressed by the fourth Policy Guideline of the Government Migration Policy Programme, which states that the permit system for labour immigration shall be simplified (Finnish Migration Policy Programme 2006).

### *Length of Procedure*

The length of procedure to issue a residence permit for employment is determined by the general rules for residence permits (see section Comparison, 2.3.1). As regards the work permit, the legislation in a substantial number of Member States does not regulate the application processing period. It should also be noted that processing times vary significantly between Member States. This study shows that the competent authorities need, on average, between three days (Bulgaria) and two months (e.g. Lithuania) to process an application for a work permit. Taking into account that an initial work permit in some Member States is only granted for the duration of one year, or even less if the duration of the work contract indicates this, a two-month processing period is relatively long.

### Conditions Concerning Immigration for Employment

This section considers the conditions established by EU Member States that must be fulfilled before third-country nationals may migrate for the purpose of employment. It should be remembered that foreigners migrating to an EU Member State also have to fulfil the general conditions for residence (see section Comparison, 2.3.1). In addition to these general conditions, conditions specific to the immigration purpose are imposed by States. In the case of immigration for work, the main conditions are those aimed at regulating access to the national employment market, such as labour market tests or quota requirements. This section will focus solely on the specific conditions related to immigration for the purpose of employment.

### *Conditions Regulating Access to the National Employment Market*

As noted in the previous section, all EU Member States oblige third-country nationals to have some kind of permit before taking up employment on their territory, usually in the form of a work permit. Thus, having a work permit is the pre-condition to being granted a residence permit for employment. Hence the work permit has to be applied for by the employer or the foreigner (depending on the country) and be granted by the competent authorities before the foreigner can apply for a residence permit. In systems where only one permit is required, labour market requirements and immigration related aspects will be examined in one procedure.

### *Labour Market Test or Quota for Labour Migration*

The national legislation in EU Member States requires that authorities make an assessment of the domestic labour market situation prior to granting a work permit. Member States

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usually adopt one of two options: a labour market test or a quota system. Only very rarely are both applied, for example, in Estonia.

The objective of labour market tests and quotas is to manage labour migration and admit as many third-country national workers as are demanded by the national economies, in the sectors where an additional work force is needed. At the same time, labour market tests and quotas also serve to control and/or limit labour migration and thereby protect national employment markets and workers already residing in the country.

Quotas<sup>130</sup> are fixed numerical limits for the admission of migrant workers into a country. Quotas can be set as an actual fixed number of migrant workers to be admitted or as a percentage of the total labour force (Baruah and Cholewinski 2007). Disadvantages of quotas include their lack of flexibility and inability to respond to fluctuating labour needs (Baruah and Cholewinski 2007).

A labour market test is designed to assess whether there are persons on the domestic labour market available for the work in question (see Community Preference Principle). A labour market test might require that the employer posts the job vacancy with national labour authorities for a specified period of time or demonstrates that he has taken active steps to recruit locally for a specified period of time (Baruah and Cholewsinki 2007).

Whereas quotas work mainly on an annual basis and are established in accordance with an estimate of labour demands for the oncoming year, labour market tests are conducted for each migrant worker individually. Quotas are commonly established at central government level, in coordination with different relevant stakeholders, such as employers and unions, regional authorities and civil society. In contrast, labour market tests are conducted by the competent authority, such as Labour Market Boards or Employment Offices. Quotas are often broken down into sub-quotas, thereby establishing priorities for professional groups that are particularly in demand. In a country that operates labour market tests, prioritizing is usually obtained by waiving the labour market test for professional groups where there are shortages or that are otherwise in demand, for example, specified categories of highly skilled workers (Baruah and Cholewsinki 2007).

### *Labour Market Tests and Quotas in EU Countries*

The majority of EU Member States apply a labour market test, with Austria, Estonia, Greece, Italy, Portugal, Romania, Slovenia and Spain adopting a quota system.

In Estonia, both labour market assessments and quotas are used: third-country nationals seeking to work in Estonia are subject to a labour market test as well as the pre-condition that there must be a quota space available. Estonia operates a general immigration quota, applicable to all kinds of immigration, regardless of the immigration category. The Estonian Aliens Act defines the annual immigration quota as “the quota for foreigners immigrating to Estonia which shall not exceed 0.05 per cent of the permanent population of Estonia annually”. This is a fixed number and no automatic annual revision is foreseen.<sup>131</sup>

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<sup>130</sup> See footnote 65, section Comparison, 2.3.1. For the purpose of this study, the term “quota” is used for actual quotas and for ceilings.

<sup>131</sup> See discussion of the quota in Estonia in section Comparison, 2.3.1.

A special situation is also reported for Hungary. A work permit will be granted if no qualified worker can be found on the local labour market (labour market test). However, the Minister of Employment Policy and Labour, in agreement with other ministers concerned, may adopt a decree specifying: the preconditions and procedure of work permit authorization for third-country nationals; the highest number of foreigners to be employed in individual occupations in any county, the capital city, and in Hungary as a whole at any one time; and the occupations in which no third-country nationals may be employed due to the trends and structure of unemployment at the given time.

*Particularities of Quotas for Labour Migration in EU Member States*

Austria only allows “key employees” to reside for the specific purpose of employment. For “key employees” a quota space needs to be available and the Labour Market Service must have given a favorable expert opinion.<sup>132</sup> Moreover, there is a double quota requirement for work related immigration. Firstly, the granting of an initial settlement permit is subject to a quota. The maximum number of settlement permits to be granted is set annually by the Federal Government. The Government considers the absorption capacity of the domestic labour market and the proposals of the provincial authorities. The numbers stated in any such proposals may be exceeded solely with the consent of the provincial authority. Additionally, there is a quota system for issuing work permits: the number of employed and unemployed foreigners must, in principle, not exceed eight per cent of the number of employed and unemployed Austrian citizens.

In Greece, a joint ministerial decision is issued annually, laying down the maximum number of residence permits to be granted for the purposes of paid employment and seasonal work. The decision is based on reports by regional Committees, including, *inter alia*, the Secretary General of the Region, representatives of the Greek Manpower Employment Organization, the Board of Labour Inspectors and the local chambers of commerce and industry. The quota is broken down into prefectures and professions or types of employment and places for paid employment and those for seasonal work.

Similarly, in Italy the annual admission quota for third-country nationals for the purpose of salaried employment, including seasonal and self-employed work, is based on a needs assessment at the regional level. It is interesting to note that in establishing the quotas, restrictions are applied to those third countries which do not participate in the fight against irregular migration.<sup>133</sup> Preferences are accorded to workers with Italian origin and quotas are reserved for third countries with which Italy has signed readmission agreements and subsequent agreements designed to regulate entry flows and procedures for re-entry. The quotas established for 2007 confirm the importance of these agreements; nationals of countries such as Moldova, Egypt and Morocco (with which Italy has signed agreements in 2003 and 2005 respectively) are accorded a significant share of the general quota of 47 100 admissions assigned for non-seasonal employees: 8000 Egyptians, 6500 Moldovan and 4300 Moroccans workers (Decreto Flusso 2007).

<sup>132</sup> The expert opinion being that of the provincial office of the Labour Market Service concerning the qualification of the third-country national as a key employee.

<sup>133</sup> The notion of “no cooperation” is not further defined.



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In Slovenia, the National Assembly's Resolution on Migration Policies also determines an annual quota. The Slovenian quota embraces a range of subcategories, including employed workers, "directed workers",<sup>134</sup> workers on vocational and other training, seasonal workers and workers performing individual services. The quota varies from year to year, however, by a general rule it cannot exceed five per cent of the working age population of Slovenia.

For Spain, it was reported that the quotas are not sufficient to cover the labour need. There is a large gap between official and real demand for labour. The conclusion of experts is that actual demand can only be met by resorting to irregular migrants (see Country Report Spain).

#### *Particularities of Labour Market Tests for Labour Migration in EU Member States*

Member States employ different methods in order to assess whether qualified workers are available in the domestic labour market for the position in question. Usually, the burden of proof is on the employer.

National legislation generally requires the employer to involve the competent Employment Agency, for example, by reporting the vacancy to the Employment Agency or by posting and/or recruiting for the vacancy through the Employment Agency. Quite common is a regulation whereby the Employment Agency – based on labour market policy considerations – gives its consent for the issuance of a work permit to a third-country national. In the case of Sweden, the employer also has to request and submit to the Employment Agency an opinion of the trade union on the matter. In some countries, national legislation requires the employer to demonstrate that he has actively tried to recruit from the domestic labour market.

Sometimes, specific time limits are defined in these requirements. For example, in the Netherlands, the vacancy must be reported to the authorities five weeks before submitting the application for a work permit. In Bulgaria, the employer must prove that he has actively sought to recruit from the domestic labour market for a period of 15 days.

The above mentioned conditions can be applied cumulatively. For example, in the Netherlands, the employer must report the vacancy as well as proving that he has conducted extensive recruitment activities.

The aim of the labour market tests is to verify that no suitably qualified candidate is available on the domestic labour market (comprising nationals of that EU Member State, other EU nationals and lawfully residing third-country nationals). Information concerning the respect of the Community Preference Principle was not available for all Member States. However, it can be said that for the vast majority of countries where information on this issue was available, respect is given to the *Community Preference Principle*, although sometimes with the exception of third-country nationals already on the territory. For example, in Cyprus, "a basic precondition for the granting of a permit

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<sup>134</sup> Workers that are employed by a foreign company located abroad.



for employment of foreign workers is the absence of prospects to meet the specific needs of the employer by the local force (Cypriot or European citizens)” (Department of Labour 2007). No mention is made of lawfully resident third-country nationals. In Ireland, it is necessary to meet a labour market test requiring that “in the first instance a national of the EEA or Switzerland, or in the second instance a national of Bulgaria or Romania, cannot be found to fill the vacancy” (Department of Enterprise, Trade and Employment 2007). Here also, the preference for lawfully residing third-country nationals seems not to be respected.

National legislation in many Member States permits exemptions from the requirement of the labour market test for specific groups of workers, for example, where there is a shortage of such workers (e.g. for highly skilled workers in Belgium). Consequently, in those cases the Community Preference Principle is not applied.

### *Other Conditions*

As observed in the sections dealing with immigration for employment purposes, there are no EU-wide standards, but rather a range of different approaches across the EU Member States. No strong trends with regard to conditions other than labour market tests or quotas (“other conditions”) can be identified. Moreover, it should be noted that for a number of countries no other conditions have been reported at all. It is concluded, therefore, that the focus for Member States is principally on labour market tests and quotas and not on “other conditions”.

Some EU countries<sup>135</sup> require proof that the third-country national possesses the qualifications, education, experience, and/or skills that are necessary for the position he is going to fill. For example, Bulgaria requires that the third-country national has, at minimum, a secondary professional education or, if this is not the case, possesses specific professional qualifications and experience corresponding to the activity in question.

Three countries<sup>136</sup> require knowledge of the local **language** as a specific condition for immigration for the purpose of employment.<sup>137</sup> Whereas Romania requires a minimum knowledge of Romanian from all foreigners, in Poland and Latvia only foreigners working in certain professions are required to have language knowledge.<sup>138</sup>

Further examples of “other conditions” include, for example, that the third-country national has to fulfill health-related requirements in Estonia and Romania; whilst Romania and Slovakia request proof of the absence of a criminal record from the third-country national; and in Sweden the foreigner must be “fully ready to return home” once the employment contract has terminated.

<sup>135</sup> E.g. Estonia, Ireland, Portugal, Romania.

<sup>136</sup> Latvia, Poland and Romania.

<sup>137</sup> As opposed to the language requirement being a general condition, for which, see section Comparison, 2.3.1

<sup>138</sup> If the employment entails a social aspect or public activities.

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There are a few noteworthy exclusion conditions.<sup>139</sup> In Belgium, only workers coming from third countries that have entered into an agreement with Belgium related to the employment of workers<sup>140</sup> are allowed to immigrate for the purpose of employment. In Ireland, immigration for employment is not possible in certain (excluded) categories, for example, general operatives and labourers, hotel tourism and catering staff (except chefs). In the UK, it is generally required that the qualification for the position is at least a university degree, a Higher National Diploma or three years work experience at a minimum National Vocational Qualification Level 3.<sup>141</sup>

Whereas the above mentioned conditions are required of the third-country national or are related to the job (i.e. exclusion conditions), there are some other conditions that are required of the employer. In some countries it was reported that, as a pre-condition to the grant of employment-related permits, salary and employment conditions for the third-country national must be the same as for national workers (e.g. Denmark, Poland, Sweden). In other countries this requirement might follow from other legislation or collective agreements that have not been examined in the framework of this study. Moreover, national legislation in some countries requires that the employer arranges housing for the foreigner (e.g. France) and/or that the employer has to cover the costs for the return journey of the foreigner after expiration of the employment contract (e.g. Sweden). Some countries require that the employer's business is registered in the country (e.g. Ireland).

### Work Permits

This study has shown that work permits for third-country nationals not yet on EU territory are limited in time and/or scope in all EU Member States.

As regards the scope of a work permit, it may be tied to a certain professional field, a region or a specific employer. The analysis of the Country Reports reveals that quite commonly the work permit is granted for a specific job with a specific employer. In this case, at least for the duration of the first work permit, the foreigner is tied to a specific employer. For example, in Ireland, the foreign worker is expected to stay in employment with the initial employer for twelve months. If the worker wishes to change employer thereafter, he must apply for a new work permit (Department of Enterprise, Trade and Employment 2007). There are, however, provisions in place in the national legislation of some Member States enabling the foreigner to access the labour market freely after several years of working in the country. For example, after several years of working in the country on restricted work permits, third-country nationals in Belgium and Austria have the right to apply for an exception card ("Befreiungsschein" in Austria or the work permit B in Belgium). It is worth noting that, in any event, if the status according to Council Directive 2003/109/

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<sup>139</sup> Moreover, it should be noted that work restrictions for third-country nationals also exist outside the scope of immigration laws, for example, many countries impose restrictions on third-country nationals with regard to working for their civil services.

<sup>140</sup> Belgium has entered into agreements with Algeria, Bosnia-Herzegovina, Croatia, Morocco, Montenegro, Serbia, The former Yugoslav Republic of Macedonia, Tunisia and Turkey.

<sup>141</sup> However, this general requirement does not apply to persons admitted under the Sector Based Scheme (SBS) for less-skilled occupations in the food processing industry and for persons admitted under the Seasonal Agricultural Workers Scheme (SAWS).

EC on the status of third-country nationals who are long-term residents<sup>142</sup> (Long-Term Residents Directive) is granted, third-country nationals have access to employment and self-employment on an equal footing with nationals.

As observed previously, Baruah and Cholewinski point out that tying the work permit to an employer may lead to the dependency of the migrant worker on a particular employer or enterprise. This, in turn, may result in an unproductive employment relationship or even exploitative conditions (Baruah and Cholewinski 2007). The situation is further aggravated by the fact that foreigners are usually less aware of their rights and have less access to information on, and hence support from, for example, trade unions (PIELAMI Report 2006).<sup>143</sup> Moreover, a third-country national should be able to improve his skills and ameliorate his personal situation by having the ability to take up other job offers (Carrera and Formisano 2005).

Initial work permits for foreign workers are also limited in time. They are usually granted according to the length of the work contract; however, depending on the country, a time limitation may be attached to the work permit despite the fact that the work contract is indefinite. Although there are differences in the length of time initial work permits are granted for, in many EU countries they are granted for one to two years. The UK grants work permits for a maximum of four to five years.

### Measures Regarding the Facilitation of Labour Migration

This section will look at legislative measures that Member States have adopted in order to facilitate labour migration. This study has focused on three different areas: job seeker permits, provisions for highly skilled workers and bilateral labour agreements.

#### *Job Seeker Permits*

The system commonly employed by EU Member States requires that the third-country national has secured a job before coming to the EU. He must apply from abroad and will obtain work and residence permit(s), as required, based on the work contract. This system has been criticized as an obstacle to facilitating labour migration, since it is overly difficult (indeed, almost exceptional) to be hired for a job without having had contact with the potential employer.

The concept of job seeker permits might be a tool to help ease the pressures on employers to hire irregular migrant workers. For example, under such a scheme, job seekers are given the possibility to enter the EU legally and search for a job for a certain period of time. Consequently, they would not need to resort to irregular migration or immigration channels not foreseen for economic activity.

The Commission's Legal Migration Plan 2005, as well as the Green Paper on an EU approach to managing economic migration, mention job seeker permits, but do not develop the matter further. So far, few Member States have taken up this idea.

<sup>142</sup> OJ 2004 L 016/44, 25 November 2003.

<sup>143</sup> The report discusses unauthorized employment. However, its findings on the protection of migrant workers' rights through enhanced information are also applicable to legal employment.

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In 2000, Spain introduced a “job seeker visa”. The Organic Law 4/2000 provides a channel for third-country nationals to access the Spanish labour market. Article 39 of the Organic Law 4/2000 creates “job seeker visas”, which allow third-country nationals to stay in Spain for a period of up to three months to look for a job. After that time, those who have not found employment must leave the country. The number of visas to be granted is determined annually by a joint ministerial group after an assessment of the national labour market and consultations with local governments and major trade unions.<sup>144</sup> The resolution of the joint ministerial group can include specifications for the candidates who desire to obtain a “job seeker visa”, for example, certain qualifications or specific work experience can be demanded. The resolution can also limit the job search to a geographical area or certain sectors, where demand cannot be met by local workers. It is emphasized that the procedure cannot be used as a mechanism to regularize irregular third-country nationals already residing in Spain.

The “job seeker visa” satisfies the needs of the labour market and rectifies a situation in which these are satisfied by irregularly residing migrants (Castellano et al. 2003). Given the thorough assessment of the labour market and the annual determination, the number and types of “job seeker visas” can be adapted to the needs of the national labour market. At the same time, the procedure allows the Government to better regulate migration flows, prevent irregular migration and therefore reduce situations of abuse and exploitation, to which those in irregular situations might be exposed.

Other countries are also discussing the possibility of “job seeker permits”. In April 2007, the Italian Parliament approved a Bill that foresees the reservation of quota space for job seeker permits (Disegno di legge 2007, Art. 1a(11)). Sweden is currently reviewing its labour migration policy with a view to its revision, with job seeker permits being one of the innovations being discussed (Intergovernmental Consultations (IGC) Meeting 2007).

Although not exactly a job seeker permit, a number of EU Member States have a similar provision for third-country nationals who have graduated from educational institutions in the Member State concerned. Third-country national graduates from universities in France, Germany, Ireland, the Netherlands and the UK can, after finishing their studies, stay on for a period of three months (Netherlands), six months (France, Ireland) or twelve months (Germany, UK) in order to look for a job.

### *Provisions for Highly Skilled Workers*

The major focus of the current labour migration debate in Europe is on highly skilled workers. There is a broad consensus amongst Member States, as well as other stakeholders, that highly skilled third-country nationals are needed within their national economies. In his speech at the High-Level Conference on Legal Immigration, in Lisbon on 13 September 2007, the European Commissioner responsible for Justice, Freedom and

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<sup>144</sup> For 2007, the Spanish government determined that the maximum number of “job seeker visas” to be granted was 455. All “job seeker visas” were limited to house-keeping services, while in 2006 other categories of employment, such as construction work and waiter, were included in the joint ministerial decision (Spanish Ministry for Labour and Social Affairs 2007).

Security stated: “We have to look at immigration as an enrichment and as an inescapable phenomenon of today’s world, not as a threat. We should take more account of what statistics tell us: 85 per cent of unskilled labour goes to the EU and only 5 per cent to the USA, whereas 55 per cent of skilled labour goes to the USA and only 5 per cent to the EU. We have to reverse these figures with a new vision, and that calls for new tools...Europe has to compete against Australia, Canada, the USA and the rising powers in Asia.”

A recent study found that 54 per cent of first generation immigrants from Med-MENA countries (Mediterranean countries of the Middle East and North Africa) who hold a university degree reside in Canada and the USA alone, while 87 per cent of those having a secondary level education or lower are in Europe (Euro-Mediterranean - Consortium for Applied Research on International Migration (CARIM) 2005).

A synthesis report produced by the European Migration Network (EMN) in May 2007 identifies the demand for highly skilled workers in eleven EU Member States (EMN 2007).<sup>145</sup> Consequently, Member States are aiming to attract highly skilled workers. A broad distinction can be drawn between: a) countries that operate special programmes or immigration schemes for highly skilled workers; and b) countries where the immigration of highly skilled workers is dealt with through ordinary immigration schemes but certain facilitations are accorded to highly skilled third-country nationals.

The research identified six Member States with specific programmes or schemes for highly skilled workers: Czech Republic (“Pilot Project: Selection of Qualified Foreign Workers”); Denmark (“Job Card Scheme”); France (“Competence and Talent Card”); Ireland (“Green Cards Scheme”); the Netherlands (“Knowledge Migrant Workers Scheme”); and the UK (“Highly Skilled Migrants Programme”).<sup>146</sup> For another six countries,<sup>147</sup> it was reported that facilitations for highly skilled workers are accorded within the ordinary immigration scheme.

Given the different education systems in third countries as well as EU countries, the recognition of diplomas is problematic and constitutes one of the challenges when setting up a highly skilled workers programme.<sup>148</sup> Member States use a variety of criteria in order to assess qualifications. Some countries look at the salary the foreigner is going to earn, whilst other States have a points system in place (e.g. Czech Republic, UK). A points system can be based, for example, on the assessment of education, salary, link to the host country and age. Another example is Austria, where the special qualification of “key employees” is checked by the Labour Market Service. In France, a definition applies that leaves discretion to the competent authority: in order to be admitted to the Competence and Talent Card Scheme, it is required that third-country nationals “participate in a significant and durable way to the economic development of France and the country of origin”.

<sup>145</sup> The report is based on the findings of National Contact Points of the European Migration Network.

<sup>146</sup> Note that as of 2008 the UK will begin implementing a new Australian style points-based immigration system. Tier 1 for highly skilled workers will be implemented first in early 2008.

<sup>147</sup> Austria, Belgium, Bulgaria, Germany, Italy and Portugal. The special situation of Austria should be noted: immigration for the purpose of employment is only possible for “key employees”.

<sup>148</sup> For further discussion, see Nonnenmacher 2006.

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The facilitations afforded are, inter alia, easier access to the temporary or even permanent residence permit (e.g. Czech Republic, Germany) and faster processing of the application (e.g. two weeks in the Netherlands). Furthermore, some Member States do not require a labour market test (Belgium) or may allocate quota space especially for highly skilled migrants.

But there is also criticism of the establishment of favorable provisions for highly skilled workers, concerning both the principle of doing this and the actual process. Carrera suggests that the profit-orientated rational of highly skilled labour schemes institutionalizes the state distinction between third-country nationals that are deemed useful, and therefore wanted, and all “the others” that are viewed as a burden to state welfare resources, i.e. exclusion of the unwanted migrants is hence justified (Carrera 2007). Although the French Competence and Talent Card was introduced in 2006 and it is thus too early to assess its effectiveness, the question has been raised whether, if at all, it is possible for the competent French authority to assess “significant and durable participation in the development of the country of origin” (Guimezanes 2006).

Furthermore, “brain drain” is discussed as a possible downside of the migration of highly skilled workers. Research suggests that some 400 000 scientists and engineers from developing countries (between 30 and 50 per cent of the total stock) are working in research and development in industrial countries, compared with around 1.2 million doing the same at home (Meyer and Brown 1999). Facilitation of immigration for highly skilled workers has the potential to seriously hamper the development of third countries. A recent communication from the European Commission proposes reducing the risk of brain drain through the promotion of circular migration. Moreover, specific measures to address brain drain should be tailored to the situation in the country concerned; for example, not to recruit actively in sectors under stress (Communication on Circular Migration and Mobility Partnerships 2007).<sup>149</sup> The Commission’s Proposal for a Highly Qualified Migrants Directive also points out that “States should refrain from pursuing active recruitment in developing countries in sectors suffering from a lack of human resources” and that “ethical recruitment policies and principles” should be applied.<sup>150</sup> However, ethical principles are often non-binding and, in any case, it is difficult to monitor and, hence, sanction infringements. Today’s highly skilled workers programmes managed by European governments do not involve active recruitment, but rather offer facilitation with regard to the admission process. However, more discussions at the national level regarding highly skilled worker programmes and how they impact on migration and development are desirable.

### *Bilateral Labour Agreements*

Another tool to facilitate labour migration is inter-state cooperation through the adoption of bilateral agreements. After World War II, immigration within Europe was characterized by bilateral labour agreements on the recruitment of workers, often between Northern

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<sup>149</sup> COM (2007) 248, 16 May 2007.

<sup>150</sup> An example of ethical recruitment policies and principles is the “Commonwealth Code of Practice for the International Recruitment of Health Workers”, adopted in 2003.

and Southern European countries. The enlargement of the EU and the free movement of workers in the EU rendered many of these contracts obsolete.<sup>151</sup> However, there are still active bilateral labour agreements in force between EU countries. For example, in 2003, approximately 44 000 persons were working in Germany under temporary contracts in accordance with bilateral government agreements with Central and Eastern European countries. Bilateral arrangements between the competent Polish and German authorities regulate the seasonal work of Polish nationals in Germany. In 2003, 318 549 seasonal workers<sup>152</sup> (most of them Polish citizens) were employed in Germany (German Federal Ministry of the Interior 2005).

It is interesting to see how EU Member States use bilateral agreements with respect to third countries. In particular, Southern European countries use bilateral labour migration agreements in a much broader sense than simply for the recruitment of workers. When designing the quota for labour immigration, Italy, on a preferential basis, reserves quotas for nationals of third countries with which it has signed readmission agreements and subsequent agreements on regulating entry flows and procedures for re-entry. On the other hand, Italy applies restrictions to the quotas with respect to states who do not participate in the prevention of irregular migration. Within the context of these agreements, special provisions can govern, for example, migrant flows for the purpose of seasonal labour. These bilateral agreements may also be used to establish procedures for the issuance of work permits. Spain has concluded general labour migration agreements with third countries such as Colombia, Ecuador, Morocco, the Dominican Republic and Peru. Spain's agreements aim at furthering a comprehensive national policy on immigration. Beyond the pure employment issue, they provide for cooperation in the fight against irregular immigration, exploitation and violation of social rights, document fraud and trafficking of human beings (see Country Report Spain).<sup>153</sup>

It should be noted that a similar approach is being advocated in the proposal for *mobility partnerships* currently being discussed at the EU level (Communication on Circular Migration and Mobility Partnerships 2007).<sup>154</sup>

### Compliance with EU Law and International Law Instruments

This section examines whether conditions with regard to the admission of third-country nationals for employment comply with EU Law and International Law Instruments.

As seen above, no regulations specific to the admission of third-country nationals for the purpose of employment exist at the EU level. It is worth mentioning that Turkish nationals lawfully resident and employed in EU Member States can benefit from favourable

<sup>151</sup> There are, however, limitations to the free movement of workers in the EU in the form of transitional arrangements, see section Emerging EU Law and Policy on Migration, 1.

<sup>152</sup> The distinction between seasonal work and temporary work is often blurred. However, seasonal work is dependent on the rhythm of the seasons, see also the section Comparison, 2.3.3.2.3.

<sup>153</sup> Spain has also concluded labour-related bilateral agreements with Romania and Poland.

<sup>154</sup> Mobility partnerships encompass a framework agreement for active cooperation between third countries and the EU on the management of migration flows, including the fight against irregular migration and better access for third-country nationals to the EU territory (COM (2007) 248).



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access to employment provisions under EU law in accordance with Decision 1/80. The Community Preference Principle, which may be a condition regarding admission for the purpose of work, appears to be generally adhered to (see above for details).

Under international law, admission policies are, in principle, subject to the sovereignty of a State. In other words, unless international obligations (for example, obligations under the Geneva Convention of 1951, etc.) would be contravened, in principle, the admission of third-country nationals falls within the discretion of States. The authority of States to regulate the movement of persons across their borders is understood as flowing from the concept of an international system of States, with States possessing primary authority over their territory and population (International Legal Norms and Migration 2002).

Obligations for States to admit third-country national might derive from international agreements, such as the General Agreement on Trade in Services (GATS).<sup>155</sup> Mode 4 of the GATS is defined as supply of a service by a supplier of one WTO member through the presence of natural persons in the territory of another WTO member on a temporary basis. Mode 4 service suppliers generally gain entry to fulfill a specific purpose (e.g. to fulfill a service contract, either as a self-employed person or as an employee of a foreign service supplier).<sup>156</sup> The exact regulation, for example with regard to the time frame of the allowed temporary stay, depends, however, on the WTO member countries commitments. GATS commitments are guaranteed minimum standards, so countries tend to be conservative, with most committing to a more restrictive regime than they actually employ (WMR 2005).

Article 4 of the European Convention on the Legal Status of Migrant Workers<sup>157</sup> (ECMW) establishes a “right to admission” for migrant workers to the territory of a contracting party. The scope of application of the Convention is, however, limited (see section Comparison, 2.3.3.1.). Moreover, the right to admission depends on whether or not the migrant worker was granted an authorization for taking up paid employment. Article 4 hence gives merely a right to enter the territory of a contracting party if the migrant is allowed to take up employment in that State. There are no provisions in the convention granting migrants a right of access to employment. A contracting party is merely under an obligation, subject to the conditions laid down in its legislation, to issue or renew a work permit for those migrants whom it has permitted to enter its territory to take up paid employment (ECMW, Art. 8(1)).

Article 18 of the European Social Charter 1961 (ESC) and the European Social Charter (Revised) 1996<sup>158</sup> (ESC Rev.) is concerned with the right to engage in a gainful occupation in the territory of other contracting parties. It applies only to those contracting party nationals already in the territory of another contracting party. The Appendix to the ESC clarifies that Article 18(1) is “not concerned with the question of entry into

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<sup>155</sup> All EU Member States are WTO members.

<sup>156</sup> However, Mode 4 does not cover people seeking access to a labour market in general or those looking for permanent residence.

<sup>157</sup> For the scope of application of the Convention see above, section Comparison, 2.3.3.1.

<sup>158</sup> For the scope of application of the Charter see above, section Comparison, 2.3.3.1.



the territories of the contracting parties and [does] not prejudice the provisions of the European Convention on Establishment”.<sup>159</sup> Moreover, the obligations set out in Article 18 are subject to a significant limitation, which stipulates that the right of nationals of contracting parties to engage in any gainful occupation in the territory of other contracting parties on an equal footing with the nationals of the latter is “subject to restrictions based on cogent economic or social reasons” (ESC, Art. 18(1)).

The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (MWC), as of 31 January 2008, has been ratified by 37 States, almost exclusively by countries of origin. For several reasons the Convention has not been ratified by any EU Member States.<sup>160</sup> The convention grants protection to migrant workers and their families. However, no further specific regulation regarding conditions for admission are included beyond confirming that States have the right to establish the criteria governing the admission of migrant workers (MWC, Art. 79).

States are obliged to respect the non-discrimination principle when establishing and implementing admission policies, such as Article 26 of the ICCPR. A different treatment based purely on the national origin or nationality of a person is therefore prohibited if it cannot be reasonably and objectively justified.

States are obliged to protect the rights of migrant workers once in their territory. From a human rights perspective, the practice of issuing the work permit to the employer and tying the third-country national to a specific employer is problematic.<sup>161</sup> The lawful residence of the third-country national depends on the continuance of the work relationship between employer and foreigner. This kind of situation is prone to abuse and exploitation. A certain degree of protection is afforded by Article 8(2) of the ECMW, stipulating that “a work permit issued for the first time may not as a rule bind the worker to the same employer or the same locality for a period longer than one year” (Cholewinski 2004). Furthermore, Article 16 of the MWC entitles all migrant workers and their families to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions. Similarly, ILO Convention 143 protects migrants who have resided legally in the State’s territory for the purpose of employment. Article 8 provides that such migrants cannot be treated as irregular migrants “by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permit.”<sup>162</sup>

## Conclusions

From the foregoing, it can be concluded that the regulations for immigration for the purpose of employment in the EU Member States are complex. The current regulations are a challenge for employers and third-country national workers alike, as different permits

<sup>159</sup> European Convention on Establishment 1965.

<sup>160</sup> For further discussion see MacDonald and Cholewinski 2007.

<sup>161</sup> See also Follmar-Otto 2007.

<sup>162</sup> This Convention has been ratified by 23 States as of 31 January 2008.

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are often required, with the involvement of various authorities. There is currently no EU legislation on the topic in force and channels for admission as well as the conditions and formalities established vary between Member States.

It is clear, however, that EU Member States want to closely manage labour migration. The underlying rationale of national admission policies for employment should be to admit as many third-country national workers as are needed by their national economies and in the specific sectors where they are needed. Labour migration serves economic purposes, but at the same time, it should be restricted in order not to allow more workers to immigrate than needed and thus to protect the national employment markets and workers already residing in the country. The current labour migration discussion and policies are focused first and foremost on highly skilled labour. The subject of migration of less-skilled labour is not sufficiently covered. It is noticeable that in the foreseen frameworks at the EU level, less skilled labour is only considered with respect to seasonal employment.

As noted, with respect to the work permit system, it is problematic that the foreigner is tied to the employer in many Member States.

#### **2.3.3.2.2 Self-Employment**

This section will look at the second of the three subcategories of work: self-employment. In particular, procedures and conditions concerning immigration of third-country nationals for the purpose of self-employed work will be examined.

According to Council Directive 86/613/EEC on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood,<sup>163</sup> self-employed workers are “all persons pursuing a gainful activity for their own account, under the conditions laid down by national law, including farmers and members of the liberal professions”. Hence the important differentiation between employment and self-employment is that a self-employed person does not work for another person who has the right to control details of his work performance.

The Green Paper on an EU approach to managing economic migration discussed a number of ideas and questions regarding self-employment. Also, the Commission’s unsuccessful proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities in 2001 addressed self-employment. The Legal Migration Plan 2005 mentions it only marginally. It states that the proposed package of a general framework directive and four specific directives is not exhaustive: “appropriate, additional proposals may be presented in areas where further examination is needed (e.g... to regulate the self-employed, etc.)” (Legal Migration Plan 2005). However, there has been less discussion and focus on immigration of third-country nationals for self-employment recently.<sup>164</sup>

<sup>163</sup> OJ 1986 L 259/56, 11 December 1986.

<sup>164</sup> The recently adopted Directive 2006/123/EC on Services in the Internal Market, OJ 2006 L 376/36, 12 December 2006, has received much attention. The Directive covers “any self-employed activity”; however, only “services supplied by providers established in a Member State” fall within the scope of the Directive. Hence, it is not of relevance to this study, which looks at admission for the purpose of self-employment of

It is to be noted that all 27 EU Member States regulate self-employment. Self-employment is classified as a form of employment in the national legislation of Member States; indeed, similar rules and principles as for (salaried) employment apply. However, no EU country has any regulations or programmes in national legislation that aim at facilitating the immigration for needed or desired self-employed persons. This differs from (salaried) employment, where a number of EU Member States have established highly skilled worker programmes or have specific provisions for this group.

As with (salaried) employment, regulations regarding self-employment at the national level differ across the EU. There are no legal instruments with regard to self-employment of third-country nationals at the EU level.

### Different Categories of Self-Employment

It is interesting to note that some Member States distinguish between different forms of self-employment. In Bulgarian and Greek national legislation there are two categories, in Romania there are three, and in the UK there are four. The classifications of the subcategories vary. Generally speaking, countries divide the category into individual professional activities, investment and innovation. In the UK, there is a specific category for writers, composers and artists.

The discussion below analyses the procedures and conditions (including restrictions) with regard to immigration for the purpose of self-employment in general. No differentiation according to subcategories is made.

### Procedures Concerning Immigration for Self-Employment

In this section the procedures established at national level in order for third-country nationals to immigrate to EU Member States are examined, with a particular focus on procedural requirements applying to specific permits.

#### *Permits Needed*

The nature of the permits required for self-employment varies between the Member States. Some countries require a specific permit that authorizes self-employed activities, whilst others only require a residence permit. It is, however, not necessarily the case that States adopting one system for employment, adopt the same system for self-employment. For example, although France has a one-permit system for (salaried) employment, it nevertheless requires a “Foreign Tradesman Identity Card” for self-employment. Conversely, in the Netherlands, where a work permit is required for employment, no such permit is required for self-employment; only a residence permit for self-employment is necessary.

Fifteen Member States<sup>165</sup> require third-country nationals who wish to immigrate for the purpose of self-employment to apply for a residence permit **and** another specific

third-country nationals which are not yet residing in the EU.

<sup>165</sup> Belgium, Bulgaria (note that Bulgaria has two schemes and only requires a specific authorization for self-employment for one scheme), Czech Republic, Denmark, France, Ireland, Latvia, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain and the UK.

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permit that authorizes the foreigner to engage in self-employed activities. There are different names for this second authorization: Professional Card (Belgium), Business Permission (Ireland), Foreign Tradesman Identity Card (France), and so on. Both the work and residence permits for self-employment are limited in time. The limitations vary slightly from country to country; the usual time-frames are between one year (e.g. the Netherlands) and three years (e.g. Germany).

As a general rule, and as is the case for (salaried) employment, third-country nationals are usually required to apply for the relevant permits and visas abroad. For the issuance of the permits, immigration authorities cooperate with the relevant national authorities concerned with business activities. Depending on the country, these are either the same authorities that are responsible for work permits (e.g. UK) or specific agencies (e.g. the Romanian Agency for Foreign Investment).

### Conditions Concerning Immigration for Self-Employment

Migrants must fulfill the general conditions required for entry and residence (see section Comparison, 2.3.1). They must also comply with specific conditions for immigration for the purpose of self-employment. This section is only concerned with the latter, in particular, the conditions related to the viability of the intended business and its benefit to the national economy. In addition, the restrictions established by some countries with regard to the self-employment activities of third-country nationals are examined.

#### *Conditions Regarding the Viability of the Planned Business*

The conditions established by Member States regarding the viability of the planned business vary significantly from country to country. However, the national legislation in most countries imposes conditions relating to economic evaluation, financial resources and the qualifications of the foreigner to conduct the business.

Nearly two thirds of EU Member States perform an economic evaluation of the planned business.<sup>166</sup> However, the authorities are, in effect, ascertaining whether the business undertaking is realistic and the likelihood for its economic success. This assessment can be based on various documents. The most common is a business plan; other documents requested may include a statement of accounts, preliminary contracts or funding agreements.<sup>167</sup> As this category is not regulated at the EU level, the rules vary between Member States.

The majority of EU Member States have a requirement concerning the availability of financial resources. It can either be required that “sufficient financial means” are available to start the business, or that a certain specified amount is invested in the business. Moreover, it may be required that funds be deposited in a national bank account (e.g. Greece) or transferred to the country (e.g. Ireland). The minimum amount a third-country national needs in order to fulfill the criteria can be up to one million Euros (investor’s scheme in the UK).

<sup>166</sup> This evaluation is called “check for profitability” (Finland), “economic viability” (France), etc.

<sup>167</sup> For example, if a foreigner purchases an existing company in Sweden in order to conduct it as his business, a report on the company by an accountant authorized in Sweden is necessary.

Another condition often required by Member States is whether the third-country national possesses the relevant qualifications. Evidence of necessary certification, licenses and the like may be required for the performance of the business in question, prior to granting the relevant permit (e.g. Bulgaria, Czech Republic).

### *Conditions Regarding the Benefit to the National Economy*

Many countries require not only that the business is economically viable as such, but also that it is of benefit to the national economy. Again, the exact form of this requirement varies among Member States. For example, Austria requires an economic or a labour market interest at the national or regional level for the concerned business; in Belgium, a “professional card”<sup>168</sup> is delivered if a certain number of new jobs are created, economic needs answered or innovative activities are promoted; in Estonia, the business has to be necessary for the development of the national economy; in Germany, “superior economic interest, special regional need or positive effects on the economy” has to be demonstrated; whilst the Netherlands requires that the business be innovative and beneficial to the Dutch economy.

Worth mentioning in this context is that certain categories<sup>169</sup> of self-employment in Bulgaria, Romania and the UK require the creation of jobs (between two and fifteen work places have to be created). In Germany, the legislation foresees that where there is no “superior economic interest”, a permit will still be granted if the recipient is to invest at least 500 000 EUR through the business, or if five jobs will be created.

### *Other Conditions*

Other conditions imposed on third-country nationals wishing to immigrate for self-employment purposes include, *inter alia*: being of good character (e.g. Ireland), the absence of a criminal record (e.g. Cyprus, Romania) and submission of a certificate of good health (e.g. Bulgaria, Romania). In addition, some countries apply a quota for self-employment (e.g. Austria, Estonia, Italy).

### *Limitations for Self-Employment of Third-country Nationals*

The authorization for third-country nationals to undertake self-employment can be limited to a certain business, or certain regions in the country, etc. Again, Member States apply different policies in this regard. For example, in Austria and Slovenia there is no restriction for self-employment permits. Whereas in Denmark and Spain, national legislation prescribes that the authorization can be restricted. In Denmark, national law foresees that the permit may be issued subject to conditions; whilst in Spain, the permit may be limited to a certain territory, sector or activity. In a number of Member States, the authorization is limited to the specific business for which it has been applied.

<sup>168</sup> The Belgian authorization for self-employment.

<sup>169</sup> “Business and Investment” in Bulgaria, “Commercial Activities” in Romania and “Business” and “Innovation” in the UK.

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Further restrictions may also be imposed as to the nature of the businesses foreigners may conduct. For example, in Italy, certain activities are reserved under law for Italians;<sup>170</sup> and in Denmark, as a rule, third-country nationals are not eligible for residence and work permits for the purpose of opening a restaurant or retail shop.

#### Compliance with EU Law and International Law Instruments

Obligations to admit third-country nationals for the purpose of providing services as a self-employed individual might derive from GATS Mode 4 depending on the specific commitment of the WTO member (see above).

There is no specific law at the EU level aimed at regulating the conditions for admission for the purpose of self-employment of third-country nationals (which are not yet residing in the EU).<sup>171</sup>

Article 4 of the ECMW has only very limited application to the admission of third-country nationals for the purpose of self-employment, since the enumeration of excluded groups of workers in Article 1(2)(b) of the ECMW also includes categories of self-employed persons (“artists, other entertainers and sportsmen engaged for a short period of time and members of a liberal profession”). For the limited content of Article 4 and the scope of application of the ECMW, see above in this section.

The observations made above in this section concerning the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families and the application of the non-discrimination principle also apply to self-employment.

#### Conclusions

The conditions for immigration for self-employment of third-country nationals vary significantly between EU Member States. As with (salaried) employment, it can be concluded that foreigners are only admitted for self-employment if their business will represent an added value to the national economy. Hence, the business needs to be economically viable and of benefit to the national economy. How this is concretely assessed is subject to rather complex rules and often involves a considerable amount of discretion exercised by the authorities involved.

As with (salaried) employment, harmonization of existing rules could bring about a simplification of procedures for would-be investors, and thus enhance the attractiveness of the EU as a place of business.

#### **2.3.3.2.3 Seasonal Employment**

This section examines the last of the three subcategories of work: seasonal employment. In particular, it covers procedures, conditions and compliance with EU Law and International Law instruments concerning the immigration of third-country nationals for the purpose of seasonal work.

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<sup>170</sup> However, this provision refers mainly to professions that are related to the civil service of the Italian State. It is hence only of limited relevance for self-employed activities of third-country nationals.

<sup>171</sup> See above with regard to the Services Directive.

Article 1(2) of the ECMW defines seasonal migrant workers, thus excluding them from its scope of application, as “those who, being nationals of a Contracting Party, are employed on the territory of another Contracting Party in an activity dependent on the rhythm of the seasons, on the basis of a contract for a specified period or for specified employment” Its seasonal character, yearly recurrence and limitation in time are hence what distinguishes it from (salaried) employment.

This study has shown that at the national level the distinction between regulations regarding seasonal employment and temporary employment is blurred. Most of the national regulations are based on the idea of a limitation in time rather than on the seasonal character of the work. Moreover, it is interesting to note that although the term “seasonal work” is mentioned in the national legislation of Member States, often the concept is not defined.

As already noted, this study examines immigration for the purpose of work (including employment, self-employment and seasonal work), family reunification and studies and training. Of these categories, only seasonal work is not provided for in the national legislation of all EU Member States. In the Czech Republic, Denmark, Ireland, Latvia and Lithuania the legislation does not recognize the category of seasonal work. In these countries, seasonal work can be handled under temporary work provisions, however, this may lead to difficulties in practice (as highlighted in the Czech Republic Country Report). In the absence of specific provisions, the ordinary provisions for immigration for the purpose of employment apply in the Czech Republic. The work permit and a relevant visa must be issued following the standard application procedures. However, this channel is not often used since the work permit procedure is too complex to be undertaken in respect of work of a duration of three months (see Country Report Czech Republic).

### EU Regulations

As with the other work categories, there is currently no EU-wide regulation for seasonal employment. However, a proposal for a directive on the conditions of entry and residence of seasonal workers is mentioned in the Commission’s Legal Migration Plan 2005. According to this, a directive on seasonal employment will be one of the four directives comprising the vertical approach towards legal migration, that is, targeting specific sectors of work. The Commission plans to present the proposal for the directive on seasonal work in 2008.

In the Legal Migration Plan 2005, the Commission envisages a scheme that proposes a residence/work permit enabling third-country nationals to work for a certain number of months per year for a period of four to five years. Thereby, the Commission aims to facilitate the recruitment of needed manpower and to grant a secure legal status to the immigrants concerned who, especially in the sector of seasonal work, often work without authorization and under precarious conditions. The Legal Migration Plan 2005 highlights that seasonal workers rarely compete with EU workers for jobs, as few EU citizens and residents are willing to engage in seasonal activities.

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## Procedures Concerning Immigration for Seasonal Employment

The aim of this section is to analyse the procedures established at the national level with regard to immigration for seasonal employment, namely: procedural requirements for permits, length of procedure and recruitment schemes established bilaterally with third countries. As was observed for both (salaried) employment and self-employment, procedures for seasonal work vary between EU Member States.

### *Permits Required*

Many countries require a work permit for seasonal work. The requirement of a work permit may exist even if a residence permit is not needed and the work is for less than three months, as is the case in the Netherlands.

The recent innovation in France is interesting. The 2006 Law on Immigration and Integration creates a specific temporary stay permit for seasonal workers. This permit allows the holder to work for a period not exceeding six months within a given year. It is delivered for a maximum of three years and is renewable (C. Foreigners, Art. L 313-10, 4). This permit was created in order to protect seasonal workers, with its three-year validity rendering workers less dependent on their employer (Mariani 2006, p. 97).

### *Length of Procedure*

The time needed by the authorities to grant necessary permits is especially crucial for seasonal employment. The very short duration of seasonal work calls for facilitated and efficient handling of applications. Information on procedures was not available for all EU Member States, as some do not have specific rules regarding the length of procedure for seasonal employment. However, for those Member States, it seems that two groups can be distinguished: those States where the decision by the authorities takes less than one month (such as Estonia (10 days), Italy (20 days) and the UK (5 days)); and those States where it takes more than one month (such as Sweden (3 months) and the Netherlands (10 weeks)).

### *Bilateral Agreements with Third Countries on Seasonal Employment*

Bilateral agreements with third countries on seasonal employment were reported for Greece, Italy, Poland and Spain. Generally, these agreements regulate the entry, stay and employment of seasonal workers.

In Italy, within the context of bilateral agreements designed to regulate entry flows and procedures for re-entry generally (L 189/2002, Art. 1), special provisions may govern flows for seasonal labour (L 189/2002, Art. 3; Art. 21). A similar approach is followed in Spain, where preference is given to nationals of countries with which Spain has signed agreements on regulation of migratory flows. Greece also includes provisions on the employment of seasonal workers in bilateral agreements that have been concluded with third countries (for example, with Egypt and Albania).



Even though not in the form of a bilateral agreement, it is worth mentioning the facilitation Polish legislation grants to certain third-country nationals. Seasonal workers from neighbouring countries (Belarus, Germany, Russia and Ukraine) are not required to obtain a work permit, provided that for a period not exceeding three months within a consecutive six-month period they perform work connected with agriculture, horticulture (with the exception of vegetable growing), or the breeding of animals.

### Conditions Concerning Immigration for Seasonal Employment

This section examines the conditions established at the national level regarding the admission of third-country nationals for the purpose of seasonal work. In particular, it considers the conditions related to the seasonal character of the work, the time-limited character of the work, quotas and labour market test requirements.

#### *Seasonal and Time-Limited Character of Seasonal Employment*

Only a small number of countries require that the work performed has a seasonal character. Finnish law refers to the harvesting of berries, fruit, speciality crops, root vegetables or other vegetables, as well as work on a fur farm. In Greece, immigration for seasonal work is reserved to employment that is “characterized by its seasonal character” (Act 3386/2005, Art. 16), and Romanian legislation foresees that the employment must be undertaken in a seasonal sector. In Sweden, work permits for seasonal work are granted only by the Migration Board for sectors such as forestry, agriculture, or berry picking. In the UK, the Seasonal Agricultural Workers Scheme (SAWS) specifically targets seasonal workers.

On the other hand, all of the Member States understand seasonal work as limited in time. This is expressed either in the admission conditions for third-country seasonal workers or through the issuance of permits for a limited period of time. Most EU Member States take the latter approach, limiting the number of months per year that the third-country national can stay and work. The duration of residence permitted for seasonal work ranges from up to three months (Finland) to up to nine months (e.g. Italy, Slovenia and Spain). More commonly, however, residence for seasonal employment is allowed for up to six months per year. The systems are slightly different in Austria and the Netherlands: in Austria, seasonal workers can reside and work for up to 12 months within a 14 month period; whilst in the Netherlands, a new work permit for seasonal work can be granted only to those who have not held a residence permit allowing them to work during the previous 28 weeks.

While keeping to the limitation of a maximum number of months of residence per year, some States have started to introduce a multiple-entry permit for seasonal work. The permit enables third-country nationals to be employed as seasonal workers for a certain number of months per year over several years. For example, the legislation in Italy and France foresees multiple-entry permits for seasonal workers that are valid for a maximum of three years.

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### *Quotas and Labour Market Test*

EU Member States also use quotas or labour market tests in order to manage seasonal labour migration, that is, to facilitate the supply of foreign labour in the quantity and at the time it is needed by the national economy.

The rules for labour market tests for seasonal work follow those for employment (see section Comparison, 2.3.3.2.1). Regarding quotas, it is noteworthy that more countries apply the quota requirement to seasonal employment than to (salaried) employment. Some Member States specifically set annual quotas for seasonal work, even though there is no quota in place for regular employment (for example, Sweden or the UK under the SAWS scheme). Generally, the quota is based solely on the estimated labour demand. Consequently, even a quota of zero is possible. Thus, in Sweden, for example, no quota was set for 2007 as the Swedish National Labour Market Board concluded that the labour market's need for seasonal labour could be supplied solely by workers from EU and EEA countries (SMB 2007).<sup>172</sup>

### *Other Conditions*

Besides the general conditions and those explained above, there are very few other conditions to be fulfilled by third-country nationals seeking seasonal work in the EU. One example is the German provision that makes reference to working hours: seasonal workers must be employed for at least 30 hours a week with a daily average working time of six hours. Another is that under the UK SAWS, employers are responsible for the third-country national's accommodation (Baruah and Cholewinski 2007, p.119).

### Change of Permit for Third-country Nationals in Seasonal Employment

Another issue is whether a third-country national can prolong his residence and, for example, “switch” to another category of “employment” without the need to leave the country and to apply for the desired permit from abroad. This matter is regulated differently in different EU Member States. Some countries do not permit seasonal workers to apply in-country for another immigration category (e.g. Bulgaria, Poland and Slovakia), other countries do allow this for certain specified categories. For example, in Italy and Slovenia it is possible to switch from “seasonal work” to “employment”. Where national law allows it, switching is subject to the fulfilment of all the conditions required for the “new” immigration category.

Finally, Spanish legislation is worthy of consideration. Third-country nationals who have been granted seasonal work authorizations for four years and returned to their countries of origin at the end of their seasonal work have priority to be engaged in permanent employment in Spain: For these individuals, the “national employment situation” will not be considered (Spanish Implementing Regulation).

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<sup>172</sup> Given the enlargement of the EU, some Member States are of the view that the majority of the need for seasonal work will now be covered by EU workers. However, this is more applicable to the former EU 15 than to the newly acceded EU countries.

### Compliance with EU Law and International Law Instruments

Seasonal workers are explicitly excluded from the application of the ECMW and hence Article 4 of it (ECMW, Art. 1(2)(e)).

However, the observations made above in this section concerning the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families and the application of the non-discrimination principle also apply for seasonal workers.

As with (salaried) employment, it should be recognized that the lawful admission and residence of third-country nationals for seasonal work depends on the relationship between the employer and the foreigner. This may be problematic from a human rights perspective as the relationship is prone to abuse and exploitation. This is only aggravated by the time-limited nature of the work and residence in the country. Spending only a few months in the EU, seasonal workers are less familiar with their rights and obligations in EU Member States. Moreover, seasonal employment is often needed in sectors that require fewer qualifications and hence is targeted, in general, at a less educated group of workers. Also, some sectors, especially agricultural work, are not regulated adequately under national labour law (Baruah and Cholewinski 2007).<sup>173</sup>

### Conclusions

A trend may be observed facilitating seasonal employment through bilateral agreements on migration management in general (see, for example, Italy and Spain). The preference concerning admission for seasonal employment of nationals from those countries with which an agreement is concluded forms part of a broader package concerning the regulation of migration between the countries concerned: generally, these third countries agree to cooperate with the EU Member State in the field of preventing irregular migration, etc. This approach is in line with the comprehensive understanding of migration and the “mobility partnerships” promoted by the European Commission. This approach seems feasible since, in principle, it offers advantages for both the EU Member State and third countries. The results of these fairly recently introduced national policies, however, require further detailed assessment.

Given the weak standing of seasonal workers and their dependency on the employer, as described above in relation to France and Italy and in line with the Commission’s suggestions in its Legal Migration Plan 2005, multiple-entry permits should be encouraged in order to decrease the risk of abuse and exploitation. At the same time, this will promote adherence to time limitations of the permit.

As noted for (salaried) employment, in the context of seasonal employment the work permit system may be problematic from a human rights perspective as it is prone to abuse.

<sup>173</sup> Recent research by IOM Ukraine has shown that seasonal workers often live in inadequate or even abusive situations during their stay in EU Member States (IOM Ukraine 2007). However, issues relating to the treatment of seasonal workers are outside the scope of this study, which is concerned only with their admission.

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### General Conclusions as regards immigration for the purpose of work (including employment, self-employment and seasonal employment)

An EU approach to migration cannot arguably be successfully realized without developing a common policy in the very important field of labour migration. The recent proposal by the Commission for a general Framework Directive on the basic socio-economic rights of all third-country workers as well as a Directive on the admission of highly skilled migrants,<sup>174</sup> are important steps in this direction. The development of a common labour migration policy could bring about a simplification and facilitation of the process for employers and third-country nationals alike. It may also contribute to reducing the risk of irregular immigration. The admission procedure and the system of permits are two important aspects of immigration for employment purposes that should be harmonized and simplified.

#### **2.3.3.3 Studies and Training**

This section will consider the conditions imposed by Member States on third-country nationals wishing to immigrate for the purpose of taking up studies or training.

Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service (Studies and Training Directive)<sup>175</sup> defines a student as “a third-country national accepted by an establishment of higher education and admitted to the territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognized by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education, which may cover a preparatory course prior to such education according to its national legislation” (Studies and Training Directive). Unremunerated trainee is defined as “a third-country national who has been admitted to the territory of a Member State for a training period without remuneration in accordance with its national legislation” (Studies and Training Directive). Thus, while both groups immigrate with the purpose of receiving education, students are looking for higher education whereas trainees aim for the acquisition of vocational skills in a private or public company, or in a vocational establishment (European Commission Webpage 2007).

The admission of third-country national students has come to be an important topic on both national and EU agendas. Suter and Jandl argue that today’s knowledge economy has made international education more and more important and hence a rapid internationalization of higher education has taken place over the last few decades (Suter and Jandl 2006). The employment of international students after their graduation is seen by industrialized countries as a possible means of relieving labour shortages and contributing to the national economy. The effects of *brain drain*, from the point of view of the countries of origin, are discussed below. It is interesting to note, as well, that in some

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<sup>174</sup> COM (2007) 638 and COM (2007) 637, 23 October 2007.

<sup>175</sup> Denmark, Ireland and the United Kingdom are not bound by the Directive.

countries (for example the UK) foreign students represent an important source of income for national educational institutions (Suter and Jandl 2006).

It should be noted that Luxembourg is the only country that has no specific provisions for the admission of foreign students in its legislation.<sup>176</sup>

### **2.3.3.3.1 Studies**

#### Procedures Concerning Immigration for Studies

In this section procedures established at the national level for third-country nationals that wish to immigrate for the purpose of studies will be examined; in particular, the length of the procedure and the duration of the permit.

#### *Length of Procedure*

As regards the length of the procedure, that is, the time needed by the relevant authorities in order to process an application, the standards differ quite significantly amongst the EU Member States. The length of procedure ranges from seven days (Bulgaria) to six months (Austria, Lithuania and the Netherlands) and is on average between two and three months. For some countries (e.g. Greece) it was reported that no specific legal provisions exist in this regard.

#### *Duration of Permit*

For 19 States<sup>177</sup> it was reported that students are granted a residence permit for the duration of one year. In four States,<sup>178</sup> residence permits for students above one year but under two years are granted. Another three States<sup>179</sup> fix the duration of the permit to the duration of the studies (e.g. Denmark, Sweden, UK). Most Member States permit the renewal of residence permits for students, but at the same time set an upper time-limit for the renewal; for example Denmark, (where the permit can be renewed, but only for a maximum of 12 months longer than the expected duration of the studies) or Greece (where the entire length of the residence permit cannot exceed the duration of the study programme increased by half).

#### Conditions Concerning Immigration for Studies

Conditions established at the national level regulating admission of third-country nationals for the purpose of studies and training will be examined in the following section; in particular, conditions related to sufficient funds, health insurance, admission at an institution for higher education, intention to return to the country of origin and the student's qualifications and language skills.

<sup>176</sup> As of November 2007.

<sup>177</sup> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain.

<sup>178</sup> Germany, Hungary, Ireland and Latvia.

<sup>179</sup> Denmark, Sweden and the UK.

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### *Sufficient Funds*

For the vast majority of Member States,<sup>180</sup> the requirement of sufficient funds was reported.<sup>181</sup> Funds must be sufficient to cover the cost of living. Moreover, some States set a specific amount that must be at the disposal of the student every month. These amounts vary amongst the Member States, from 115 EUR (Estonia) up to 773 EUR (Sweden). In Romania it is required that the student possesses the equivalent of the minimum monthly national salary. In addition to sufficient funds, Luxembourg requests that a bank deposit of 1200 EUR is made by the student. It is also worth mentioning that Malta requires the student to have a return ticket.

### *Health Related Requirements*

For 20 States<sup>182</sup> it was reported that students must possess health insurance.<sup>183</sup> Four countries make requirements with regard to medical certification: in Cyprus, students must provide a medical certificate attesting that they are not infected by an infectious disease, as well as providing a chest x-ray. Similarly, national legislation foresees that students in the Czech Republic might be required (depending on the circumstances) to provide a medical report. Whilst in Spain, if the duration of the studies surpasses six months students have to provide a medical record. For studies in Poland, a medical certificate is required attesting that there is nothing health-related preventing the student from commencing his studies in the chosen faculty and in the chosen mode of education.

### *Admission to an Educational Institution for Students*

The most crucial condition for this category is admission to an educational institution. For the vast majority of States<sup>184</sup> it was reported that national legislation specifically requires that the third-country national be admitted to an educational institution for students prior to entry.

### *Qualifications*

Some EU Member States impose specific conditions concerning the individuals' education and qualifications. Third-country nationals immigrating to Ireland for study purposes must have the academic ability to follow the particular course. Similarly, Malta requires that the third-country national is in possession of the qualification required for the studies being undertaken. Italy requests that the education to be received is coherent with previous education and Latvian legislation prescribes that the knowledge of the student corresponds to the entry requirements of the respective educational institution, that is, the foreign student's previous education must be adequate.

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<sup>180</sup> Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the UK.

<sup>181</sup> For the remaining countries this requirement is covered under the general conditions.

<sup>182</sup> Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Germany, Greece, Ireland, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

<sup>183</sup> However, for remaining countries, this requirement is covered by the general conditions.

<sup>184</sup> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Romania, Slovakia, Slovenia and Spain.

### *Language Skills*

Five countries include or foresee a language requirement in their national legislation. In Denmark, students must have knowledge of the Danish, Swedish, Norwegian, English or German language. Draft amendments to the Estonian Aliens Act include a language requirement to be met. Both Germany and Latvia request proof of knowledge of the language in which the education is to be given. However, in Germany, this shall not be required if it has already been taken into account during the admission process. Similarly, third-country nationals wishing to study in Ireland must have sufficient proficiency in the English language to undertake the course.

### *Return after Completion of Studies*

Some countries include in their national legislation requirements that concern the return of the student to his country of origin or permanent place of residence after the completion of studies. In Ireland and the UK it is a condition that the student intends to return at the end of his studies. Likewise, the Netherlands requires a declaration by the student of his understanding that the admission is of a temporary nature. For studying in Sweden, on the other hand, a declaration by the third-country national that he will leave Sweden after finishing his studies is required.

### *Other Requirements*

For the Czech Republic, Estonia, Luxembourg and Spain it was reported that students have to prove that they have accommodation. Belgium and Cyprus require that the third-country national does not have a criminal record, while the Czech Republic and Romania require that the applicant present a copy of his criminal record certificate to the relevant authorities. UK national legislation requires that students do not intend to engage in business or take employment beyond the work regulations foreseen for students. Legislation in Italy and Portugal include provisions on the age of eligible students.<sup>185</sup>

### Employment Regulations for Students

For all Member States, except Cyprus, it was reported that students are allowed to undertake limited employment during their studies.<sup>186</sup> In Cyprus a foreign student who is studying or being educated in the Republic is not allowed to exercise a profession, as either a self-employed person or at the service of an employer, unless he is the holder of a special employment permit related to practical training that is part of his study programme.

In those Member States where employment is permitted, legislation varies as to whether or not students require a work permit. The national legislation in ten States<sup>187</sup> requires

<sup>185</sup> According to Italian legislation, the student must be 18 years old or 14 years for secondary education. The Portuguese legislation requires that the student is of minimum age and is not older than the maximum age for that purpose established in the joint administrative rule of the Ministers of Internal Affairs and of Education.

<sup>186</sup> No information was received for Malta.

<sup>187</sup> Austria, Bulgaria, Czech Republic, Denmark, Estonia, Greece, Lithuania, the Netherlands, Slovenia and Spain.

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that students hold a work permit. In contrast, in four States<sup>188</sup> it was reported that a work permit is not necessary.

All countries that allow students to work impose limitations with regard to the time spent working. However, these limitations differ among the EU Member States. Some countries simply establish that the work may not conflict with the students' study schedule (e.g. Belgium, Estonia), whilst the legislation of France and Germany contains annual limitations, thus students may work 60 per cent of the annual working time (France) or 90 full or 180 half days during a year (Germany). Commonly, the hours that students may work per week are limited, ranging from ten hours (e.g. Slovakia) to 24 hours (Hungary). Many Member States adopt a combination of limiting the hours of work per week and/or the possibility to work full time during vacations or for a certain number of months per year. Examples include Denmark (students are allowed to work 15 hours a week *and* full time during vacations), Finland (20 hours per week *or* full time during vacations) and Spain (full time if the total does not exceed three months).

### Change of Permit

National legislation in the majority of EU Member States foresees that students may change their immigration type, that is, while still in the country they may apply for a residence permit for a different immigration purpose (for example, switching from a residence permit for the purpose of studies to one for the purpose of work). Some countries, for example Bulgaria, Greece and Romania, do not allow a change of permit.

### Possibilities for Job Search after Graduation<sup>189</sup>

In principle, students are obliged to leave the country upon completion of their studies. However, as they have been living in the host country and are used to its social and cultural characteristics, they are often seen as ideal candidates for integration into the local labour market (Suter and Jandl 2006). Consequently, a number of Member States have introduced measures in their national legislation facilitating the job search for third-country national graduates. Basically, EU Member States grant residence permits for the duration of three to twelve months in order to enable graduates to find a job in the local labour market, thereby facilitating the retention of highly qualified third-country nationals.

In Germany, after a successful final degree, a residence permit can be prolonged for up to one year for the purpose of searching for a job; however, the job must be one for which it is permissible for foreigners to be hired. According to the French Law on Immigration and Integration of 24 July 2006, after obtaining a degree not inferior to a masters, a provisional work authorization of six months may be granted to a third-country national graduate. In the Netherlands, migrant students are granted a three months grace period in which to find a job as a knowledge worker, making them eligible for a knowledge worker residence permit. However, if the job found does not qualify the former student as a knowledge worker, the work permit scheme applies in full. Ireland, on the other

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<sup>188</sup> Poland, Romania, Slovakia and Sweden.

<sup>189</sup> See also section Comparison, 2.3.3.2.



hand, has established a Graduate Scheme. The main qualification for this scheme is that the individual has obtained a degree (first degree, masters or doctorate) from an Irish third-level educational institution after 1 January 2007. Those who qualify are entitled to a single non-renewable extension to their student permission for a six-month period starting from the date of receipt of their examination results in order to seek employment. Likewise, in the UK there is the International Graduates Scheme (IGS) that permits third-country national graduates from UK universities to work for 12 months in the UK. The main requirement is that the individual intends to seek and take work during this period of leave. For all of the above countries it should be mentioned that if the graduate does not find a job within the given time frame, he must leave the country.

### Compliance with EU Law and International Law Instruments

This section will study whether the procedures and conditions established at the national level comply with EU and International Law Instruments.

#### *EU Law*

The Studies and Training Directive was formally adopted on 13 December 2004. Member States were required to transpose the Directive by 12 January 2007. Denmark, Ireland and the UK are not bound by the Directive. According to the European Commission, the following countries had notified full transposition by 2 July 2007: Austria, Belgium, Bulgaria, Czech Republic, Finland, Hungary, Latvia, Lithuania, the Netherlands, Romania, Slovenia and Sweden. Partial transposition only had been notified by Slovakia. No transposition has been notified by Cyprus, Estonia, France, Germany, Greece, Italy, Luxembourg, Malta, Poland, Portugal and Spain (European Commission 2007).

The Directive distinguishes between four categories of third-country nationals: students, pupils, unpaid trainees and volunteers. It also determines general conditions for the admission of all these groups, as well as specific conditions for each group, including for the admission of students (Studies and Training Directive, Art. 6; Art. 7). The Directive includes a provision whereby under certain conditions third-country national students already admitted by a Member State may be granted the right to move to another Member States so as to facilitate the pathway for those pursuing studies in a number of Member States (Studies and Training Directive, Art. 8). Article 12 regulates what type of residence permit has to be provided to students. Furthermore, the conditions under which students are allowed to work are laid down in Article 17 of the Studies and Training Directive. The Directive also contains provisions regarding procedural guarantees and transparency, as well as possible fast-track procedures (Studies and Training Directive, Art. 18; Art. 19).

Conditions for admission, procedures and work regulations for third-country national students have all been examined in this study. Hence Articles 6, 7, 12, 17 and 18 of the Studies and Training Directive are of interest.

Regulations at the national level are in line with the general and specific conditions laid down in Articles 6 and 7 of the Studies and Training Directive. The fact that some Member States require a medical certificate for a student is warranted under Art. 6(1)(d) (threat to public health). Although the requirement of a declaration with respect to the

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return of the student after completion of the studies (as adopted in the Netherlands and Sweden)<sup>190</sup> is not explicitly mentioned as a condition in Articles 6 or 7, the provision is supported by the preamble of the Studies and Training Directive, which clearly states that “migration for the purpose set out in this Directive is by definition temporary” (point 7). The requirements relating to the education and qualifications of students are not foreseen in the catalogue of conditions contained in the Directive, but express nothing else but the need to fulfil certain qualification-related minimum requirements before being admitted to an institute of higher education. The same applies for age related requirements.

As regards procedures, the requirements at the national level are in line with Article 12 of the Studies and Training Directive, regulating the duration of the residence permit granted. Article 18 of the Directive prescribes – quite loosely – that the decision on the admission shall be adopted by the relevant authorities “within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application”. The research showed that in some countries up to six months are needed in order to make a decision regarding admission, whereas other States may admit third-country national students within seven days. The difference in the length of procedure is significant. Moreover, six months is a comparatively long time compared to the overall duration of studies (for example, three years for Bachelor studies). The relevant provision of the Studies and Training Directive should be reconsidered in this regard.

With respect to the work restrictions applicable to students, as described in Article 17 of the Studies and Training Directive, the conditions established at the national level comply with this provision. Often students are even allowed to work more than the minimum hours per week laid down in the Directive. Only Cyprus reported that students are not allowed to work, the exception being where the student holds a special employment permit related to practical training that is part of his study programme.

### *International Law Instruments*

On 12 July 2006, the Committee of Ministers of the Council of Europe adopted the Recommendation on the admission, rights and obligations of migrant students and co-operation with countries of origin (Recommendation of 12 July 2006). In Article II.1.d) ii., the recommendation states that “Member States should refrain from requiring the migrant student to deposit a sum of money in a bank account of such an amount as to constitute an unreasonable financial obstacle to his admission.” Luxembourg requires a bank deposit of 1200 EUR, which is an important sum. However, given the overall cost of living in Luxembourg, the sum might not be seen as unreasonable. As regards the length of procedure, the Recommendation does not go further than the Studies and Training Directive, establishing that applications should be processed “within a reasonable time and, in any event, not so as to hinder his course of study” (Recommendation of 12 July 2006, Art. IV (3)).

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<sup>190</sup> UK and Ireland include a similar condition in their national legislation. However, these two States are not bound by the Directive.

Based on the above, conditions set at the national level appear to comply with the relevant EU and International Law standards.

### 2.3.3.3.2 Training

Significantly less information is available on the admission of third-country national trainees. Only a few States<sup>191</sup> reported specific conditions for the admission of trainees. It is evident that in those countries, different categories and schemes for trainees may exist. For example, the Dutch authorities distinguish between two categories related to training: *practicants*<sup>192</sup> and trainees. In the UK, trainees can immigrate under two different schemes: “Studies and Training”<sup>193</sup> and the “Training or Work Experience Scheme (TWES)”.<sup>194</sup>

#### Procedures Concerning Immigration for Training

For most of the Member States<sup>195</sup> for which information is available, it is reported that residence permits are issued for one year. However, in the case of *practicants* in the Netherlands, the residence and work permit will be granted for a maximum of 24 weeks.

#### Conditions Concerning Immigration for Training

EU States require similar conditions as those for immigration for the purpose of studies, such as possession of sufficient funds and health insurance. For example, in Estonia, the following conditions must be met: payment of a state fee, legal income requirement and health insurance and housing requirements. Under Greek legislation, enrolment or registration at an educational institution, adequate financial means for covering maintenance costs and the cost of studies, payment of the enrolment fees to the educational institution and possession of health insurance coverage are required. Portuguese legislation, on the other hand, prescribes that trainees must have a travel document, health insurance and a training contract.

A training contract between the employer and the trainee is an important condition that was reported as required in three countries.<sup>196</sup> For example, Portuguese legislation foresees that “a traineeship contract to carry out an unremunerated training course with a company or officially acknowledged vocational training institution, which has been certified by the Employment and Vocational training institute” must be submitted for the granting of a residence permit (Act 23/2007, Art. 93(2)).

<sup>191</sup> Belgium, Estonia, Germany, Greece, the Netherlands, Portugal, and the UK.

<sup>192</sup> In the case of *practicants*, the employer of the third-country national must have entered into an agreement with a Dutch company with regard to the training.

<sup>193</sup> The main categories are the following: 1) students, including (i) students at publicly funded higher education institutions, (ii) students over 16 years of age admitted to bona fide private educational institutions, and (iii) those admitted to study at independent fee-paying schools; 2) student nurses, including student midwives; 3) overseas qualified nurses and midwives admitted to specialized training programmes for those groups; 4) prospective students in the above three categories; 5) postgraduate doctors and dentists; and 6) persons undertaking a clinical attachment or dental observer post.

<sup>194</sup> The main requirement for such a work permit is that the training or work experience leads to a recognised vocational qualification.

<sup>195</sup> Belgium, Greece, the Netherlands and Portugal.

<sup>196</sup> Belgium, Estonia (in draft legislation) and Portugal.

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There are different regulations at the national level in relation to the requirement of work permits for trainees. In Belgium and the Netherlands, a work permit must be obtained; however, a labour market test such as that usually linked to work permits, is not required. Similarly, the German Residence Act establishes that a work permit is required for trainees. In contrast, a work permit for trainees in Estonia is not necessary. National legislation in the Netherlands and the UK provides for the protection of the local labour market: in the Netherlands the number of trainees per company must be reasonable, thus trainees cannot total more than ten per cent of a company's staff, although this quota does not apply to migrant students and asylum seekers. A pre-condition to be admitted under the TWES in the UK is that the third-country national is not filling a vacancy for an employee.

Belgium and, in principle, the UK require that the relevant training is full time. However, under the specific British TWES, only 30 hours of training a week are required.

Of utmost importance under the UK immigration law is that the trainee possesses the intention to leave the UK after his completion of the training and that he does not intend to take up other employment during his stay.

It is interesting to note that for vocational (non-academic) studies, the applicant in the Netherlands must provide a written explanation as to why the Netherlands is the most suitable country to undertake the relevant studies and how the training will subsequently make a positive contribution to the labour market in his country of origin. He also needs a statement from the Ministry of Education in his country of origin confirming that the studies cannot be undertaken in the country of origin. Moreover, the third-country national must have had previous relevant vocational training in the country of origin.

### Compliance with EU Law and International Law Instruments

This section will study whether the procedures and conditions for the admission of third-country national trainees established at the national level by EU Member States comply with EU and International Law Instruments.

#### *EU Law*

The Studies and Training Directive covers unremunerated trainees. However, Article 3 of the Directive leaves it to the discretion of the Member States whether or not they wish to apply the Directive to unremunerated trainees.

Articles 6, 10, 14 and 18 of the Studies and Training Directive are of relevance to trainees. The conditions established at the national level for the admission of trainees are in compliance with the general and specific conditions in Articles 6 and 10 of the Studies and Training Directive. A condition like the written explanation required in the Netherlands (as to why the Netherlands is the most suitable country to undertake the studies and how admission will make a positive contribution to the labour market in the country of origin) is not mentioned in Articles 6 and 10. However, it can be justified under the overall objectives of the Directive expressed in the Preamble: "Migration for the purpose set out in this Directive...constitutes a form of mutual enrichment for the migrants concerned, their country of origin and the host Member State and helps to promote better familiarity

amongst cultures.” No information is available regarding the time needed by the relevant national authorities for adopting a decision and hence cannot be compared to Article 18 of the Directive.

### *International Law Instruments*

On 2 November 2001, the General Conference of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) adopted the “Revised Recommendations concerning Technical and Vocational Education” (UNESCO Recommendations on Training 2001). The Recommendations call for enhanced international cooperation in the field of technical and vocational education. Moreover, Member States are invited to take special measures to provide access to education to foreigners, in particular, migrants and refugees. However, there are no explicit recommendations for the admission of foreigners for the purpose of training.

Based on the above, conditions set at the national level appear to comply with the relevant EU and International Law standards.

### Conclusions

Conditions for the admission of students are centered around the concept of a temporary admission in order to pursue a course at an institute of higher education. The possibilities for extension of a residence permit for students and for change of immigration category or residence permit are hence limited. Taking into account the resources students usually have at their disposal, the requirement for sufficient funds is lower than for other immigration categories and students are allowed to undertake part-time work in order to cover some of their costs. The conditions for admission set at the national level are in line with the relevant EU law instruments. However, the Studies and Training Directive gives broad discretion to the Member States with regard to the period for adoption of a decision. This provision should be reconsidered with a view to adopting a concrete time-limit for the procedure, which should be as short as possible. Interestingly, EU Member States are increasingly offering students the possibility of remaining in the country for a limited period of time after successful graduation in order to search for a job. This measure facilitates the retention of highly qualified third-country nationals that have the potential to contribute to the national (and European) economy.

As regards training, there are different regulations across Europe. Moreover, different sub-categories and schemes for training may exist within one country. From the little information available, it seems that the Studies and Training Directive (that may be transposed at the discretion of the Member States) has not brought about a common policy.

## **3. Cooperation with Third Countries**

This section examines how EU Member States cooperate with third countries in immigration matters; in particular, in relation to cooperation with respect to social security, transfer of remittances and brain circulation at the national level. Moreover, examples of Member State cooperation with third countries in pursuit of comprehensive

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migration management is also presented. Currently, there is no EU-wide legal framework covering these fields. However, a lively policy debate is currently taking place on the topic of cooperation with third countries (see also section Emerging EU Law and Policy on Migration, 2).

Following the EU Heads of States meeting in October 2007 and the related Communication of the Commission “Priority actions for responding to the challenges of migration: first follow-up to Hampton Court”,<sup>197</sup> a comprehensive policy approach to migration management was agreed. Today, it is commonly accepted that comprehensive and efficient migration management includes cooperation with third countries. Discussions currently taking place at the EU level seek to define appropriate tools for this cooperation, for example, mobility partnerships and circular migration. Another dimension of cooperation with third countries is the nexus between migration and development, a topic currently high on the global and EU policy agendas. The overarching question is how to harness the impact of migration on development. In pursuit of this end, the Commission adopted the Communication “Migration and Development: Some concrete orientations”<sup>198</sup> in September 2005, in which it provided orientations in the areas of remittances, diasporas as actors of home country development, circular migration and brain circulation, and mitigating the adverse effects of brain drain.<sup>199</sup>

### Social Security

This section examines the schemes in EU Member States enabling third-country nationals, upon their return to their country of origin, to access social security benefits accrued in the host state during their stay in the EU.

Social security can be defined as “the protection which society provides for its members, through a series of measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care; and the provision of subsidies for children” (ILO 1999). Social security encompasses both contributory and non-contributory benefits. This study understands pension rights as a sub-category of social security. However, because of its importance, especially in the labour migration context, pension rights are considered separately.

Sixteen Member States<sup>200</sup> reported that third-country nationals are able to access some form of social security rights. Fourteen<sup>201</sup> of these countries reported that third-country nationals can access social security rights after their return to their country of origin.

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<sup>197</sup> COM (2005) 621, 30 November 2005.

<sup>198</sup> COM (2005) 390, 1 September 2005.

<sup>199</sup> The importance of the migration-development nexus is often reiterated, including at the recent Council of the European Union, 2831<sup>st</sup> External Relations Council Meeting, Brussels, 19 – 20 November 2007, and the European Union – African Union Summit in Lisbon in December 2007.

<sup>200</sup> Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and the UK.

<sup>201</sup> Austria, Belgium, Cyprus, Estonia, Germany, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain and the UK.

However, for the UK this is only applicable for temporary absences abroad. Two countries (Czech Republic and Finland) reported on pension rights only. Different conditions for eligibility for access to social security rights are set. Often, only nationals of those third countries that have concluded a bilateral reciprocal agreement with the Member State are eligible. This is the case, for example, in Austria and Cyprus. Dutch social benefits can be paid only to persons that reside in a country that has concluded an agreement with the Netherlands under which the entitlements to benefits can be monitored. In Poland and Italy, it was reported that migrants retain any social security rights accrued, regardless of whether or not a bilateral reciprocal agreement is in effect. For twelve<sup>202</sup> out of the above-mentioned sixteen Member States, it was reported that migrants have access to pension rights accrued in EU Member States after their return to their country of origin. Here again, the entitlement might be subject to the existence of a bilateral agreement with the concerned third-country (e.g. in the case of Austria).

### Remittances

Remittances can be defined as “Monies earned or acquired by non-nationals that are transferred back to their country of origin” (Glossary on Migration 2004).<sup>203</sup> There is a growing awareness in the EU<sup>204</sup> of the potential of remittances to contribute to development in countries of origin.

This study looks at specific initiatives by Member States in order to facilitate the transfer of remittances, but does not examine generally available possibilities in the financial market for the transfer of remittances through banks, private companies (such as Western Union), etc.

Currently functioning schemes were not reported for any Member State. However, the topic is being discussed in several countries. In 2007, the Belgian Senate organized a series of hearings on “Migrant Remittances”.<sup>205</sup> In the Czech Republic, an inter-ministerial meeting was recently held on migration and development, and the Ministry of Finance has expressed an intention to analyse the remittances from the Czech Republic. One of the topics addressed in the Danish Government’s new Development Assistance Plan 2008 – 2012, is migration and development. The plan is to support international initiatives, including other EU Member State’s initiatives, which are targeted at facilitating opportunities for migrants to contribute to the financing of development in their home country through the transfer of knowledge and resources. The French 24 July 2006 Law on Immigration and Integration creates a savings account for development purposes that can receive the savings of migrants from developing countries who hold a residence permit for the exercise of a professional activity. The purpose of this account is to finance investments beneficial to the economic development of the migrant’s country of origin. The Italian Disegno di legge 2007, Article 1 *a bis*, stipulates that sending

<sup>202</sup> Austria, Belgium, Czech Republic, Finland, Germany, Italy, Lithuania, the Netherlands, Poland, Slovenia, Spain and the UK.

<sup>203</sup> The European Commission defines remittances “broadly, as including all financial transfers from migrants to beneficiaries in their countries of origin” (Migration and Development 2005).

<sup>204</sup> See the Communication by the European Commission on Migration and Development, 2005.

<sup>205</sup> As of the end of 2007, the hearings have not been followed by recommendations.



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remittances should be rendered easier. This should be done by creating measures that promote the use of regular channels for the transfer and through promoting agreements with associations, thereby reducing the costs of transfer. The UK's Department for International Development (DFID) recognizes the potential contribution of remittances to resource flows to less developed countries. However, the DFID generally sees its role as limited to the facilitation of the market in transfers. To this end, it has supported the gathering of data on remittances and has encouraged the financial services sector to exploit market opportunities.<sup>206</sup>

### Circular Migration

Circular migration has been defined broadly as “a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries”<sup>207</sup> (Communication on circular migration and mobility partnerships 2007).<sup>208</sup> The European Commission is, indeed, envisaging the inclusion of measures promoting circular migration in some of the future EU legislative instruments, as well as the adjustment of existing measures to the same end; hence creating legally binding instruments that promote circular migration (see section Emerging EU Law and Policy on Migration, 2).

The Country Reports indicate that few EU Member States have measures in place facilitating circular migration. However, the topic is being discussed by the governments of quite a number of Member States and some countries already have pilot projects in place.

For Belgium, the “right to return” was reported in the context of circular migration. Third-country nationals holding a residence permit in Belgium have the right to leave for a period of less than one year without any conditions, and for more than one year if they prove before their departure that the “centre of their interests” will remain in Belgium. Circular migration is an important topic for the Czech authorities, who have a pilot project concerning temporary labour migration targeting Western Ukraine. Recruitment, facilitation of visas and work permits, migrant accommodation, health insurance and return are provided for, *inter alia*, by this pilot project. In France, the 24 July 2006 Law on Immigration and Integration foresees that the delivery of the “competence and talent card”<sup>209</sup> requires a significant contribution to the economic development of both France and the country of origin. Hence, the concept of the “competence and talent card” builds on the idea of going back and forth between the countries concerned. The Finnish Government has stated that “Finland is of the opinion that third-country

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<sup>206</sup> The DFID does not see a role for more interventionist policies, such as the guaranteeing of particular remittance products, or regulation of remittances beyond that already being done by the general regulator.

<sup>207</sup> It is arguable that the definition should contemplate also the possibility of legal mobility back and forth between two or more countries (IOM comments on Circular Migration 2007).

<sup>208</sup> COM (2007) 248, 16 May 2007.

<sup>209</sup> The “competence and talent card” can be granted to foreigners who participate in a significant and durable way in the economic development and influence of both France and the country of origin in intellectual, cultural, scientific, humanitarian, and sports-related matters. This specific permit is issued for three years and is renewable. It authorizes the exercise of any professional activity linked to the project that justifies granting the permit. This permit is not meant to be widely issued.



nationals who have temporarily left the EU labour market must have secured access back to the labour market. The opportunity of the third-country workers to move between the country of origin and the country in which they work, not only encourages ‘brain circulation,’ but also promotes efforts to avoid the adverse effects that their migration to the EU may have on the countries of origin” (Finland’s responses on Green Paper 2005). In Greece, one pilot project concerning circular migration has been implemented. The project targets circular migration between Greece and Albania and is funded by the European Commission (AENEAS programme). Article 1 *a bis* (3) of the Italian Disegno di legge 2007 envisages measures favouring the use of competences acquired during the stay in Italy in the country of origin through development cooperation activities and the encouragement of productive return of the migrant to the country of origin, on either a temporary or definitive/permanent basis. This allows for a continued regular status in Italy where the immigrant participates in specific projects carried out by the competent ministries. UK immigration policy makes only very limited provision for what may be termed “brain circulation”. However, in order to prevent “brain drain”, the National Health Service follows the Commonwealth Code of Practice for the International Recruitment of Health Workers of May 2003, which prohibits recruitment activities aimed at healthcare workers from developing countries.<sup>210</sup> The Code of Practice does not, however, preclude individual applications by persons from developing States.

### Comprehensive Migration Management

It is interesting to note that a few Member States have recently started to conclude bilateral agreements with selected third countries aimed at comprehensive cooperation in migration management. These agreements go partly in the direction of the “mobility partnerships” proposed by the European Commission. Often, the agreements can be summarized with the following formula: cooperation in the prevention of irregular migration in return for the facilitation of labour migration and measures that aim at maximizing benefits from the migration-development link for all parties involved in the migration process.

Italy’s immigration legislation, Law No. 189 of 30th July 2002 (L189/2002) foresees that “[i]n the formulation and possible review of bilateral cooperation and aid programmes for intervention measures not for humanitarian purposes, in relation to countries that are not members of the European Union, ... , the Government also takes into account the cooperation provided by the countries concerned in the prevention of irregular migratory flows and in combating the criminal organizations operating in the fields of clandestine immigration, trafficking in human beings, the exploitation of prostitution and trafficking in narcotics and armaments, and also in the matter of judicial and penal cooperation and in the application of international regulations on the safety of navigation”. Further, “The cooperation and aid programmes indicated ... may be subjected to revision in the event that the Governments of the countries concerned do not adopt appropriate prevention and vigilance measures to prevent the irregular re-entry of expelled citizens into Italy”. Moreover, when establishing the annual quota for labour migration, Italy accords spaces in the quota for nationals of third countries with which it has signed agreements designed

<sup>210</sup> An exception is made for government-to-government arrangements permitting such recruitment; arrangements of this kind have been entered into with China, India and the Philippines.

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to regulate migration flows, whereas restrictions are applied to nationals from countries with which there is no cooperation<sup>211</sup> in the fight against irregular migration.

Portugal has signed several bilateral agreements regarding cooperation on migration issues.<sup>212</sup> The agreements establish norms and principles to facilitate the temporary stay of third-country nationals for the purpose of work. They guarantee foreign workers the same social protection and conditions of work as for Portuguese nationals. Moreover, these bilateral agreements aim at contributing to better management of migration flows, acting against irregular border crossings and unauthorized employment of workers, further strengthening of co-operation between countries of origin and destination, establishing conditions of employment and guaranteeing the protection of migrant workers' rights and welfare. Furthermore, Portugal signed a multilateral agreement with the Community of Portuguese-Speaking Countries (CLPC) to facilitate the CLPC citizen's circulation.<sup>213</sup> Certain categories of professionals (for example scientists, researchers, athletes, journalists/reporters, cultural agents and artists) benefit from a multiple-entry visa regime.

The most important measures adopted by the Spanish Government to regulate migration flows with countries of origin, particularly those countries from which flows are of a significant size, are bilateral agreements.<sup>214</sup> These bilateral agreements may serve as instruments to further a global national policy on immigration (Carulla 2004). The agreements primarily concern the management of labour migration, but go beyond this in many ways, offering a comprehensive approach to the management of migration. Issues addressed include: notification of job offers; selection of candidates; labour standards and signing of employment contracts; issuance of permits for stay and work in Spain; travel and reception in Spain; employment and social conditions of workers in Spain; rights of migrant workers before and during their stay in Spain, and return to their country of origin. The agreements also provide for cooperation in the fight against irregular immigration, exploitation and violation of social rights, document fraud and, particularly, trafficking in human beings. Moreover, the bilateral agreements recognize that workers who have had the opportunity to train and gain professional experience abroad can be important agents for development in their countries of origin. In this regard, measures promoting the professional reintegration of migrant workers upon their return to their countries of origin are included. In order to increase the geographical scope of the approach and to take into account the full migratory cycle,<sup>215</sup> in 2006 a new class of agreement was signed, providing for the repatriation of individuals who arrive or remain in Spain without authorization.<sup>216</sup>

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<sup>211</sup> The notion of "no cooperation" is not specified further.

<sup>212</sup> Agreements with some ex-colonies, such as Cape Verde (1997) and Brazil (2003), but also with Ukraine (2005) and Romania (2005).

<sup>213</sup> Timor Leste is not included.

<sup>214</sup> The Spanish Government has signed agreements of this kind with Colombia, Ecuador, Morocco, the Dominican Republic, Peru, Poland and Romania.

<sup>215</sup> For example, in the case of Morocco the migration cycle does not always begin in the territory of Morocco, but often in sub-Saharan Africa.

<sup>216</sup> Spain has signed agreements with Gambia, Guinea, Guinea Bissau and Mauritania.

## Conclusions

When examining actual cooperation between EU Member States and third countries, the gap between the importance attached to this topic at the EU level and the actual measures in place at the national level is noteworthy. However, a trend may be observed that the issue is gaining importance and is increasingly included in national agendas as well.

Most of the bilateral agreements on cooperation with third countries at the national level concern social security. In fact, over half of EU Member States have bilateral agreements with third countries on this subject. Some Member States have started to discuss the facilitation of the transfer of remittances to third countries. France and Italy have included reference to this in draft laws. However, in most Member States activities are as yet limited to debate and research. Only a few Member States refer to circular migration in their national legislation. But several EU Member States have taken up the idea, accepting the concept as such and are implementing, for example, pilot projects in this area. Some countries have concluded bilateral agreements with third countries that aim at comprehensive migration management. By and large, these agreements offer facilitation of labour migration for nationals of a third-country in exchange for cooperation in the prevention of irregular migration. These agreements go in the direction of what is proposed as “mobility partnerships” by the Commission. The impact of those agreements should be studied further, with a view to refining the concept of “mobility partnerships”.



# Recommendations

This study has focused on the conditions and formalities for legal immigration imposed on third-country nationals by EU Member States. The following aspects have been looked at in particular: other immigration categories; visa policy; conditions according to length of stay; conditions for immigration for the purpose of family reunification, work and study and training. In addition, the cooperation of the different Member States with third countries was analysed. The recommendations following from this analysis are presented below.

## General Remarks

During the course of this project, national immigration legislation in a substantial number of Member States underwent significant changes. This is due to increased EU legislation in this field and hence the need to transpose EU legislation into national law, as well as the fact that States are trying to adapt the legislation to new migration needs and realities.

It is clear that legal immigration policies in the EU are seeking to achieve diverse objectives. Legal immigration is sought to supply national labour demands and hence to attract foreign workers, especially highly skilled workers; but a strong emphasis is also placed on migration control and the prevention of irregular migration.

At the same time, European integration is progressing amongst Member States, providing for the free movement of EU citizens in the territory of the EU for the purpose of work, study, etc. and for free travel for all persons within the Schengen area. Further development of a common European Migration Policy is needed in order to support the European integration process. A comprehensive common policy would render the immigration regulations easier and more transparent for immigrants and competent authorities alike. Moreover, it has the potential to attract more workers, including highly skilled ones, to come to Europe through regular channels.

## Other Immigration Categories

A few immigration categories other than family reunification, work, studies and training were found to exist in a number of countries. Examples include immigration for retirement or for medical treatment. In the framework of building up an EU immigration policy and legislation, thought should be given to the possibility of developing a common policy for these categories as well.

## Visa Policy

For an improved administration of the visa policy and a limitation of discretionary powers of the authorities in such a matter, a maximum length of procedure with regard to decisions on visa applications might be adopted.

It is recommended that immigration legislation foresees the possibility of the judicial review of decisions to reject visa applications in order to fully ensure the applicant's right to a fair trial.

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Consideration should be given to establishing an obligation for competent authorities to reason the rejection of visa applications, in order to allow efficient and fair judicial and administrative review of the decisions.

#### Residence Rules: General Conditions and Procedures

A common policy could be developed in the field of general conditions and procedures for immigration. A number of general conditions, valid for all immigration categories and for all immigrants, exist in the national legislation of the vast majority of EU Member States. These general conditions include, for example, financial means, accommodation and health insurance. Likewise, procedures concerning the application, granting, rejection or appeal against a negative decision exist in all EU countries.

For increased transparency and clarity, EU Immigration Law terminology could draw a distinction between general conditions (valid for all immigration categories) and specific conditions (valid for a specific immigration category).<sup>217</sup>

The development of a common policy in this area would help to define terms and set both standards and limitations. Careful consideration should be given to the establishment of a common set of general conditions, in particular with regard to integration-related conditions, in order not to create unwarranted obstacles to immigration.

An important obstacle to immigration is the length of procedure, that is, the period of time a third-country national must wait for the decision on his application. It is recommended to set a maximum length of procedure applicable to all residence permit applications.

European immigration legislation should provide for the possibility of appeal against negative decisions in relation to all residence permit applications. For effective legal protection, such an appeal should have a suspending effect.

The establishment in some Member States of competent bodies specialized in immigration law (Immigration Tribunals, etc.) to deal with appeals should be noted as a positive development, as it can enhance the quality and efficiency of rulings.

#### Residence Rules: Conditions According to Length of Stay

A common policy has been developed in this area through the introduction of an EC long-term residents permit,<sup>218</sup> which creates an EU-wide standardized status for third-country nationals who are long-term residents and accords them a set of rights on an equal basis with nationals.

Beyond the scope of the Directive, the following should be considered: national legislation in Member States does not distinguish between “short”, “long” and “permanent” residence, but rather between “temporary” and “permanent” residence. However, these terms have quite different meanings in the different countries. It is recommended that further law-

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<sup>217</sup> Note, that, for example, the Studies and Training Directive, OJ 2004 L 375/12, 12 January 2005, already includes the notion of “general conditions”.

<sup>218</sup> Long-Term Residents Directive, OJ 2004 L 016/44, 25 November 2003.

making at the European level clarifies the concepts of “temporary” and “permanent” residence. In addition, the distinction between the nature of a visa and that of a residence permit is often not clear in national legislation. In this regard, further consideration should be given to the standardization of the concept of “visa”.

#### Residence Rules: Conditions for Specific Immigration Types: Family Reunification

The Family Reunification Directive<sup>219</sup> has established common minimum standards in this area. The following aspects are worthy of consideration. Firstly, the admission of family members not belonging to the nuclear family is left to the discretion of the Member States. Several EU countries are restrictive in the admission of these family members (adult children, parents, etc.). In particular, only a few countries admit unmarried partners under family reunification schemes. It is recommended that the relevant provisions be reconsidered, taking into account the fact that in European societies the concept of family is progressively understood as including other members than simply spouses and minor children.

Article 7(2) of the Directive allows Member States to require that third-country nationals comply with *integration measures*. A trend can be observed regarding EU countries increasingly imposing ***integration conditions*** rather than *integration measures* (see section Comparison, 2.3.3.1). Consideration should be given to the possible clarification of this Article, with a view to emphasizing that it does not concern *integration conditions*. Not only might integration conditions be problematic from a human rights perspective (for example, depending on the capacities of the individual), but the learning of languages abroad is not necessarily efficient or effective. Resources should instead focus on measures promoting the immigrant’s integration upon arrival in the EU country.

#### Residence Rules: Conditions for Specific Immigration Types: Work

At present, regulations at the national level regarding the immigration of third-country nationals for the purpose of work show substantial differences amongst the Member States. Moreover, the regulations are, in general, complex. The development of a common policy is needed in order to simplify procedures and increase transparency for third-country nationals and EU employers alike, thus ensuring the supply of needed labour.

Current discussion at the EU level concerning labour migration focuses on highly skilled workers. It is recommended that continued consideration be given to the rights, procedures and facilitated immigration of less skilled workers, as their labour is also needed within the EU.<sup>220</sup>

In relation to immigration for the purpose of work, the procedure should be simplified. The need to apply to different authorities for different permits hampers the quick recruitment of needed workers. A single permit procedure, as proposed recently by the Commission, seems to be a possible solution (Proposal for a Single permit and Common Rights Directive).<sup>221</sup>

<sup>219</sup> OJ 2003 L 016/12, 22 September 2003.

<sup>220</sup> Proposal for a Single Permit and Common Rights Directive, COM (2007) 638, 23 October 2007.

<sup>221</sup> COM (2007) 638, 23 October 2007.

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In order to avoid potential exploitation and abuse, it is recommended that the permit(s) for third-country workers be not granted to the employer, but to the worker. It is encouraged that steps be taken to ensure some flexibility regarding a change of employer (for example, within the same sector or after a short period of time) to avoid an unhealthy dependence of the worker on his employer and to lower the risk of abuse by unscrupulous employers.

Further consideration should be given to the functioning and impact of job seeker permits, as they can facilitate the immigration of third-country nationals for the purpose of work. It enables the third-country national to reside legally whilst searching for work and hence reduces situations of abuse and exploitation, to which those in an irregular situation might be exposed. At the same time, the State is still fully able to manage immigration.

The development of a common policy in the area of self-employment has the potential to simplify the procedures and conditions for would-be investors and thus enhance the attractiveness of the EU as a place for business investments.

Given the weak standing of seasonal workers and their dependency on the employer, as well as being in line with the Commission's suggestions in its Legal Migration Plan 2005, multiple-entry permits should be encouraged in order to decrease the risk of abuse and exploitation and to promote adherence to the time limitation of the permit.

It is also recommended that the relevant EU legislation clarifies the concept of seasonal work and its distinction from temporary employment.

#### Residence Rules: Conditions for Specific Immigration Types: Studies and Training

As regards studies, consideration should be given to the establishment at the EU level of a specific maximum time-limit for the adoption of a decision on the admission of students. The maximum time-limit should be appropriate with regard to the overall length of the studies in question.

The possibility offered by some EU countries to remain in the country for a limited period of time after successful graduation in order to search for a job seems a good way to retain highly qualified third-country nationals having the potential to boost the national and European economy. Giving due consideration to the measures necessary to reduce the effects of "brain drain", these regulations should be studied further and might be replicated at the EU level.

As regards training, in order to achieve a common policy and make Europe more attractive for the category of trainees, therefore contributing to the stimulation of economic growth, the implementation of EU wide regulations is to be welcomed.

#### Cooperation with Third Countries

In order to protect migrant's human rights and to increase the attractiveness of the EU, a common policy that outlines EU standards as regards access to social security benefits, including pension rights, should be considered.



Remittances can be an important tool for promoting development. It is recommended that more research and discussion on the topic should be encouraged, leading to specific recommendations on measures to facilitate the transfer of remittances to third countries.

Circular migration has been recognized as a mechanism that can contribute to the development of third countries. The inclusion of provisions in national immigration legislation as well as immigration law at the EU level promoting circular migration is advised.

The migration debate at the EU level recognizes that efficient migration management should pursue a comprehensive approach. It is recommended that the bilateral agreements on the management of migration flows concluded by some Member States with third countries and their impact be further studied with a view to analyzing their success and in order to further refine the concepts of instruments proposed at the EU level.

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<sup>222</sup> In the framework of this study, the Department of International Migration Law and Legal Affairs of IOM has asked several IOM Mission based in European countries to provide input to the study. A questionnaire was designed and sent to IOM missions aimed at gathering information about the real impact of migration legislation.

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## Country Reports





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## 1. General Immigration Policy and Trends

In 2007, there were 474 795 foreigners legally residing in Austria, with 297 336 of these individuals having permanent resident status and the majority (42.35 per cent) living in Vienna. The main countries of origin for these immigrants are former Yugoslavian republics (Serbia (26.55 per cent), Bosnia-Herzegovina (19.78 per cent), and Croatia (11.97 per cent)) and Turkey (19.86 per cent). This structure is mainly due to historic factors: many citizens of these States migrated to Austria during the 1970s as guest workers to meet employment demands and remained in the country as settlers.

Until 1992 the settlement of foreigners was regulated by the Passport Act of 1969 (as well as the Alien Police Act of 1954). There was no legal distinction between short-term and long-term stays and a visa was the only type of permit for entry and residence in Austria. The Aliens Act of 1992 and the Residence Act of 1993 introduced a quota system and the requirement for immigrants to submit applications for residence permits from abroad. The latter Act, however, included strict time limits for prolongation procedures that could not be fulfilled by many foreigners that had been in Austria for years, making their stay illegal. This was one of the legal problems that motivated further reform through the Alien Act of 1997. This new Act has been more complex than its predecessor, but changed the procedural rules in a way that increased protection of long-term settled immigrants against expulsion. The 1997 Aliens Act was amended several times, generally making it more restrictive.

On 1 January 2006, the “Alien Law Package 2005” came into force, partly building on the basic structures from previous legislation. The Alien Law Package defines the legal status of aliens in three central acts: the Alien Police Act (FPG), the Settlement and Residence Act (NAG) and the Asylum Act (AsylG). The employment of foreigners is regulated by the Aliens Employment Act of 1975 (AuslBG).

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

In 2006, the main purposes for which residence permits were issued included studies (2005), special cases of employment (1858) and family reunification (598). Seasonal workers were also an important group of foreigners. In the same year, 13 931 existing residence titles were renewed. Depending on the length of the stay, permits for legal entry and stay are issued according to either the NAG or the FPG. The NAG governs the issue, rejection and withdrawal of residence titles of foreigners who reside or want to reside in the federal territory for longer than six months, as well as the documentation of established rights of residence and settlement (NAG, Art. 1(1)). The NAG is valid for almost all foreigners, including third-country nationals and EU citizens.<sup>223</sup> All other stays (especially under six months) which do not fall within the scope of the NAG are regulated by the FPG.

<sup>223</sup> Nevertheless, special provisions apply for EU citizens taking into account their specific status guaranteed by European law.

There are various specific purposes of residence regulated in the NAG. For example, a residence permit may be granted to researchers (NAG, Art. 67) or artists (NAG, Art. 61) and there is also a special settlement permit for private purpose (NAG, Art. 42).

## **2.2 Admission Rules – Visa Policy**

### **2.2.1 Competent Authorities**

The Austrian diplomatic and consular offices abroad are the competent authority for issuing decisions on visa applications (FPG, Art. 7). However, in exceptional cases some border crossing points are enabled to issue visas (FPG-DV, Art. 1).<sup>224</sup>

### **2.2.2 Procedural Steps – Conditions to be fulfilled**

The issuance of visas is regulated by the Alien Police Act (FPG), which provides a legal basis for visa types A to C (commonly referred to as Schengen visas), in addition to special national visas (categorized as D and D+C type visas) which may be issued for a duration of up to six months and enable short-term work activities (FPG, Art. 20). Foreigners from certain countries have a special status as they can travel to Austria and stay there for a short time without a visa.<sup>225</sup>

Generally, there are no health requirements regulated by the NAG.<sup>226</sup> The fee for visa A or B is 35 EUR, for visa C the fee is 43 EUR, and the fee for a D+C visa is 75 EUR (Consular Tax Act). There is a special procedure for the issuance of a visa D+C in which the labour market service is involved (FPG, Art. 24). The time limit for a decision concerning the visa application is six months (FPG, Art. 11(5)), however, the real processing time depends upon the complexity of the case. There are also big time differences depending on the citizenship of the applicant and the responsible embassy.

Grounds for refusing the issuance of a visa include any threat to the public interest or grounds for refusal given by another Schengen State through registration in the SIS (FPG, Art. 21(7)). Additionally, a visa may not be issued if it seems doubtful that the third-country national will leave Austria after the visa expiration, or if it is assumed that the third-country national would intend to work in Austria (except in cases of business travels and for the issuance of a visa D+C (FPG, Art. 21(1) No.6)). The visa application shall also be refused if the alien has tried to defraud the authorities in relation to his identity, his citizenship or his documents (FPG, Art. 21(7) No.5).

The competent authorities are not obligated to provide justification for a negative decision (FPG, Art. 11(2)). A more detailed reasoning is obligatory only in cases of favoured third-country nationals who are relatives of EU citizens (FPG, Art. 11(4)).

<sup>224</sup> Their acts are ascribed either to the district administrative authority or, in some larger towns, the federal police authority, which are the competent authorities in this case.

<sup>225</sup> The privileged countries which are listed in Regulation 539/2001/EC (in the version 1932/2006) based on Article 62 of EC-treaty are: Andorra, Argentina, Australia, Bolivia, Brasilia, Brunei, Canada, Chile, Croatia, Costa Rica, El Salvador, Guatemala, Honduras, Israel, Japan, Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Panama, Paraguay, San Marino, Singapore, South Korea, the United States of America, Uruguay, Vatican City State, and Venezuela.

<sup>226</sup> Exceptionally, the foreigner shall present a health certificate if he has been in a State where dangerous epidemics had arisen during the preceding six months (FPG, Art. 23).

## 2.2.3 Appeal and Administrative or Judicial Control of the Decisions

Within the visa procedure a remedy is generally not permitted (FPG, Art. 9(3)). However, the concerned parties may pursue an extraordinary remedy to the Administrative Court or to the Constitutional Court, which may void the decision on the grounds that it was made unlawfully or that violations of the individual's constitutional rights had occurred. Thereafter, the authority is obliged to make a new decision according to the reasoning of the court's decision.

## 2.3 Stay and Residence Rules

### 2.3.1 General Rules regardless of the Immigration Category

#### 2.3.1.1 Competent Authorities

In the case of applications submitted from outside Austria, the competent Austrian diplomatic authority abroad shall be in charge of accepting these applications (NAG, Art. 3(3)). They are only entitled to refuse applications based on matters of form and not substantive issues.

The competent authority for decisions on applications for residence permits is the provincial governor.

#### 2.3.1.2 Procedural Steps – Conditions to be fulfilled

Concerning new immigrants, all types of residence titles must be applied for from abroad prior to entry (NAG, Art. 21).

The granting of residence titles to a foreigner shall be refused if: a residence ban has been imposed on him; a residence ban of another EEA Member State is effective against him; an expulsion order has become enforceable against him within the last 12 months; a marriage of convenience or an adoption of convenience of the foreigner is evident; the foreigner has exceeded the period of the visa-exempt entry and residence permitted; or if he has been legally convicted for evasion of the border control or illegal entry into the federal territory within the last 12 months (NAG, Art. 11(1)).

The residence title shall be issued to a foreigner if the following conditions are met: the residence of the foreigner does not threaten the public interest; the foreigner can furnish proof of a legal title to accommodation corresponding to normal Austrian standards; the foreigner holds full medical insurance coverage in the federal territory; the foreigner's residence does not lead to a financial burden on a territorial authority;<sup>227</sup> and the foreigner's residence would not harm the relations between the Republic of Austria and another State or international subject (NAG, Art. 11(2)).

<sup>227</sup> Financial means can be compensated by a "declaration of liability" with a minimum validity period of five years and a wide content (NAG, Art. 2(15)). The concerned person must pay for all possible financial disadvantages that might concern the State in connection with the stay of the foreigner. This liability is not linked to the period of legal stay of the foreigner, but instead has a minimum validity of five years, and it also applies if after the expiration of the permit the foreigner remains illegally in Austria.

In practice, the most important reasons for negative decisions are the absence of adequate financial means or of health insurance and the presumption that the alien represents a danger to public order or national security. The latter reason is presumed if the alien has been convicted of criminal offences or, in some cases, of illegal entry and stay.

As in the case with visas, there are generally no health requirements. However, if the foreigner has been in a State where dangerous epidemics have arisen during the preceding six months, the alien must present a health certificate. The fees for residence titles are: 100 EUR for limited titles and 150 EUR for unlimited titles (Consular Tax Act, Art. 14).

Foreigners who apply for a residence title are required to fulfil an “integration agreement”. The integration agreement consists of two modules: a first module focusing on “acquisition of the ability to read and write” and a second module focusing on “acquisition of knowledge of the German language and becoming able to participate in the social, economic and cultural life in Austria”. A final exam rated as “passed” is required to fulfil the obligation of the integration agreement (NAG-DV, Art. 8).<sup>228</sup> Although it is called an “agreement”, the integration agreement is an obligation required by law. The consequences for the lack of fulfilment of this obligation can be administrative punishment (NAG, Art. 77(1)), financial disadvantages (NAG, Art. 15) or, as a means of last resort, expulsion (FPG, Art. 54(4)).

Most residence permits can only be issued if a certain quota is not exceeded (NAG, Art. 12). These quotas are determined annually by the Austrian Federal Government in settlement regulations, which state the maximum number of settlement permits that may be granted during the following year. The number is divided according to the different kinds of residence titles (NAG, Art. 13). In 2007, the federal government approved a quota of 6500 residence permits, 7500 seasonal employees and 7000 agricultural workers. The number of residence permits is divided into subcategories, including key-employees (1420), self-employed key-staff (145), family reunification (4540), private stay (140) and holders of a EC-long-term permit from another Member State (135) (Settlement Reg. 2007).

The authorities are obliged to decide on applications for residence without unnecessary delay, with a six-month limit for the decision (AVG, Art. 73). If the authority does not decide within six months, the applicant has the right to a special remedy called a devolution application. In this case, the competence will devolve to the second instance. In cases where the quota system applies, the limits are prolonged for the period where no quota place is available.<sup>229</sup> However, in cases of family reunification the waiting time caused by this situation may not exceed three years (NAG, Art. 12(7)).

<sup>228</sup> The Federation shall cover the course costs up to a maximum amount of 50 per cent. The exact amount of federal coverage depends on whether the obligations are fulfilled within a period of two years (NAG, Art. 15). The remainder of the cost shall be paid by the foreigner.

<sup>229</sup> In practice, this causes problems in connection with Carinthia because the Federal Government is not entitled to provide a higher number of permits than proposed by the provinces. The province Carinthia regularly makes proposals with a very low number of permits, especially concerning the ground of family reunification.

The general rule for prolongation of applications provides that the current residence title with the same purpose of residence is renewed if the requirements are still met (NAG, Art. 24(4)). If the foreigner wishes to change the purpose of residence during his stay in Austria he shall immediately notify the competent authority. A change of purpose of residence shall be admissible if the foreigner fulfils the requirements for the residence title he applied for and, if necessary, a required quota space is available.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

The Federal Minister of the Interior shall decide on appeals against decisions made by the provincial governor (or by the mandated district authorities) (NAG, Art. 3(2)). Against such decisions the concerned parties have the right for an extraordinary remedy to the Administrative Court or to the Constitutional Court, which must annul decisions if they occurred unlawfully or violated constitutional rights (B-VG, Art. 130; Art. 144). Only for third-country nationals privileged by community law or agreements are the independent administrative senates (UVS)<sup>230</sup> competent as second instance (NAG, Art. 9(1)). In the case of applications submitted from outside Austria, the competent Austrian diplomatic authority abroad is entitled to refuse applications for the formal reasons stated previously. Appeals against such decisions are inadmissible at administrative instances, but they can, however, be enforced through the Administrative Court or the Constitutional Court.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

A distinction can be drawn between stays under visas and stays under residence permits. With reference to short term stays, the Alien Police Act (FPG) has notably established the visa C (for short-term stays up to three months) and visa D+C (for longer-term stays up to six months) due to the requirements of the Schengen Implementing Agreements. The visa D+C, newly introduced by the FPG, enables short term working activities in exceptional cases.

Various types of permits exist for longer stays, including both residence permits and settlement permits. In principle, the residence permits enable temporary residence. Such permits include: residence title “family member”, allowing restricted settlement with the chance of subsequently receiving a residence title “EC-long-term residence permit - family member”; residence title “EC-long-term residence permit” for the documentation of the unlimited right of settlement; residence title “EC-long-term residence permit - family member” for the documentation of the unlimited right of settlement; and residence permit for non-permanent limited residence in the Federal territory for a specific purpose with the possibility of obtaining a settlement permit afterwards (NAG, Art. 8(1)).

<sup>230</sup> The UVS are organized as administrative authorities, but due to the guaranteed independent position of their members they are qualified as tribunals with regard to the application of Art. 6 of the ECHR and Art. 234 of the EGV.

### 2.3.2.2 *Permanent Residence*

For permanent establishment, the category “settlement permit” is provided. It is divided into five subcategories (NAG, Art. 8(2)):

1. “Settlement permit - key employee” entitles [the applicant] to a limited settlement and pursuing of an occupation for which a written statement or a certificate within the meaning of the Aliens Employment Act has been issued;
2. “Settlement permit - for private purpose” (literally translated as settlement permit – except employment) entitles [the applicant] to limited settlement without the possibility of pursuing an occupation;
3. “Settlement permit - unrestricted” authorizes limited settlement and pursuit of an occupation in a self-employed capacity or an occupation in a non-self-employed capacity according to Art 17 of the Aliens Employment Act;
4. “Settlement permit - restricted” grants entitlement to limited settlement and pursuit of an activity as a self-employed person or employee, for which an authorization pursuant to the Aliens Employment Act applies;
5. “Settlement permit - relative” authorizes limited settlement without pursuing an occupation; the pursuit of an occupation shall only be admissible due to an additional change of purpose which is subject to the quota requirement.

Moreover, “Resident permit – EC-long-term residence permit” is granted to foreigners who have been permanently settled in the federal territory during the last five years if they have complied with the integration agreement (NAG, Art. 45).

A “settlement permit - unrestricted” (NAG, Art. 43) is issued to key employees after a period of 18 months following the settlement, in the case of a notice of the labour market service regarding the qualification as key-employee (AuslBG, Art. 12(9)). Third-country nationals who hold a “settlement permit - key employee” (NAG, Art. 44) may be issued a “settlement permit - restricted” subject to no quota if they possess a work permit pursuant to the Aliens Employment Act.

Third-country nationals who hold a residence title “EC-long-term residence permit” of another Member State may be issued a “settlement permit - for private purpose” if a quota space is available (NAG, Art. 49(1)). Third-country nationals who possess a residence title “EC-long-term residence permit” may be issued a “settlement permit - restricted” for the purpose of pursuing employment if a quota space and a work permit pursuant to the Aliens Employment Act are available (NAG, Art. 49(2)). A “settlement permit - unrestricted” may be issued to such individuals not earlier than 12 months afterwards, provided that a statement of the authority competent according to the Aliens Employment Act is available (NAG, Art. 49(3)).

## 2.3.3 Conditions for Specific Immigration Types

### 2.3.3.1 Family Reunification

According to the NAG, family reunification is one of the purposes of residence for a settlement permit. It is, however, restricted by the quota system.<sup>231</sup> The federal government is allowed to designate categories of family members whose reunification with third-country nationals is to be made possible on a preferential basis by reason of the advanced stage of their integration. Consequently, they are given preferential treatment within the quota system (NAG, Art. 13(7)).

The term “family member” is defined in Art. 2(9) of the NAG in the context of a “basic family”: “A spouse or an unmarried minor children, including adopted and step-children. The spouses (except spouses of Austrian nationals, EEA nationals and Swiss nationals) must have reached a minimum age of eighteen. In the case of a polygamous marriage where the sponsor already has a spouse living with him in the federal territory the issue of a residence title to a further spouse is not possible.” There are special provisions against marriages and adoptions of convenience (NAG, Art. 30). In the case of family reunification with Austrian or EEA nationals, family members include those in the ascending line.

There are various types of settlement permits granted to family members depending on the legal status of the sponsor (NAG, Art. 46). There are special regulations regarding reunification of family members with EEA nationals.

Relatives of holders of a “settlement permit - private purpose” shall be issued the same title if a space within the quota system is available (NAG, Art. 46(1)); whilst relatives of holders of a “settlement permit - restricted” shall be issued a quota free “settlement permit - private purpose” (NAG, Art. 46(2)). Family members of key employees may be issued a “settlement permit - restricted” for a period of validity not exceeding 18 months if a space within the quota system is available (NAG, Art. 46(3)). Family members of third-country nationals shall be granted a “settlement permit - restricted” if a space within the quota system is available and the sponsor holds one of the types of long-term residence titles that are listed in the relevant provision (NAG, Art. 46(4)). After one year they have a right to a “residence permit -unrestricted” that entitles them to free accession to the labour market (NAG, Art. 46(5)). Relatives of a sponsor who holds a “settlement permit - relative” may be granted a “settlement permit - restricted” if a quota space and a work permit pursuant to the Aliens Employment Act is available (NAG, Art. 47(4)). Family members who have been entitled to permanent settlement for the period of five years shall be issued a residence title “EC-long-term residence permit - family member” if they have complied with the integration agreement and, in the case of a spouse, have been married to the sponsor for at least two years (NAG, Art. 48).

<sup>231</sup> In cases of family reunification, if the number of quota spaces in a province has been exhausted, the respective authority shall postpone the ruling until quota space becomes available, provided the concerned authority may not reject or refuse the application for other reasons. Three years after submitting the application, an additional postponement of applications for family reunification shall not be admissible and the quota requirement pursuant shall no longer apply (NAG, Art. 12 (7)). The time limit of three years does not cover all types of family reunification, but only relatives with a “settlement permit – restricted.”



Family members of third-country nationals who hold a residence title “EC-long-term residence permit” from another Member State may be issued a “settlement permit -private purpose” or a “settlement permit - restricted” if, in the case of a spouse, a marriage with the third-country national exists at the time of the settlement (NAG, Art. 50).

There are special regulations for family members of EU citizens, which apply when the sponsor is an Austrian, EEA or a Swiss national who resides permanently in Austria and who enjoys the right of free movement within the EU. Only this group of relatives can enjoy the benefits laid down in EU secondary law (Directive 2004/38/EC) and the implemented Austrian provisions (e.g. the possibility to bring family members in the ascending line). Relatives of EEA nationals who are not themselves EEA nationals may be granted a quota-free “settlement permit - relative” (NAG, Art. 56(1)). The reunifying EEA national shall submit a liability declaration even if the relative has sufficient financial resources himself. Relatives may be issued a “settlement permit - restricted” if a quota space and a work permit pursuant to the Aliens Employment Act are available (NAG, Art. 56(3)).

For family members and other relatives of other sponsors<sup>232</sup> who are Austrian, EEA or Swiss nationals permanently residing in Austria, a residence title “family member” or a “settlement permit - relative” (NAG, Art. 47) should be issued. The following relatives of such a sponsor may be issued a quota-free “settlement permit - relative” upon application: first-degree relatives in the direct ascending line of the sponsor or his spouse, in cases where they actually enjoy financial support; an unmarried partner who can provide evidence of the existence of a long-term relationship and who enjoys financial support from the sponsor in the country of origin; and other relatives of the sponsor who a) have already enjoyed financial support through the sponsor in the country of origin, b) have already lived together with the sponsor in the country of origin and were financially supported by him, or c) on grounds of their severe health problems are dependent on the personal care of the sponsor (NAG, Art. 47(3)).

### **2.3.3.2 Work**

#### Employment

Under current legislation, it is generally very difficult to immigrate to Austria simply for the purpose of work. Only “key employees”, as mentioned in the Aliens Employment Act (AuslBG, Art. 2(5)), have the right to apply for a residence title. Therefore special qualifications and a high income are necessary. The concept of “key employees” is, other than the provisions concerning seasonal work, not restricted to specific sectors of the Austrian economy. Only foreigners with an “EC-long-term residence permit” (NAG, Art. 45) or with a “residence permit - unrestricted” (NAG, Art. 8(2)) have free accession to the labour market (AuslBG, Art. 17(1)).

Foreigners who intend to work in Austria need a special kind of residence title which includes all purposes (“settlement permit - unrestricted”) (NAG, Art. 43). For working

<sup>232</sup> That means sponsors who do not enjoy the right of free movement within the EU.

activities, third-country nationals and members of the most “new” EU Member States<sup>233</sup> additionally require a work permit to be distributed to the employer (AuslBG, Art. 4).<sup>234</sup> After a certain period of legal work the foreigner has the right to apply for a working allowance or an exception card, which gives him free access to the labour market within a province or within the whole federal territory. The issuance of work permits is restricted by a quota system. The number of employed and unemployed foreigners must not, in principle, exceed eight per cent of the number of employed and unemployed Austrian citizens (AuslBG, Art. 12a). The validity of a work permit may not exceed one year (AuslBG, Art. 7(1)). The working allowance is valid for up to two years (Art. 14a(4)) and the exception card for up to five years (AuslBG, Art. 15(5)); both can be renewed.

### Self-employment

Self-employment is a specific purpose for the issuance of a residence permit. To avoid circumvention of the more restrictive regulations for employees, a special procedure involving the Labour Market Service (the competent authority for the employment of foreigners) is followed if there are justified doubts about the purpose of the stay being a self-employed activity (NAG, Art. 60(1)). Third-country nationals who hold a residence title “EC-long-term residence permit” may be issued a “settlement permit - restricted” with a period of validity limited to 12 months for the purpose of the pursuit of a self-employed occupation if a quota space is available (NAG, Art. 49(4)).

Third-country nationals may be granted a residence permit as self-employed if they have committed contractually to one particular activity that shall exceed a period of six months and there is a statement from the competent provincial office of the Labour Market Service concerning the qualification of said activity as self-employment and the existence of an interest for Austria with respect to its economic and labour market policy in the concerned business (NAG, Art. 60). Third-country nationals who are entitled to free movement within the EU may be granted a “settlement permit - restricted” (NAG, Art. 44(2)) for the purpose of pursuing a self-employed occupation. The legislator intends by this provision to cover cases that are regulated by treaties between the EC and certain third States.

### Seasonal work

There is a special procedure for short-time employed foreigner (seasonal employees) according to the Aliens Employment Act (NAG, Art. 13(5); AuslBG, Art. 5). This category of residence is very important regarding tourism and agriculture. The motive for the introduction of these provisions is that, despite national unemployment levels, within these areas there is a lack of workforce supply. The concerned migrants have no possibility to obtain a permanent residence status.

<sup>233</sup> Czech Republic, Hungary, Slovakia, Poland, Latvia, Lithuania, Estonia, Romania and Bulgaria (AuslBG, Art. 32a).

<sup>234</sup> The work permit is restricted to a certain occupation.

A specific quota can be included for this group of third-country nationals in the annual quota regulation (NAG, Art. 13(5); AuslBG, Art. 5). A visa D+C pursuant to Article 24 of the FPG is issued to these persons.<sup>235</sup>

The provinces are entitled to make proposals for the admission of temporarily employed foreigners and harvest workers. Foreigners who have a residence title or enjoy the freedom to settle have to be treated in a favourable way. The prolongation of such a special work permit is possible but, in cases of an occupation for one year, a new permit can only be granted two months after the expiry of the old permit. The maximum duration of such permits is 12 months during a period of 14 months.

### **2.3.3.3 Studies and Training**

Registration at a university is necessary in order to apply for a student residence permit. Third-country nationals may be granted a residence permit as pupils if they are ordinary pupils of a public school, of a private or statutory school with public status or of an accredited non-educational institution (NAG, Art. 63).

Because of a reference to the ASVG in Article 11 of the NAG, students up to 24 years of age are required to possess 4 274 EUR for each year of study and students older than this must possess 8 280 EUR per year. It is possible to earn a part of the necessary amount by working, but the pursuit of employment requires a work permit issued by the Labour Market Service (NAG, Art. 64(2)).<sup>236</sup>

The student residence permit can be issued for a maximum of one year (NAG, Art. 20(1)). For the purpose of study, the renewal of a residence permit shall be admissible only if third-country nationals provide evidence of educational achievement.

## **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

One field with the risk of possible human rights offences is family reunification. The main reason for this is the restriction of the settlement of third-country nationals by the quota requirement. In the recent decision C-540/03, concerning the Council Directive 2003/86/EC, the European Court of Justice has mentioned that such restrictions by a Member State would not be admissible. Moreover, there are objections concerning the definition of the term “family”. The Austrian legislature did not make use of the options in Article 4 of Directive 2003/86/EC to enable the family reunification for other relatives and partners; it is principally restricted to the basic family (spouse, children, etc.). As a related note, registered partnerships are not recognized in Austria. This can cause problems if a

<sup>235</sup> It is possible to increase the number of permits laid down by the annual quota regulation for a limited period but not for the annual average.

<sup>236</sup> In fact, it is very difficult to receive this permit because of the quota system. The working activity shall not detract from the actual purpose of residence, which is study. That could be interpreted in a way that the students have to spend the majority of their stay studying and are entitled to work only part-time. However, the income earned by this occupation is not limited. A liability declaration is admissible as an alternative way of compensating missing financial amounts.

registered partner of a relative of another EC citizen who is living in Austria applies for a residence title on the ground of family reunification.

The issuance of a residence title to parents, partners and other relatives who receive financial support from the sponsor is only possible if the sponsor is an Austrian citizen, EEA citizen or citizen of Switzerland and resides permanently in Austria (NAG, Art. 47(3)). In the procedure for family reunification only the relative who intends to come to Austria can apply and only he has procedural rights and remedies. Although according to the jurisdiction of the ECHR the rights of the sponsor can be violated too, he has no procedural position enabling him to enforce his rights. This is not only a problem in relation to Article 8 of the ECHR, but also concerning Article 13 of the same Convention. However, this system is, in principle, lawful according to EU secondary legislation (Directive 2003/86/EC, Art. 5).

In contrast to that required by Directive 2004/38/EC, there is no provision for an accelerated procedure to issue visas for third-country nationals who are relatives of EC-citizens.

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

Generally speaking, the NAG made the procedure for migrants wishing to stay in Austria more complicated. The new law established more formal requirements and it increased the types of residence titles, which are difficult to distinguish from one another.

The NAG causes practical problems, especially for citizens of States in which no Austrian embassy is situated. The applicant must travel to another State, which can be very expensive and in some cases even impossible due to the visa regulations of the State where the competent Austrian embassy is situated.

The NAG requires an element of border crossing for the most favourable conditions to apply to relatives of EC citizens, which therefore places Austrian citizens typically at a disadvantage relative to other EEA Citizens. Problems arise especially in connection with binational marriages. Under the NAG, a spouse who is a third-country national must apply for a residence title from his country of origin. In some cases, this is in fact impossible or at least very expensive. There are even some cases in which spouses of Austrian citizens have been deported from the Austrian territory.

#### **5. Cooperation with Third Countries**

There are international treaties between Austria and many other States concerning social insurance law. Most of these treaties enable the addition of periods of insurance in both States and the payment of social insurance amounts of one State even if the person is living in the other State. Such bilateral agreements exist between Austria and the following countries: Australia, Bosnia, Chile, Iceland, Israel, Croatia, Liechtenstein, Macedonia, the Netherlands, Norway, Philippines, Switzerland, Serbia, Tunisia, Turkey, and the United States of America. So, in principle, migrants of these countries have access to social security and pension rights after their return to their country of origin. If the foreigner

changes his place of residence to another Member State he can nevertheless receive the payments, because Regulations 1408/71/EC and 574/72/EC apply. Their scope has also been extended to third-country nationals by Regulation 859/2003/EC.

There are no special measures enabling brain circulation stipulated in the Austrian alien law.

The facilitation of remittances is not organized in any way by State institutions and it is not covered by Austrian migration law.

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## 1. General Immigration Policy and Trends

Following World War I, immigration progressively became the object of State policy in Belgium. The first immigration in-flows, primarily Italians and Poles, occurred during the reconstruction of the country following the war, but the recruitment policy abroad was stopped during the economic crisis of the 1930s. There was, however, a renewed need for immigrants after World War II.

Belgium, like other European countries, stopped its active policy of foreign labour recruitment in 1974, again in response to economic crisis. Since the 1970s, only very few work permits have been issued each year, and in most cases these are issued to skilled workers. Migration to Belgium continued, primarily through family reunification with those foreign workers who had remained in Belgium following the previous programs of labour recruitment.

After protests against the legal insecurity of foreigners within Belgium in the 1970s, a new law was adopted unanimously by the Parliament on 15 December 1980. This law, which is still in force today but has been amended on numerous occasions, does not regulate the process of admission, but the administrative status of foreigners. The idea behind its passage was to consolidate the rights of immigrants once they are legally admitted. With the main exception of the right to family reunification, the admission of immigrants remains a discretionary competence of the State and is regulated by the government Ministry of Interior.

EC law has become a major influence in the evolution of Belgian law. The transposition of the first directives adopted at the European level became a reality with the adoption of several laws in 2006 and 2007.

In 2005, there were 870 862 third-country nationals in Belgium, which represented 8.34 per cent of the total population (10 445 852 persons). This figure is less than in the 1990s, but this decrease is due to high naturalization rates (Ministry of Employment 2006 Report).<sup>237</sup> A large majority of foreigners (66 per cent) come from the EU, and the main sources of third-country nationals are Morocco and Turkey.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

The Law of 1980 distinguishes between “general or common provisions” and “complementary or derogatory” provisions, which are applicable to certain categories of third-country nationals only. This second title foresees more favourable provisions applicable to certain groups of privileged third-country nationals.

Within this legal framework, the “favoured” categories of foreigners include: family members who benefit from family reunification (Law of 1980, Art. 10(4)); third country

<sup>237</sup> Belgium, which gives the possibility to people to acquire its nationality after only three years of residence, has the most generous naturalization legislation of the EU.

nationals in a position to acquire or recover Belgian nationality (Law of 1980, Art. 10(2)), which does not concern many people; third-country nationals suffering from severe illness who are the object of new provisions that are different from those related to subsidiary protection because Belgian asylum authorities do not have the medical human resources to deal with them (Law of 1980, Art. 9ter); third-country students (Law of 1980, Art. 58), a category that does not include trainees; third-country victims of trafficking (Law of 1980, Art. 1(2)), on the basis of Directive 2004/81/EC; third-country scientific researchers (Law of 1980, Art. 61/10), on the basis of Directive 2005/71/EC; and third-country long-term residents (Law of 1980, Art. 15bis; Art. 61/6), on the basis of Directive 2003/109/EC.

Family members are the most important category in terms of numbers. Third-country students are an interesting category because they are the only persons favoured by Belgian law without an international obligation to do so. Moreover, it is clear that Community law became the main factor for evolution of Belgian immigration law with the creation of new categories for ill persons, victims of trafficking and scientific researchers in order to transpose recent EC directives.

The advantage for the persons falling under those privileged categories is a subjective right to stay in Belgium if they fulfil the conditions required by law. This means that the Belgian Minister for Interior and its administration competent in controlling immigration, in principle, do not have discretion with regard to the admission of those persons into Belgium. In contrast, the Ministry of Interior does have such discretion with regard to third-country nationals not belonging to any of the privileged categories (who fall under Article 9 of the Law of 1980).

There is, in the Law of 1980, no special status for workers (employed or self-employed) who fall under Article 9, but there are separate rules on work permits that distinguish between several categories.

## **2.2 Admission Rules – Visa Policy**

### **2.2.1 Competent Authorities**

The competent authority is the Ministry of Interior, in particular the Office for Aliens within the Ministry. Embassies and consulates are competent regarding the reception of applications and the delivery of long-term visas; however, they do not make any decisions concerning the granting of visas.

### **2.2.2 Procedural Steps – Conditions to be fulfilled**

Long-term visas are applied for and issued abroad, allowing a third-country national to enter Belgium and to apply for the delivery of a residence permit.

The conditions applicable to the granting of long-term visas are the ones applicable to the granting of permits (see section 3.2.3.1.2).

The only case in which a deadline is fixed by the law for the delivery of the long-term visa is in the case of family reunification; the decision must be taken within nine months of the date of submission of the application (Law of 1980, Art. 10ter(2)).<sup>238</sup>

### 2.2.3 Appeal and Administrative or Judicial Control of the Decisions

Decisions on visa applications made by the administration may be appealed before the Council for Aliens Appeals. The Council is a new specialized administrative jurisdiction that very recently replaced the State Council for all appeals based on the laws concerning the entry, stay, settlement and return of foreigners (mainly the Law of 1980 and its executing rules).<sup>239</sup>

An appeal does not, in principle, have a suspending effect, but a request for the suspension of the decision can be submitted.

## 2.3 Stay and Residence Rules

### 2.3.1 General Rules regardless of the Immigration Category

#### 2.3.1.1 Competent Authorities

The competent authority for matters regarding stay and residence is the same as that described in section 2.2.1 concerning visas. In most cases, the applicant must submit his request through the competent Belgian embassy or consulate in his country of origin or residence.

#### 2.3.1.2 Procedural Steps – Conditions to be fulfilled

A third-country national who wishes to immigrate to Belgium must apply from abroad (Law of 1980, Art. 9). The aim of this requirement is to avoid having to return an applicant already on the territory in the case of a negative decision.

There are common admission conditions to be satisfied by all third-country nationals, regardless of their status. The first relates to health: immigrants must prove that they do not suffer from diseases that put public health in danger (enumerated in an annex to the Law of 1980).<sup>240</sup> The second is the traditional condition related to threatening public order and national security.

With regard to integration, in Brussels and Wallonia the French Community implements a policy based on the fight against inequality and discrimination for disadvantaged social groups, of which immigrants are obviously part without being its only target. In contrast, the Flemish Community has defined for immigrants a new specific policy called “civic integration” through a legislative decree of 2003, as amended in 2006. In this report,

<sup>238</sup> This period can be extended two times for three months each in exceptionally complicated cases. If the administration fails to make a decision within nine months, the decision is considered as positive.

<sup>239</sup> This change occurred to relieve the State Council, which is *de jure* the general administrative judge, as appeals by third-country nationals and refugees had grown to about 80 per cent of the case load.

<sup>240</sup> Employed workers must produce a medical certificate attesting that they will not be unable to work in the near future.

only the Flemish policy for integration is discussed, which is new in comparison with the classical policy of the French Community.

The target group is all foreigners over 18 years of age who were registered for the first time in a commune within the last year, with the exception of those staying only temporarily and EU citizens. The process of civic integration involves two stages. The first stage is composed of three elements managed by eight reception offices, and it includes the following requirements: attending 60 hours of a course on social orientation, which discusses the rights, duties and values of the host society; attending a minimum of 120 hours in a Dutch language course; and life orientation based on access to the labour market. During the second stage, the person is referred to education and training establishments. Participation in the first stage is legally compulsory and refusal or absence can be punished by an administrative fine of 50 to 5000 EUR. The third-country national has to pay a fee for the programme unless he is unable to do so. These provisions are the sign of the development of a mandatory integration policy based on the responsibility of the individual.

There is no further integration requirement before admission into the territory as a precondition for the delivery of a visa, residence or work permit. However, it may be that the Flemish Community will, in the future, require the inclusion within the provisions of the Law of 1980 relating to family reunification of the integration conditions applicable in the Community where the sponsor lives.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

The appellate process for decisions relating to residence and stay is the same as that described for visa decisions (see section 2.2.3).

Appeals concerning work authorizations do not fall under the competence of the Council for Aliens Appeals, but under the competence of the State Council. Before appealing to the judge regarding decisions about work permits and authorizations for employees, the applicant or the employer has a legal obligation to ask the region for an administrative review of its decision.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

Prior to 2006, the Law of 1980 stated that the residence right of a third-country national already admitted was, in principle, unlimited in time, unless the contrary was explicitly foreseen. The reform of 2006 reversed this principle. Article 13 now foresees that unless the contrary is explicitly foreseen by law, a residence right is, in principle, limited in time. For instance, an immigrant holding a work permit valid for nine months and delivered on the basis of a temporary work contract for nine months will normally be authorized to reside for nine months (in other words the length of residence is aligned with the length

of the work). In contrast, family members reunified with a sponsor having an unlimited permit will be given a one year renewable permit each year for up to three years.

The residence permit delivered to third-country nationals is the Registration Certificate in the Aliens Register (known under its abbreviation C.I.R.E.). It is, in principle, valid for one year and renewable depending on the residence right of the third-country national.

Regarding third-country nationals who have been granted an EC long-term residence permit in another Member State, the added value of the right to work and study in Belgium is doubtful because the conditions are the same as for common third-country nationals. In particular, it seems that they are still obliged to obtain a work permit or a professional card. However, they have the possibility to apply in Belgium and to reside immediately on its territory and the decision has to be taken within four months of their application. They will receive a C.I.R.E. like common third-country nationals, but their right of residence will become automatically unlimited after five years of residence.

### **2.3.2.2 Permanent Residence**

It is important to distinguish between the right to reside and the residence permit. The permit is the proof delivered to the immigrant proving his residence right in Belgium. The limited validity of the permit, which has to be renewed regularly, does not necessarily indicate that the residence right is limited as well, as an unlimited right of residence will also lead to the delivery of a permit that has to be renewed. Third-country nationals have two similar, but nonetheless different, possibilities to consolidate their legal position in Belgium. The second possibility (long-term residence) was added to the initial one (settlement) through transposition of Council Directive 2003/109/EC.

The status of “settled alien” has to be given, on request, to every third-country national after five years of legal and continuous stay in Belgium if they are no longer residing on a temporary basis (such as a family member during the first three years of residence or a worker with only a temporary contract). Apart from slightly better protection against return and the acquisition of some social rights equivalent to those of Belgian nationals, the main advantage of this status is that the holder will receive an “Identity Card for Aliens” instead of a C.I.R.E. This identity card must be renewed every five years, in comparison with every year in relation to the C.I.R.E.

The second possibility for third-country nationals to consolidate their legal position is the status of long-term resident, introduced into the Law of 1980 by a new Law of 25 April 2007, which transposed Directive 2003/109/EC concerning long-term residents. This status has to be given, on request, to every third-country national after five years of legal and continuous stay in Belgium if he: is not residing in Belgium on a temporary basis; has stable, regular and sufficient financial resources to support himself and his family in order to avoid becoming a burden for the Belgian State; and possesses medical insurance coverage. Such persons are granted an EC long-term residence permit, which is similar to the Identity Card for settled foreigners. The main advantage of this status, however, is the possibility to benefit from a certain extension of freedom of movement within the EU.<sup>241</sup>

<sup>241</sup> With the exception of Denmark, Ireland and the United Kingdom, who are not bound by Directive 2003/109/EC.

## 2.3.3 Conditions for Specific Immigration Types

### 2.3.3.1 *Family Reunification*

Regarding family reunification, a main distinction can be drawn between family members of EU citizens (including Belgian citizens) and family members of third-country nationals.

The family members who have the right to join or accompany an EU citizen (including Belgian citizens) are: the spouse of the sponsor; the descendants of the sponsor or his spouse (upon the condition that they are either less than 21 years old or dependent); the dependent ascendants of the sponsor or his spouse; and the spouse of the said ascendants or descendants. The family members benefit from the same legal regime as the one granted to the EU citizen (Law of 1980, Art. 40).

The family members who have a right to join a third-country national are his spouse or partner over the age of 21 years and their children, upon the condition that they are less than 18 years old and are single. Two conditions have to be fulfilled: the sponsor must have medical insurance that covers himself and his family in Belgium and he must have sufficient accommodation for the entire family. With respect to the latter, accommodation is regarded as sufficient if it complies with the requirement concerning security and health applied in the concerned Region.<sup>242</sup> The right to family reunification is not limited to third-country nationals having an unlimited right to stay in Belgium, but also benefits those admitted for a limited period. However, if the sponsor is a student he must have stable, regular and sufficient financial resources. Except in the special case of a disabled child, financial resources are not required for family reunification in Belgium. Persons not meeting the above criteria do not have a right to family reunification, but may apply nevertheless (Law of 1980, Art. 9). The relevant authorities have the discretion to allow or refuse their stay in Belgium.

### 2.3.3.2 *Work*

This section of the report concerns third-country nationals who wish to be admitted into Belgium for the purpose of work and does not address access to the labour market of persons admitted for other purposes.

A distinction needs to be made between third-country nationals seeking employment and those seeking self-employment. Nevertheless, in both cases, a prior authorization is required to have access to the labour market. Those authorizations, which are different from residence permits, require in principle that the person applies from abroad and not from within the Belgian territory.

#### Employment

The three Regions, which are in charge of employment policy, have the competence to issue work permits to employees. The Regions possess only an executive competence and thus have to apply the rules regarding work permits adopted by the federal power. In each Region, the competent authority is the Ministry for Employment.

<sup>242</sup> The Regions are responsible for the housing policy.

There are three types of work permit in Belgium: one for immigrants entering as workers (permit B); one for foreigners already having a stable right to stay in Belgium (permit A); and one for persons already having a temporary right to stay in Belgium (permit C), such as students.

Permit B is limited to a single employer (not simply the concerned profession) and is valid for a period of one year, but it is renewable. Contrastingly, permit A is valid for every employed profession and without time limit, while permit C is valid for every employed profession, but for a limited period of time only.

The Belgian system is “vacant job oriented”, thus before the employee can request a work permit, his employer must apply for an “occupation authorization”; this will only be delivered if it is not possible to find a worker in the domestic labour market able to occupy the vacant position (what is often called the “labour market test”). Moreover, authorizations are only delivered to workers coming from third countries bound with Belgium by an international agreement related to the occupation of workers.<sup>243</sup>

There are, nevertheless, two substantial exceptions to the labour market test requirement. Firstly, certain categories benefit from a waiver, for example third-country nationals having an unlimited right to stay. Secondly, for other categories the labour market is not tested because Belgium has a need for that type of worker, for example, highly qualified workers.

A third-country national working under a permit B has the right to acquire a permit A after a certain number of years of work: four years in principle, but three if his country of origin is bound to Belgium by an international work agreement, and one year less in both cases if his spouse or children are staying legally with him in Belgium. The permit A will extend his right to work without limitation in regard to time and employment. Moreover, on the basis of the work permit A, third-country nationals can obtain a residence permit valid indefinitely (even if the permit has still to be renewed in principle every year, the right to stay is no longer limited in time). This system shows that an immigrant worker has the possibility to consolidate his right to stay and work in Belgium after a maximum of four years.

Applicants must apply separately for work and residence authorizations. The two types of work authorization will be issued by the Belgian embassy or consulate. When the purpose of the immigrant’s stay is to work, his visa will only be delivered if the work authorization is delivered. In this sense, the work authorization has primacy over the residence authorization, even if the immigrant may subsequently lose his work authorization if he loses the right to residence.

### Self-employment

The system of authorization for self-employed persons is similar to the one for employees described above. Instead of a work permit, the worker will have to apply for

<sup>243</sup> These are Algeria, Bosnia-Herzegovina, Croatia, Macedonia, Morocco, Tunisia, Turkey, Serbia and Montenegro.



a professional card. The delivery of professional cards for self-employed third-country nationals falls within the competence of the federal power.

The competent administration has a discretion to deliver the card if the project is interesting for Belgium from an economic perspective (for example, because it creates a certain number of new jobs, answers an economic need, promotes innovative activity, etc.) or for social, cultural, artistic or athletic reasons. Certain categories benefit from a waiver, for example, immigrants possessing an unlimited right to stay.

Belgian law targets highly qualified workers by facilitating their admission on the labour market. Persons having at least finished higher education (meaning university studies as well as other high schools after secondary education) may obtain a work permit without a prior labour market study if their salary is higher than 33 082 EUR per year. Their employment is, in theory, limited to a maximum period of four years, which can be renewed once, unless they earn more than 55 193 EUR per year. In practice, the majority of these persons will easily subsequently be granted an unlimited residence permit allowing them to work in Belgium without any restriction.

It can be noted that this system is not based on a waiver of the acquisition of a work permit, but on an extremely facilitated procedure: if the persons fulfil the objective conditions related to the degree and salary, the permit is delivered upon simple request, without the exercise of administrative discretion. Moreover, those persons may apply even if they have already entered Belgium or if they come from a country that is not bound to Belgium by an international agreement related to the occupation of workers.

### Seasonal work

There are no specific provisions for seasonal workers in the federal legislation on work permits. This means that those workers and their employers would, in principle, have to apply each year for the necessary authorizations. However, the Flemish and Walloon regions have adopted framework agreements with the representative organizations of employers and employees in order to facilitate the delivery of work permits in these cases.

### **2.3.3.3 Studies and Training**

Third-country nationals have a subjective right to be admitted into Belgium for higher education if they are registered in an educational establishment, possess sufficient financial resources and present a certificate proving the absence of sentences for infractions (if the person is older than 21 years).

The financial resources are broadly defined and may, for example, be fulfilled by possessing a minimum level of financial resources as determined each year by royal regulation. In 2007, this figure was 524 EUR per month, plus 150 EUR per family member. The salary that a student can earn by working legally outside of class hours is taken into consideration. In addition, a grant or a loan covering health, stay, studies and return costs, or a guarantee from a third person to cover expenses relating to the health, stay, studies and return costs of the student for a period of at least one academic year may suffice.

There are special provisions for trainees in the rules on work permits. The authorization and permit are delivered without a labour market test upon the following conditions: the trainee will not occupy any other job during the stay; the training programme is full time; the duration is at most 12 months; and a contract mentioning the training programme and the salary, which cannot be under the legal minimum, is translated into the language of the trainee and signed by him.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Generally, the conditions established in Belgium concerning immigration of third-country nationals conform to EU regulations.

Even after the recent reforms in 2006, the rules relating to family reunification and the admission of foreign students remain quite generous in Belgium in comparison with the European standards and the choices made by other Member States. It remains to be seen how the new requirement concerning sufficient accommodation will be applied, and if it will make family reunification more difficult in practice.

### **4. Real Impact of Immigration Legislation on Immigration in Practice**

#### *The question of co-existence of residence and work permits*

The co-existence of different permits for residence and work makes the Belgian system rather complicated. This is, in particular, the case for persons receiving a permit B (the relevant permit for third-country national workers in Belgium). The Law of 1980 does not state that this permit gives a right of residence to the concerned person. Even if it is not clear that there are problems in practice, a better connection between the laws relating to work and those regarding residence would enhance legal certainty and clarity for immigrants. This is certainly why NGOs have proposed to amend the Law of 1980 in order to create a new status for immigrant workers, which might be temporary or permanent depending on the length of the labour contract.<sup>244</sup> Furthermore, serious consideration should be given to the creation of one single permit combining residence and work.

The rules on work permits, which were in the past excessively unclear, have fortunately been clarified recently; however, more could be envisaged. For example, the need to maintain the work permit C for persons staying temporarily in Belgium (for instance, students) is questionable: what is the sense of such a requirement if the permit is delivered automatically upon simple request? In addition, it must be possible to put the necessary indicator regarding access to the labour market on the residence permit in order to inform the concerned person and possible employers, as well as to allow the possibility of inspectors checking the legality of the access to the labour market.

<sup>244</sup> This position has been expressed in 2003 by the VMC (Vlaams Minderheden Centrum, the Flemish Center for Minorities) and in 2007 by the FAM (Forum Asylum and Migrations, a federation of NGOs).

*The question of the ratification of the UN Convention of 1990 on the rights of all migrant workers*

There has been some debate about the UN Convention of 1990 on the protection of all migrant workers, which Belgium has not ratified like it has ILO Conventions No. 143 and No. 157. An academic study was conducted in 2003 concerning the implications of its possible ratification by Belgium. Contrary to the statement of the Federal Government, the conclusions of the authors are that the ratification would not imply important changes to Belgian migration law; nevertheless, this does not mean that it would remain without effect. On the one hand, it would consolidate some rights by giving them an international legal basis, while on the other hand, it would request from Belgium a better connection between residence and work permits for workers, as well as more coherence in policies relating to the fight against illegal immigration and the regularization of undocumented migrants. The latter outcome is especially important since the Belgian immigration and employment policies lack coherence. Labour immigration is all but stopped according to the law, but many third-country nationals illegally work with little risk to their employers. The Flemish Government has expressed its willingness to ratify this Convention; however, the Federal power still does not consider it convenient. The situation seems to be dead-locked as this convention is a “mixed” treaty under Belgian Law (because it concerns competences of the Federal power as well as of the Regions and the Communities).

*The problems with regard to the functioning of the Office for Aliens of the Ministry for Interior*

Annual reports of the Federal Ombudsman show that almost all the complaints against the Ministry of Interior concern the Office for Aliens. In 2006, the Ombudsman underlined several important elements. Firstly, the time necessary to renew a residence permit runs from six to eight weeks, which is inadequate as persons are advised to introduce their request two to four weeks in advance. The consequence is that they risk losing their job and cannot travel. Secondly, the principle of reasonableness is not respected as requests for regularization may not be decided upon for two years or longer.

An inquiry into the opinion of third-country nationals regarding Belgian migration law shows that people do not understand that the procedure of family reunification is long and complicated. Some efforts have been made to improve the information available to applicants regarding the procedure and its length through the website of the Office for Aliens.

Finally, the very large distrust of immigrants, their lawyers, many actors and observers of alien policy, journalists and even a lot of politicians can be considered as a serious problem to the development of a coherent immigration policy in Belgium. The image of this administration is often very poor, not only because it is in charge of unpleasant tasks like returning undocumented migrants by force, but also because of poor administrative management and communication problems. Responsibility for this situation may be diverse and both political as well as administrative, but some changes to improve the functioning of the Office for Aliens should be envisaged in order to recover its credibility.

The much higher opinion that people in Belgium hold of the administration in charge of the refugee policy, despite an asylum request rejection rate of 85 to 90 per cent, shows that this is not impossible even in a very difficult context.

*The divergent opinions of French and Flemish Communities about immigration*

Belgium is a federal State based on two different kinds of federated States (the three regions of Brussels, Flanders and Wallonia and the three Flemish, French and German Communities), with territories partly overlapping each other and with each kind of federated State in charge of different competences. Migration affairs are distributed over the three levels of power: residence falls within the competence of the Federal power, while the delivery of work permits to employed third-country nationals falls within the competence of the Regions<sup>245</sup> and integration falls within the competence of the Communities. The different levels do not feel the need to cooperate significantly, which would create problems if Belgium were to decide to establish a coherent and universal immigration policy.

It is within this institutional framework that the two main Communities (French and Flemish) express increasingly divergent views with regard to immigration issues. The situation of the labour market and the employment policies are also quite different between the three regions and a request for more autonomy in that field is strongly expressed by the Flemish Community. Moreover, the strength of the far-right party “Vlaams Belang” (“Flemish interest”), which has attracted a significant number of Flemish voters at each election since 1991 on the basis of a programme combining the independence of Flanders with strong anti-immigration measures, contributes to a different political climate concerning migration in the North and the South of Belgium.

The main sector where a divergence is clearly expressed and visible is the area of integration, where only the Flemish Community has launched a compulsory policy. This fact, evidencing the increasingly divergent views between the Communities regarding immigration policy, is not surprising since the Flemish and French policies are extensively influenced by the Netherlands and France respectively.

## 5. Cooperation with Third Countries

The Belgian authorities have recently paid more attention to the link between migration and development. In 2004, the Senate released an entire special report entitled “Migration and development: forces for the future” (Migration and Development Report) and drew a list of recommendations. One recommendation was the widening of the work permit C to embrace third-country nationals working for projects of partnership between the North and South that are agreed by the Ministry for Cooperation. In addition, it was recommended that a structure be created in charge of the coordination of policies concerned with the issues of migration and development. Furthermore, it was recommended that the law of

<sup>245</sup> This is not the case for rules governing the delivery, which is still a competence of the Federal power, so the Regions actually possess only executive powers in that field. For self-employed immigrants, rules and delivery of work authorizations fall within the competence of the Federal power.

25 May 1999 defining priority countries for cooperation be amended to include criteria based on the importance of the number of immigrants present in Belgium who could contribute to this cooperation.

The Belgian Government has also been extremely active the last two years in organising a conference in Brussels on migration and development with the International Organization for Migration (IOM) and the World Bank on 15 and 16 March 2006 and, in particular, the first meeting of the Global Forum on Migration and Development from 9 to 11 July 2007, as a follow up to the High Level Dialogue of the United Nations on the same subject.

Since 1990, Belgium has had a Special Ambassador for Immigration and Asylum. However, this position does not seem to play an important role in the field of migration and development.

Crucially, the Belgian Ministry for Development Cooperation finances some projects linking migration and development, including the MEDMA programme for Moroccan emigrants and the MIDA Great Lakes programmes for the Diasporas from Congo, Rwanda and Burundi. These projects focus on third countries and are all implemented by IOM.

It should be noted that Belgium is the eighth largest source of remittances to immigrant countries of origin. The Senate decided to organize a series of hearings in 2007 on “Migrant remittances”, which were compiled in a report, but that has not been followed by the making of any recommendations (Remittances Report).

Two elements can be mentioned in relation to the idea of circular migration, which currently seems to be the preferred option. Firstly, since the 1960s Belgium has concluded bilateral agreements in relation to the field of social security with Algeria, Australia, Canada, Chile, Croatia, Democratic Republic of Congo, Israel, Morocco, Philippines, Tunisia, Turkey, the United States of America and ex-Yugoslavia. These conventions guarantee the principle of non-discrimination, the protection of acquired rights and the export of benefits upon certain conditions for nationals of both countries. Specifically, these agreements generally allow pensions and family allowances to be paid abroad, as well as access to health care in both countries. It can be noted that the main countries of origin of immigrants in Belgium (Morocco and Turkey) are included within this list. As noted in the section on employment, there is no job-seeker status for third-country nationals in Belgium. Authorizations are only delivered to workers coming from third countries bound with Belgium by an international agreement related to the occupation of workers. These include the nine following countries: Algeria, Macedonia, Bosnia-Herzegovina, Croatia, Morocco, Tunisia, Turkey, Serbia and Montenegro.

Secondly, the “right to return” guaranteed by Article 19 of the Law of 1980 allows immigrants living in Belgium to leave it for a period of less than one year without any condition and for longer than one year if they prove before their departure that the “centre of their interests” will remain in Belgium. The adequacy of this last requirement, which might be difficult to satisfy, should be analysed in order to see if it is in line with the goal to facilitate mobility between the Member States of the EU and third countries of origin of migrants.

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## 1. General Immigration Policy and Trends

Bulgaria is primarily a country of emigration and transit, only to a lesser extent of immigration. According to the UN Migration Report, the net migration index for Bulgaria between 1995 and 2000 was 40 000, meaning that the country has registered 40 000 more emigrants than immigrants. This figure remained stable, being exactly the same as that for the previous period (1990-1995). This situation can principally be explained by economic trends; Bulgaria maintains GDP levels lower than the EU average and at a level similar to that of neighbouring countries. Thus, rather than legal or irregular immigration to the territory of the Bulgarian State, the primary policy concerns relate to the irregular transit of foreigners towards the other EU Member States, as well as aims to prevent the irregular presence of Bulgarian nationals in the territory of the other Member States.

Foreigners seeking residence in Bulgaria, both continuous (a renewable permit for up to one year) or permanent (without temporary limit), are predominantly citizens of neighbouring countries (such as Macedonia, Greece and Turkey) and EU Member States (such as the UK and Germany). The only countries that do not follow this trend are Russia, Ukraine, China and the USA. In 2006, there were 55 684 permanently resident foreigners in Bulgaria.<sup>246</sup>

The Law on Foreigners in the Republic of Bulgaria, first adopted in 1998 and frequently amended since, is the primary piece of legislation regulating migration in Bulgaria. It was initially designed to conform to European requirements and has evolved with the changing nature of those requirements according to the State's status regarding EU accession.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

The main types of immigrants that may enter the Republic of Bulgaria include family members, students and trainees, as well as individuals seeking employment or self-employment. Also allowed are those travelling for business and investment or not-for-profit activity and, in some cases, individuals arriving for medical treatment, retirement, repatriation and those arriving into the territory on special grounds.<sup>247</sup>

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

The authorities responsible for issuing visas are the diplomatic and consular representations of the Republic of Bulgaria. The applicant must apply in person and sign his application

<sup>246</sup> The status of continuous residence was granted to 14 694 foreigners, an increase of 20 per cent in comparison with the previous year. There is an increasing trend in the numbers of work permits, although they still remain quite low, with an average of about 1000 work permits per year. In 2006 there were 1473 work permits issued or prolonged.

<sup>247</sup> There are special grounds of admission for correspondents of foreign mass media that have accreditation in the Republic of Bulgaria and for foreigners who have acquired the status of special protection as per Article 25 of the Law of Fighting the Illegal Traffic of People.



in front of the responsible consular official.<sup>248</sup> The visa application for a long term visa type “D” has to be coordinated with the Ministry of the Interior.

## 2.2.2 Procedural Steps – Conditions to be fulfilled

As a general rule, a foreigner needs a visa to enter the country unless he holds the nationality of a country exempted from this requirement. The Ordinance on Visas defines several types of visas: for airport transfer (visa type A), for transit (visa type B), for short stay (visa type C) and for long stay (visa type D).

Short stay visas are issued to a foreigner who enters the country once or several times for a total period of no more than 90 days within six months, calculated from the date of first entry (Ordinance on Visas, Art. 9).

The latest amendment to the Law on Foreigners made substantial changes in the regime of long-term visas (Law on Foreigners, Art. 15). Under the new regulation long stay visas are valid for up to six months and grant a right of stay for up to 180 days. Unlike in the past, the long-term visa allows multiple entries within the period of its validity. It is granted to persons who wish to settle for either a continuous period or permanently in Bulgaria.

Also introduced with this amendment was a special type of long term visa with a validity of up to one year and right of stay of up to 360 days. This visa may be issued to foreigners who: carry out scientific research; are students in one-year educational programmes; are post-graduate students or trainees; are sent on a business trip by a foreign employer in order to perform specific tasks related to the control and coordination of fulfilment of a contract for tourist services; or are sent on a business trip by a foreign employer for making investments that are certified as following the procedure of the Law for Encouragement of Investments.

The application for a long-term visa shall contain: two copies of the required application form; a valid travel document; a photocopy of the travel document accompanied by all valid visas; pictures of the applicant; and originals of the documents justifying the request for a long-term stay in the Republic of Bulgaria. There are two types of fees related to visas: a visa application fee of 20 EUR and visa issuing fee (which varies depending on the type of visa requested, but for the long-term stay visa type “D” is 30 EUR). In practice, the official deadline for a decision on the application, as communicated by the Bulgarian consulates, is 30 working days.

There are a number of conditions required to be fulfilled by foreigners in order to enter the country. The applicant must possess: sufficient resources for providing his maintenance in relation to the duration and the conditions of his stay in Bulgaria, as well as for returning to the State of his permanent residence; health insurance and other relevant insurances; an invitation in a form, where such is required; and other documents proving the purpose of travel.<sup>249</sup>

<sup>248</sup> In the case of short-term visas it is possible for the visa application to be submitted by a tourist operator or other authorized person.

<sup>249</sup> As an exception to the general rules, according to Article 25a of the Law on Foreigners, it is possible to

The Law on Foreigners identifies two types of grounds for refusal of visa applications: absolute and relative. The 16 absolute grounds, where refusal to issue a visa is mandatory, are enumerated in Article 10(1) of the Law on Foreigners. These include cases where: the applicant's activities have or could put in danger the security or the interests of the Bulgarian State or there is evidence that he acts against the security of the country; the applicant implements trafficking in persons or smuggling of migrants; the applicant has made an attempt to enter the country or to pass through it using false or forged documents, visa or residence permit; the applicant could disseminate a grave infectious disease; the applicant has no ensured maintenance or other necessary obligatory insurances during the stay in the country, or funds ensuring opportunity for returning to his country of origin; the applicant is included in the informational massif of the unwelcome foreigners in the country, maintained by the Minister of Interior and by the Minister of Foreign Affairs.

The ten relative grounds, where the refusal to issue a visa falls under the discretionary power of the issuing authority are enumerated in Article 11 of the Law on Foreigners. These include cases where: there is information that the applicant wishes to enter the country in order to commit a crime or breach of the public order; the applicant entering the country might harm the relations of the Republic of Bulgaria with another State; during a previous stay in the country the applicant has been socially supported by the State; the applicant is not in a position to substantiate reliably the declared purpose of travelling; the applicant does not have sufficient resources to provide his maintenance in relation to the duration and the terms of the stay in the Republic of Bulgaria, as well as to return to his permanent State of residence or to pass through the Republic of Bulgaria; the applicant has presented a document of untrue contents or has declared incorrect data. The grounds for refusal to issue a visa are also grounds for refusal of entry into the country.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

In practice, the refusal rates for both short stay and long stay visas are very low, 1.67 per cent and 10 per cent respectively. Neither the Law on Foreigners nor the Ordinance on Visas foresees a procedure for the appeal of a refusal to issue a visa. The decision is within the discretionary power of the consular official. There is no obligation on the respective authorities to give reasons for their decisions, nor an obligation to inform the applicant of the decision in writing.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### **2.3.1.1 Competent Authorities**

The leading institution in decisions regarding the stay and residence of foreigners is the Ministry of Interior, especially its Directorate "Migration" together with its regional offices. The Ministry of Labour and Social Policy, through its National Employment

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admit foreigners without the presence of any of the requirements of the Law on Foreigners if the foreigners have contributed to the Republic of Bulgaria in the public and economic sphere, or in the sphere of national security, science, technology, culture or sport.

Agency, is responsible for decisions on applications for work permits, permits for self-employment and for the registration of the employment of permit-free categories of foreigners.

### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

Upon entry, the foreigner shall apply to the Directorate “Migration” of the Ministry of Interior (or its regional offices) for a residence permit.

Article 24(2) of the Law on Foreigners identifies three general conditions that all applicants for residence shall meet: possessing accommodation in the country; possessing sufficient resources;<sup>250</sup> and possessing compulsory medical insurance.<sup>251</sup> There is no condition linked to knowledge, either of the Bulgarian culture or of the Bulgarian language. Thus there are no integration or language tests for the migrants to complete.

It is not possible to switch from short-term to long-term stay without return to the country of origin. It is also not possible to switch from one ground of residence to another.<sup>252</sup>

The application fee for continuous residence and its prolongation is 5 BGN (2.5 EUR). For a prolongation of up to 6 months the fee issued is 200 BGN (100 EUR), and for up to 1 year the fee is 500 BGN (250 EUR). The application fee for permanent residence is 5 BNG (2.5 EUR), and the permit itself costs 1000 BGN (500 EUR). However, in cases of permanent residence granted to a foreigner married to a Bulgarian citizen, the fee is reduced to 150 BGN (75 EUR). There are also reduced fees for foreigners of Bulgarian origin and in cases of reciprocity based on intergovernmental agreement. The fee for the issuance of a residence card to a foreigner with continuous or permanent residence is 10 BGN (5 EUR), or higher if expedited.

Applications for the granting of continuous residence are submitted to the Directorate “Migration” of the Ministry of Interior or its regional offices. The decisions have to be taken within seven working days of the application being made. Applications for the granting of permanent residence are submitted to the Directorate “Migration” or its regional offices, or through the diplomatic and consular representation in the country of habitual residence of the foreigner. In the first case the decision has to be taken within a 60-day period, and in the second within 180 days. In cases of applications for long-term residence by foreigners who are long-term residents in other EU Member States, the application is submitted to the Directorate “Migration” of the Ministry of Interior and is decided within a four-month period from the date of the application.

<sup>250</sup> The minimum personal financial resources for daily maintenance for a foreigner in the Republic of Bulgaria amounts to 50 EUR or its equivalent in another foreign currency, except in the cases foreseen by intergovernmental agreement for educational, scientific or cultural exchange or by other acts of the Council of Ministers (Regs. for Law on Foreigners, Art. 8(b)). It is also possible for a sponsor in Bulgaria to take financial responsibility for an applicant through a declaration, certified by a notary, and documents proving the financial resources of the sponsor.

<sup>251</sup> Generally, there are no special requirements for the medical examination of immigrants. However, the need for a medical certificate is explicitly mentioned among the necessary documents for the granting of work permits, permits for self-employed activities and permits for not-for-profit activities.

<sup>252</sup> Foreigners who entered the country on one ground cannot have their stay prolonged on another ground except in cases when the interests of the State require it or in the event of extraordinary circumstances (Law on Foreigners, Art. 2(1)).

### **2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions**

A decision refusing the granting or extension of residence status, as well as the refusal of a work permit, may be contested by administrative order before the immediately superior administrative body. Both the legality and the expedience of the administrative act may be contested by the complainant.

Judicial review based on legality is only possible through the administrative courts system. The administrative acts issued by ministers can be directly challenged in front of the Supreme Administrative Court.

## **2.3.2 Conditions according to Length of Stay**

### **2.3.2.1 Temporary Residence**

Stay based on a long-term visa type “D” may be granted for up to either 180 days or 360 days, depending on the purpose for which the visa is issued.<sup>253</sup> A long stay visa is valid for a period of up to one year.

A residence permit for the purpose of continuous residence is issued by the Ministry of Interior and valid for a period of up to one year. For issuance, the following four items are required to be held by all applicants: a standard application form; a document confirming that the respective fees have been paid; a copy of the applicant’s passport, visa page and stamp of last entry; and proof of accommodation in the country. Depending on the status that constitutes the basis of the application, various additional documents may be required.

### **2.3.2.2 Permanent Residence**

Foreigners with grounds for obtaining a permanent residence permit must submit, in addition to the standard documents mentioned above: documents proving the grounds for the granting of permanent residence; documents confirming the permanent residence status of any spouse, child or parents; documents confirming sufficient resources for the duration of stay in the country; a declaration for the consent of both parents (in cases when the applicants are unmarried or minor children of a permanent resident); a birth certificate (in cases where the applicants are parents of a Bulgarian citizen); and evidence that the candidate has been legally residing in Bulgaria for an uninterrupted period of at least five years (in cases where this is the ground for acquisition of permanent residence). The permanent residence permit is valid for a period dependent on the validity of the national passport with which the foreigner has entered Bulgaria.

The following permits can also be mentioned: the card of a continuously resident family member of an EU national with a validity of up to five years; and the card of a permanently

<sup>253</sup> The visa allowing a stay of up to 360 days is valid for a period of up to one year and it may be issued to: foreigners who carry out scientific research or who are students in one-year educational programmes; post-graduate students or trainees; foreigners sent on a business trip by a foreign employer in order to perform specific tasks related to the control and coordination of fulfilment of a contract for tourist services; as well as to foreigners sent on a business trip by a foreign employer for making investments that are certified as following the procedure of the Law for Encouragement of Investments.

resident family member of an EU national that is valid for a period of up to ten years (Law on ID Docs, Art. 59(1)).

### **2.3.3 Conditions for Specific Immigration Types**

#### ***2.3.3.1 Family Reunification***

For the purpose of allowing family members into the territory of Bulgaria, the following groups of sponsors can be identified: Bulgarian citizens; EU, EEA and Swiss citizens; third-country nationals with continuous residence in Bulgaria; and third-country nationals with permanent residence in Bulgaria. The definition of “family member” differs across these groups.

If the sponsor is a Bulgarian citizen then family members are defined as: the spouse and relatives of descending line (including where they are descendant only of the foreign spouse) who are under 21 years old and who have not entered into a marriage; relatives of descending line (including where they are descendant only of the foreign spouse) who are over 21 years old but do not have income of their own due to the fact that they are not in a condition to provide their maintenance, or where serious health reasons force the Bulgarian citizen to take personal care of them; relatives of ascending line (including relatives of ascending line only of the foreign spouse) to whom the Bulgarian citizen or the foreign spouse provide maintenance; other members of the household who have been entirely supported by the Bulgarian citizen in his State of origin or in the State of his customary residence and of whom serious health reasons force the Bulgarian citizen to take personal care of them (Law on Foreigners, Art. 2(2)).

If the sponsor is an EU, EEA or Swiss citizen, then family members are defined as: spouses or cohabitants of the sponsor; persons of the descending line of the sponsor who are not Bulgarian citizens and have not reached 21 years of age, or for whose maintenance the sponsor is responsible, or who will inherit off the other spouse; and persons of the ascending line for whose maintenance the sponsor or his spouse are responsible. The following groups can also derive rights of entry and stay, despite the fact that they do not fall within the category of family members: other family members that do not fit the above definition but who are financially maintained in the country of origin; members of the household of the sponsor who enjoy the right of free movement and who require personal care by the sponsor due to serious medical conditions; and persons with whom the sponsor has a certified factual cohabitation.

If the sponsor is a third-country national with continuous or permanent residence in Bulgaria or a third-country national with long-term residence in another EU Member State, then family members are defined as the spouse and children under the age of 18 who are not married (Law on Foreigners, Add. Provisions (1)).

There are several categories of family members who are eligible for permanent residence: the spouse of a foreigner permanently resident in the country five years after the marriage; minor children of a foreigner with permanent residence in Bulgaria and who are not married; parents of a Bulgarian citizen when they provide the due legally established

support and, in the cases of acknowledgement of adoption, upon expiration of three years from the acknowledgement of adoption; persons who by 27 December 1998 have entered, are staying, or were born in the territory of Bulgaria and whose parent has married a Bulgarian; members of the family of a Bulgarian citizen, if they have stayed continuously in the territory of Bulgaria during the previous five years (Law on Foreigners, Art. 25(1)).

### 2.3.3.2 *Work*

#### Employment

The general rule is that a foreigner must possess a work permit to be able to work under an employment contract in Bulgaria.<sup>254</sup> The work permit is a personal document that confirms the right of a foreigner to take on employment within the territory of Bulgaria for a specific legal or personal entity and for a particular place, position, type and duration of work (Ordinance on Work Permits, Art. 2(1)). The maximum term for a work permit is one year and although it can be renewed the total period of employment cannot exceed three years without at least a one-month period of interruption.<sup>255</sup>

The application for a work permit is executed by the employer prior to the arrival of the foreigner in the territory of the country. The work permit itself is issued by the National Employment Agency.

A full labour market test is required to be satisfied in order to be issued a work permit (Ordinance on Work Permits, Art. 6(1)). The employer must prove that: he was actively searching for the necessary specialist for a period of at least 15 days, including through the employment offices of the National Employment Agency and through announcements in the national and local media; there are no Bulgarian citizens, permanently resident foreigners or other foreigners with similar rights who possess the required profession, specialization or qualification; and there is no possibility of training the necessary personnel.

<sup>254</sup> Work permits are not required from foreigners who: have permanent residence in Bulgaria or hold equal rights on the basis of right of asylum, recognized refugee status or humanitarian status; are employed or posted according to an intergovernmental agreement concluded by the Republic of Bulgaria, when the condition of release of the work permit requirement is foreseen in the agreement; are sent into the country according to an intergovernmental agreement and programme for legal, financial, expert, humanitarian and other assistance to Bulgarian institutions with which they are not in an employment relationship; are managers of trade companies or branches of foreign legal entities; are members of the Executive Board and the Board of Directors of trade companies, as long as they are not engaged under employment contracts; are representatives of foreign trade companies, registered in the Bulgarian Trade and Industry Chamber; are accredited as members of the foreign diplomatic, consular and trade representatives, or are representatives of international organizations; are officially accredited to the Ministry of Foreign Affairs as correspondents of foreign mass media; are keeping their habitual residence abroad and are participants in scientific, cultural or sporting events, when their activity in Bulgaria does not continue for more than three months; are applying for refugee, asylum or humanitarian status – for work in the centres created by the State Agency for Refugees; are family members of citizens of the EU, EEA countries or Switzerland who benefit from the free movement provisions of international agreements; or are accepted as researchers for the implementation of a research project.

<sup>255</sup> The maximum period of employment is not applicable in cases of high managerial personnel of companies and branches of foreign companies in Bulgaria, teachers and professors in secondary schools or universities, professional sportsmen or trainers, and specialists present for the control and reception of goods from foreign companies.

In addition to the labour market test, there is a minimum education requirement for the foreigner, who must have obtained secondary professional education or higher, or possess specific professional qualifications and experience corresponding to the objective requirements for the specific activity to which the work permit relates.

The following persons do not have the right to work in the territory of Bulgaria, nor may they be issued work permits: holders of a short-term visa and holders of a continuous residence permit based on one of several grounds outlined in the Law on Foreigners, Article 24(1).<sup>256</sup>

Foreigners who are legally resident in Bulgaria and who fall outside the grounds mentioned above may be issued a work permit. This group notably includes family members of a foreigner holding a residence permit for continuous or permanent residence and persons of Bulgarian origin. Work permits are not required from foreigners who have permanent residence in Bulgaria or family members of Bulgarian, EU, EEA or Swiss citizens.

The fee for the issuance and prolongation of a work permit is 600 BGN (300 EUR). The same fee also applies to a local legal entity accepting a posted foreign worker.

All documents necessary for the issuing of work permits must be submitted by the employer to the Directorate “Employment Office” of the National Employment Agency. The Directorate subsequently has three days within which to send all these documents to the Executive Director of the Agency, along with its opinion on the case. The Executive Director decides whether to grant the work permit and notifies the applicant within the legally prescribed deadlines. Any refusal to grant a work permit can be appealed following the procedure of the Administrative Procedure Code.

### Self-employment

The possibility of admission on the basis of self-employment, referred to as “free-lance activity”, is subject to a permit issued by the bodies of the Ministry of Labour and Social Policy. In general, such status can only be granted on the basis of an application from the country of origin and requires the presentation of a business plan (Law on Foreigners, Art. 24(1)).

Permission for self-employment is issued by the National Employment Agency and is valid for a period of one year. Depending on the conditions of the labour market or the general economic conditions in the country, the Minister for Labour and Social Policy can introduce temporary limitations on self-employed activities either nationally or within a specific region. The National Employment Agency has one month within which to decide on the application. In the case of a positive decision, a long-term visa D can be issued and subsequently, upon arrival in Bulgaria, a continuous resident permit. This type of permission is subject to annual renewal.

<sup>256</sup> Foreigners exercising a commercial activity; regular students; representatives of a foreign company; financially secured parents of permanently resident foreigners or of Bulgarian citizens; foreigners admitted for medical treatment; retired and financially secured foreigners; foreigners performing an activity under the law of encouragement of investments; foreigners who wish to be self-employed or to perform not-for-profit activity.



In practice, the procedure outlined above is not made use of: in 2005 not a single permit for this type of activity was issued and in 2006 not a single application was filed (2005 and 2006 Migration Report respectively). One reason for this could be that the majority of those interested in setting up a business apply under the business and investment provisions, which do not require a special permit from the employment authorities, rather then applying under the self-employment provisions.

Several categories of foreigner engaged in business and commercial activities have the right to receive long-term residence upon registration. The categories eligible for continuous residence are: foreigners who carry out commercial activity in the country according to the legally established order, as a result of which at least ten positions have been opened for Bulgarian citizens (unless agreed otherwise by an international agreement, ratified, promulgated and enacted in the Republic of Bulgaria); foreigners who are representatives of foreign commercial companies registered at the Bulgarian commercial-industrial chamber; and foreigners who implement activities under the Law for encouragement of investments (Law on Foreigners, Art. 24(1)). Foreigners who have invested over 500 000 USD (341 000 EUR) in the country according to the lawful order are eligible for permanent residence (Law on Foreigners, Art. 24(1)).

A foreigner who has a registration and is active under the Commercial Law has to present: a certified copy of the decision for registration to the Commercial registry; a certified copy of the document for registration to the tax authorities; a certified copy of the document for registration to the National Agency for Revenues, as well as a document confirming that ten Bulgarian citizens are employed (in cases of application on this ground); and documents confirming the presence of sufficient resources.

### Seasonal work

Seasonal work also requires a work permit (Employment Promotion Act, Art. 72(5)), which is issued for up to six months in one calendar year. A reduced fee of 300 BGN (150 EUR) applies to such cases. There are no special provisions for persons engaged in temporary employment in the Law on Foreigners.

### **2.3.3.3 Studies and Training**

The main categories of students and trainees admitted are the following: students in regular education in licensed educational establishments, including all full-time students studying in an officially accredited institution; students in one year educational programmes; graduate students; and trainees. The last three categories are entitled to long stay visas valid for a term of up to one year and allowing a stay of up to 360 days (Law on Foreigners, Art. 15).

Studies are the most common ground for the granting of continuous residence permits and account for approximately 40 per cent of the total permits granted annually. The necessary documents are a certificate from the educational establishment where the applicant is enrolled in a full-time programme for the respective academic year and documents confirming sufficient resources for the period of stay in the country (Regs. for Law of



Foreigners, Art. 17). Foreigners of Bulgarian origin are released from the requirement of possessing sufficient resources.

Without a work permit, short-term employment can legally be performed upon registration with the National Employment Agency within three days of beginning the activity (Ordinance on Work Permits, Art. 4(2)). Employment of this type is mainly undertaken by foreign students in Bulgaria and can either take the form of 20 hours per week during the academic year or three months in one calendar year during the vacation period.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

The main criticism of the Bulgarian immigration legislation with regard to compliance with the ECHR concerns the administrative sanction permitting expulsion of foreigners on grounds of national security. In one of the latest judgements of 14 June 2007, the European Court of Human Rights unanimously ruled in two separate cases (*Hasan v. Bulgaria* (No. 54323/00) and *Bashir and Others v. Bulgaria* (No. 65028/01)) that, by expelling two foreigners both of whom were married to Bulgarian women, Bulgaria had violated several provisions of the Convention, including Article 8 (the right to family life) and Article 13 (the right to an effective remedy). The decision is linked to the provision of Article 42 of the Law on Foreigners stating that a foreigner may be issued with an expulsion order if his presence in the country constitutes a serious threat to national security or public policy. Furthermore, according to Article 47 of the same Act, orders imposing coercive measures relating to the security of the country are not liable to be challenged in court.

The most recent legislative activity relating to the field of migration has focussed on the transposition of the requirements of numerous European acts. Thus it can be considered that, at present, the Bulgarian legislation in the field complies with the relevant EU standards. Special provisions have been introduced for EU nationals and members of their families (either EU nationals themselves or third-country nationals). Special rules have also been introduced to facilitate the settlement of third-country nationals with an EC long-term residence permit from another EU Member State.

Concerning the rights of long-term resident third-country nationals, the Constitution and the Law on Foreigners grant these individuals rights equal to those of Bulgarian nationals, apart from those rights for whose exercise Bulgarian citizenship is required. Permanent residents in Bulgaria have the right to work without the need of a work permit and have the same rights as far as health insurance and social security are concerned.

The right to family reunification is granted to foreigners with both continuous and permanent residence status. The definition of family members corresponds to that in the Council Directive 2003/86/EC on the right to family reunification and, in some cases, is even wider. However, there is some inconsistency with regard to the age of children who can be considered as family members; in some provisions, the law uses the term “under age children”, which under Bulgarian law would mean under the age of 18, while in other cases there is a reference to 21 years of age. There are no integration or language

tests foreseen, even in cases of permanent residence applications. Anyone who has been legally resident for a period of five years has the right to receive a permanent residence permit.

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

Overall, the migration legislation is being implemented satisfactorily, considering the situation in which it is done, namely the lack of a comprehensive national migration policy, the diversity of institutions involved in the implementation and the constant changing of the rules.

The overarching problem in the field of migration in Bulgaria is the lack of a clearly formulated and consistently implemented national migration policy. In spite of the problematic demography of the country and the insistence of some business leaders, there is no political consensus nor any public debates on the need for stimulation and management of migration. As a result, any changes to the Bulgarian regulations on migration were motivated by Bulgaria's accession to the EU and do not, therefore, always corresponded to its specific economic and social conditions.

From an institutional perspective, there is no single independent body that has as a main objective the development and implementation of consistent immigration policy. This creates a feeling of insecurity and confusion not only among immigrants, but also among experts and the administration.

With regard to legislation, the main difficulties are caused by the constant amendments to the legal framework. In the last four years, the Law on Foreigners was amended on average three times per year and almost every amendment required further changes to other laws or secondary legislation. In some cases, the secondary legislation was not amended for a considerable period of time, creating confusion as to which parts of it were still applicable and which parts were implicitly repealed due to contradiction with the latest amendments in the law.

The Bulgarian Helsinki Committee (BHC) in 2006 reported cases of discriminatory application of the provisions of the Law on Foreigners relating to foreigners married to Bulgarian citizens. The general provision allowing the stay of such foreigners even without the presence of the long-stay visa type "D" (Law on Foreigners, Art. 27(1)) was applied only towards EU citizens, EEA citizens and citizens of the countries of North America. For all other categories of foreigners, especially those of African or Arabic origin, a stay was refused due to the lack of a visa "D". The BHC reported that as a result of an initial practice by the courts to annul such decisions as incompatible with Article 8 of the ECHR, in 2006 several contradictory judgements were rendered. However, the 2007 amendments of the Law on Foreigners introduce a change in Article 27(1) that makes the possession of a visa type "D" a condition for issuing residence permits for all categories of foreigners, thus eliminating any previous discrimination.

## **5. Cooperation with Third Countries**

As the number of foreigners in relation to the total population in Bulgaria is quite low and the countries of origin vary widely, there are no agreements, or even discussions, about brain circulation measures, nor any efforts on remittances. In that sense, Bulgaria is still on the receiving end due to the many Bulgarian migrants abroad.

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## 1. General Immigration Policy and Trends

The presence of migrants in Cyprus is closely linked to the country's rapid economic growth, mainly after 1974, as shaped by various external factors. Nevertheless, for many years government policy regarding the employment of immigrants remained restrictive. From the beginning of the 1990s, however, the lower growth rate of the economy compared with the preceding years, an increase in inflation, pressure from employers to reduce labour costs and the fear of further inflationary pressures led to the introduction of a 'foreign' labour force. Another decisive factor was the country's low unemployment rate, along with full and stable employment for Cypriot workers.

In 2001, it was estimated that the total number of migrants legally living and working in Cyprus was 29 730, comprising 6.8 per cent of the whole labour force, compared with 2.5 per cent in 1990.<sup>257</sup>

As a rule, immigrant workers are employed in manual, unskilled, low-paid and low-prestige jobs in which Cypriots show no interest. Furthermore, a significant number of immigrants perform "atypical" work, mainly of a seasonal nature, and immigrants are often employed in extremely adverse conditions. As a result, they may be forced into conditions of isolation and restriction to specific areas, as in the case of domestic workers.

The main countries of origin of immigrant workers are Moldova, Romania, Bulgaria, Lebanon, Syria, Jordan, Egypt, Sri Lanka, India and the Philippines. With the exception of the Lebanese and to a lesser extent the Jordanians, a substantial number of whom work in highly-skilled jobs, most of the immigrants from Middle Eastern countries are employed in services, agriculture and industry as either skilled or unskilled workers (Trimikliniotis 2003).

Immigrant employment policy continues to be characterized by impermanence and "elasticity". According to commentators, immigrants' residence in Cyprus is dealt with as a temporary phenomenon and no efforts are made towards their active participation in and full integration into the country's labour market and social life.

The legislation regulating the issue of immigration is the Aliens and Immigration Law, Chapter 105, as amended. The Law deals mainly with the issue of refusal of entry into the Republic of Cyprus of irregular immigrants. It is complemented by the Aliens and Immigration Regulations of 1972, as amended, as well as the Aliens and Immigration (Visas) Regulations of 2004.

<sup>257</sup> These figures do not, however, include Greek immigrants, immigrants of Greek descent from the Black Sea area, domestic workers, performing artists, irregular immigrants or permanent visitors (mainly European pensioners). Data is not available for these categories, or if it is, it is only approximate. According to N. Trimikliniotis, the total number of migrant workers (including domestic workers, cabaret workers and 'illegal' migrants) is currently 35 000 – 40 000 (Trimikliniotis 2006).

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Cypriot legislation envisages a number of different types of immigration status, drawing a primary distinction between third-country nationals and third-country nationals who are family members of an EU national. Within the former category, the relevant legislation provides different regimes for family members, employees, self-employed persons and students.

It can be noted that the national policy is to prevent third-country nationals from settling more permanently in Cyprus. Permits are issued on a short-term basis, the length depending on the type of occupation, and may currently only be renewed for a total of up to four years (until recently permits expired after six years).

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

Visas are required to be issued by the consular authorities of the Republic of Cyprus prior to the arrival of the immigrant. However, Section 9A of the Aliens and Immigration Law regulates the issuance of visas at the borders as an exception to the general rule.

#### 2.2.2 Procedural Steps – Conditions to be fulfilled

Subject to some exceptions,<sup>258</sup> all foreigners entering Cyprus require visas for stays up to 90 days. Applications for visas should be filed with a valid passport at the consular authorities of the Republic of Cyprus prior to arrival in the Republic. Types of visas include authorizations issued by the Republic for: one or more entries into the Republic for a period of residence not exceeding three months at a time within six months from the date of first entry; entering one or more times for transit purposes (in other words for the purpose of being transferred to another EU Member State), the visa not exceeding five days each time; and transit via an airport. The Republic of Cyprus does not grant long-term visas.

The Aliens and Immigration Regulations prescribe the procedure for the issuance of visas, which includes: information to be provided depending on the type of visa to be issued; the provision of guarantees for the repatriation and upkeep of the applicant; the carrying out of personal interviews with applicants; and the examination of visa applications and applicable criteria therefore.

<sup>258</sup> Regarding stays of up to 90 days, a visa is not required for: nationals of Australia, Canada, Japan, the United States of America; and nationals of Andorra, Argentina, Bolivia, Brazil, Brunei, Chile, Costa Rica, El Salvador, Guatemala, Honduras, Hong Kong (SAR), Israel, Korea (Rep), Liechtenstein, Macau (SAR), Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Norway, Panama, Paraguay, San Marino, Singapore, Switzerland, Uruguay, Vatican City and Venezuela. Moreover, the following are not required to have a visa in order to re-enter Cyprus: nationals of India, China, Bangladesh, Pakistan and Sri Lanka who are holders of a temporary entry and residence permit for the purposes of employment, the exercise of an independent profession or study; or nationals from the aforementioned countries who are holders of an immigration permit.

Moreover, the following persons are generally prohibited from entering Cyprus: poor persons;<sup>259</sup> mentally insane persons; any person suffering from a contagious disease that is dangerous to public health; any person sentenced for murder or for a criminal offence punishable with imprisonment for any period of time that makes the competent authorities consider the person as an unwanted immigrant; any prostitute or person living out of the proceeds of prostitution; and any person considered by the Council of Ministers to be an unwanted person.

Finally, no visa may be granted to a foreigner who is considered likely to cause problems to public order, national security or the international relations of the Republic, unless the immigration authorities consider that his entry is necessary for reasons of humanitarian or national interest or due to the international obligations of the Republic.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

As a general rule, all acts of the administration of the State, including acts of consular authorities, are subject to judicial review by the Supreme Court of Cyprus by virtue of Article 146 of the Constitution.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

In most cases, stay permits are issued by the Civil Registry and Migration Department of the Ministry of Interior. Alongside the Civil Registry and Migration Department, the procedure for the delivery of stay and residence permits also involves other administrative authorities. The Aliens and Immigration Regulations provide for the establishment of an Immigration Control Commission that is appointed by the Council of Ministers. No immigrant falling within Categories A to F (see section 2.3.2.2) may be granted a residence permit in Cyprus unless he holds the relevant recommendation issued by the Committee. The Aliens and Immigration Regulations also provide for the establishment of an Advisory Committee on Alien Matters that provides advice to the Minister of the Interior regarding the issuing of entry permits, including permits for the entry of third-country nationals for the purpose of employment or for the exercise of an independent profession, as well as the entry of third-country nationals as students. However, any advice given by the Advisory Committee is not binding on the Minister.

#### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

In most cases, an application for the issuance of an immigration permit may be filed by an applicant who has not yet entered into the Republic. The application should be submitted at the consulate of the Republic in the country where the applicant is located. The type of documentation required for immigration status depends on the type of permit requested.

<sup>259</sup> According to Section 2 of the Aliens and Immigration Law, a “poor person” means a person who, in the opinion of the Chief Immigration Officer, is or is likely to become unable to support himself or his dependants, or is likely to become a burden on public resources.



The immigration authorities have a general right to request any person entering or departing from the Republic to undergo a medical examination, to be carried out by a medical officer, if there is suspicion that the said foreigner suffers from an infectious disease that is liable to be dangerous to public health. In practice, this requirement is obligatory as the immigration authorities require all immigrants to undergo such an examination.

According to the Aliens and Immigration Law, Section 33, immigrants entering Cyprus need to present themselves to the immigration office of the district where they reside within seven days of arrival for registration and to provide the authorities with the relevant information regarding identity (such as passports, pictures, citizenship and date of birth).

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

According to Section 18LH of the Aliens and Immigration Law, any decision taken by the immigration authority on the refusal to grant or renew a permit, an order for deportation, or the withdrawal or non-renewal of an authorization for the residence of the family members of a sponsor is subject to the filing of a recourse before the Supreme Court of Cyprus in accordance with Article 146 of the Constitution. Under the recourse procedure, an administrative action must be filed within 75 days of the notification of the decision of the immigration authority. The action does not act as a stay of execution of the decision and an interim order must be sought to stop the decision taking effect until the completion of the action. The interim order application must be supported by a detailed affidavit of all the relevant facts, with the subsequent interim hearing usually being completed within two to three months of filing.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

The granting of a temporary residence permit for the benefit of a foreigner is subject to the discretionary powers of the immigration officer at the port of entry and may be subject to such terms and conditions as provision of security for the purpose of covering the repatriation expenses of the foreigner. The temporary residence permit ceases to be valid if the permit holder leaves the country and does not return for a period of three months.

The delivery of a temporary residence permit is subject to a fee of 50 CYP (85 EUR).

### ***2.3.2.2 Permanent Residence***

According to Cypriot legislation, both national permanent residence permits and EC long-term residence permits may be granted. Nevertheless, a long-term residence permit has the same value as a permanent residence permit.

A third-country national who has resided in the Republic for a continuous period of 15 years immediately before 16 August 1960 may be granted permanent residence. Additionally, the following categories of persons may be granted an immigration permit for the purposes of permanent residence in the Republic:

- Category A: a person intending to be self-employed in the agricultural or livestock-farming sector in the Republic;
- Category B: a person intending to be self-employed in the mining business in the Republic;
- Category C: a person intending to be self-employed in a business in the Republic;
- Category D: a person intending to be self-employed in a business in the Republic (under different conditions from category C);
- Category E: a person offered work not being of a temporary type. Such a person needs to have a certificate from the immigration authorities stating that the taking up of this work will not lead to the creation of unjustified competition in the category of employment in which the person concerned intends to be employed;
- Category F: a person receiving an unencumbered yearly income of 3800 CYP (6485 EUR), his wife 1800 CYP (3072 EUR) and each of his dependants, 1800 CYP (3072 EUR).

The Minister of the Interior may grant an immigration permit for the purposes of permanent residence to persons not falling within one of the aforementioned categories if he thinks that this is suitable, and provided that public interests will not be harmed.

The immigration permit will cease to be valid if the holder has not taken up permanent residence in Cyprus within one year of the permit being granted. The same applies where the holder of a permit fails to be engaged or to continue to be engaged in one of the activities for which he holds the permit. Finally, the permanent residence permit will cease to be valid if the holder thereof remains outside the Republic for a period of two years.

According to Section 18H of the Aliens and Immigration Law, the Immigration Control Committee shall grant EC long-term resident status to third-country nationals who have resided legally and continuously within the Republic for five years immediately prior to the submission of the relevant application. Some exceptions to this include, notably, when the applicant: resides in the Republic to pursue studies or vocational training; is authorized to reside in a Member State on the basis of temporary protection; or resides solely on temporary grounds, such as an au pair or seasonal worker. Periods of absence from the territory of the Republic must not interrupt the aforementioned five-year period and shall be taken into account for its calculation where they are shorter than six consecutive months and do not exceed ten months in total within the five-year period. In addition, the third-country national must fulfil all of the following conditions: have stable and regular financial resources that are sufficient to maintain themselves and their family members; possess medical insurance; not be a threat to public order and security; and not have secured residence by means of false representation (Aliens and Immigration Law, Section 18I). The delivery of a long-term residence permit is subject to a fee of 250 CYP (427 EUR) and is renewable for a fee of 100 CYP (171 EUR).

### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 *Family Reunification*

Foreigners who are family members of an EU national have a right to accompany or join him if the EU national has a right of residence in the territory of Cyprus for a period of longer than three months and he satisfies the following conditions: is a worker or self-employed person in the Republic, or is enrolled at a private or public establishment, accredited or financed by the Republic for the principal purpose of following a course of study, including vocational training; possesses sufficient resources for himself and his family members not to become a burden on the social assistance system of the Republic during their period of residence; and possesses comprehensive health insurance coverage.

Legislation prescribes a “family member” of an EU national as: his spouse; the partner with whom he has a registered partnership; his direct descendants who are under the age of 21 or are dependants, as well as those of his spouse or registered partner; and his dependent direct relatives in the ascending line, as well as those of his spouse or registered partner.<sup>260</sup> Nevertheless, by way of derogation, only the spouse, the registered partner and any dependent children shall have the right of residence as family members of an EU student (not dependent direct relatives in the ascending line).

The immigration authority will immediately issue a residence card upon payment of a fee of 20 CYP when filing the relevant application form. According to Section 13 of the Aliens and Immigration Law, the residence card shall be valid for five years from the date of issuance, or for the envisaged period of residence of the EU citizen, if this period is less than five years.

Apart from the right of residence within Cyprus, the spouse and any dependent children are entitled to take up any employed or self-employed activity anywhere within Cyprus, even if they are not EU nationals.

According to Section 14 of the Aliens and Immigration Law, family members of EU citizens who are not nationals of a Member State and have legally resided with the EU citizen in the Republic for a continuous period of five years shall have the right of permanent residence there. The permanent residence card shall be automatically renewable every ten years following the payment of 20 CYP (34 EUR).

For the purpose of exercising the right to family reunification with third-country nationals, Section 18LB of the Aliens and Immigration Law provides that the sponsor must:

- Have resided lawfully in the Republic for a period of at least two years;

<sup>260</sup> Further to the above, legislation provides that the Republic of Cyprus shall, in accordance with the Aliens and Immigration Law, facilitate entry and residence for the following persons: any other family members (irrespective of their nationality) not falling under the definition of ‘family member’ in Section 2 of the Law who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen; the partner with whom the Union citizen has a duly attested durable relationship.

- Possess accommodation regarded as normal for a comparable family in the same region and that meets the prescribed general health and safety standards;
- Possess health insurance in respect of all risks normally covered for nationals of the Republic, both for himself and for the members of his family;
- Possess stable and regular resources that are sufficient to maintain himself and the members of his family, without recourse to the social assistance system of the Republic.

Where a sponsor holds a residence permit for a period of one year or more and has reasonable prospects of obtaining the right of permanent residence in the Republic, the immigration authority shall authorize the entry and residence in the Republic of the following third-country nationals: the sponsor's spouse (on condition that the marriage took place at least one year prior to submitting the application for family reunification) and the minor children of the sponsor and of his spouse.

The family members of a foreigner enjoying rights as a long-term or permanent resident include: the sponsor's spouse, on condition that the marriage took place at least one year prior to submitting the application; the minor children of the sponsor and of his spouse; and the parents of the sponsor if they are directly and completely dependent upon him. Furthermore, these family members are afforded equal rights of employment and self-employment as the long-term or permanent residents who are supporting them.

No rights of entry and residence are afforded to a third-country national unmarried partner with whom the sponsor is in a duly attested stable long-term relationship, nor to a third-country national who is bound to the sponsor by a registered partnership. Neither are they afforded to unmarried minor children of such persons (including adopted children), or to adult unmarried children of such persons who are objectively unable to provide for their own needs on account of their state of health.

The application for entry and residence for the purposes of family reunification must be made using a special form prescribed by Schedule III of the Law and must be accompanied by a fee of 100 CYP (171 EUR), together with documentary evidence proving the family relationship.

The residence permit that is granted to the sponsor's family members is initially valid for one year, but is subject to renewal. In any event, its duration cannot exceed the term of the residence permit of the sponsor.

### **2.3.3.2 Work**

#### **Employment**

Family members of EU nationals as well as family members of long-term residents are granted the right to exercise a profession without the need to apply for a work authorization. These two statuses, described above, will not be discussed in any more detail.

An employer must search for local workers before they can apply for permission to employ immigrants. They must first employ any Cypriots registered in the regional office;

only when there are no Cypriots available for the specific job in the relevant region will a permit be granted.

Applications for the issue of Entry and Work Permits in General Categories of Employment are submitted to the Civil Registry and Migration Department by the intended employer, through the respective District Aliens and Immigration Branch of the Police, on condition that the foreign workers are abroad. The applications should be accompanied by a work contract stamped by the Department of Labour of the Ministry of Labour and Social Insurance, which is competent to examine whether, regarding the specific profession or job, there are no available or adequately qualified Cypriots and then to make a recommendation for the employment of third-country nationals. The applications are forwarded to the Civil Registry and Migration Department and, after they are examined and it is established that there is nothing against the third-country nationals that prevent their entry into Cyprus, the relevant Entry and Work Permits are issued.

In order to protect the good name and economic interests of Cyprus, it has been decided that companies (including Business Companies) eligible to employ third-country nationals on the island are limited to those belonging to groups with transparent ownership and sources of capital and whose ultimate shareholders are approved by the Civil Registry and Migration Department, or to public corporations quoted on any recognized stock exchange. Eligible Business Companies may employ third-country nationals in executive positions on the island.<sup>261</sup> The maximum number of such executives is three, unless the Director of the Civil Registry and Migration Department is persuaded that a greater number is justified. For executive staff, the application for a First Temporary Residence Permit is made to the Civil Registry and Migration Department, who will decide within one month whether to issue the permit, unless the case warrants further consideration.

For the purpose of granting employment permits to foreign workers in general, the following documents are required: the relevant application forms; a photocopy of the foreigner's passport; a clean criminal record certificate; medical certificates; a bank letter of guarantee for 200-500 CYP (342-856 EUR), depending on the country of origin of the foreigner, to cover possible repatriation expenses, valid for six months after the expiration of the work contract; a work contract, stamped by the Department of Labour of the Ministry of Labour and Social Insurance as well as by the Revenue Stamps Registrar; and a 20 CYP (34 EUR) fee for the submission of the application.

A temporary residence permit for employment purposes is valid for a maximum of four years, but may be extended. The work permit is tied to a specific occupation and employer.

### Self-employment

Cypriot legislation draws a distinction between self-employment and independent profession; self-employment implies permanent residence, whereas independent profession refers to temporary stay.

<sup>261</sup> Business Companies are expected to recruit non-executive staff from within the island. They may employ third-country nationals in non-executive positions if comparable Cypriot personnel are not available.

A foreigner has the right to enter the Republic for the purpose of exercising an independent profession, that is, any activity carried out individually including an artistic activity. The Aliens and Immigration Regulations, Section 12, provides that this includes the provision of professional activities by a company that is not dependent on an employer. While artistic activities include the authorship of literary work, musical composition and the creation of works of fine art.

When the foreigner files an application at the Embassy of the Republic in his country of residence, or to the Director of the immigration authority, for the purpose of entering the Republic and exercising an independent profession, he must submit the following supporting documents:

- His application, stating his full identity information, as well as the type, extent and duration of his professional or artistic activity, the place from which he will be exercising his business, any needs for staff and a description of the premises (which must be suitable for this purpose);
- A clean criminal record;
- A copy of his passport;
- A certificate of registration at a commercial association, where applicable;
- A personal statement, duly certified, as to the amount the foreigner is willing to invest in the Republic, where applicable;
- A special license for exercising the profession, where this is required by the laws of the Republic;
- In the case of a company, the articles of incorporation, proof of its registration, the names of its directors and the names of its shareholders;
- In the case of an artist, proof of his artistic activities, such as publications, performances or exhibitions of works in the country of origin or elsewhere;
- And any other documents deemed important to the applicant for supporting his application.

A temporary residence permit for the purpose of exercising an independent profession is valid for a period of one year, but may be renewed for further periods of time (Aliens and Immigration Regulations, Section 12(9)).

Regarding self-employment, according to Section 5 of the Aliens and Immigration Regulations, where a foreigner wishes to be granted an immigration permit for the purposes of residence in the Republic, the following applies with regards to the applicable income:

- Category A: A person intending to be self-employed in the agricultural or livestock-farming sector in the Republic needs to demonstrate that he has an unencumbered capital of 200 000 CYP (342 000 EUR);

- Category B: a person intending to be self-employed in the mining business in the Republic needs to demonstrate that he has an unencumbered capital of 200 000 CYP (342 000 EUR);
- Category C: a person intending to be self-employed in a business in the Republic needs to demonstrate that he has an unencumbered capital of 150 000 CYP (256 000 EUR). He must also demonstrate that his profession or business will not adversely affect the general economy of the Republic;
- Category D: a third-country national may also be granted a permanent residence permit where he intends to be self-employed in a profession or science in the Republic if he demonstrates that he is duly qualified to exercise his profession or science in the Republic. In addition, a third-country national falling under this category needs to demonstrate that he receives sufficient funds or has a secured income enabling him to carry out his profession. Finally, for a third-country national to be granted permanent residence under this category there must be a necessity in the Republic for additional members of the particular profession or science.<sup>262</sup>

Such permits are permanent unless the third-country national: in cases where he is outside the Republic, fails to take up permanent residence in the Republic within one year from the date that the permit has been granted; fails to take up professional activities or to continue being engaged in professional activities; has taken permanent residence in a third-country or has resided outside the Republic for a period of two years or longer.

### Seasonal work

A recent amendment of the provisions of the Aliens and Immigration Law on 14 February 2007 has included a simple reference to seasonal work but does not contain any terms and conditions for such work. In any event, foreigners may be employed in Cyprus for a period of less than three months and the provisions on temporary employment permits apply.

### **2.3.3.3 Studies and Training**

Where foreign students are concerned, they will be granted a “temporary student permit” provided they fulfil the following conditions:

- The applicant has been selected by a recognized institute of higher education or a public or private institute or organization for the purpose of receiving a diploma, postgraduate diploma, doctorate diploma or other such diploma of higher education;
- He holds a valid travel document and visa where necessary;
- He has sufficient resources to cover fees for the first year of studies as well as living expenses for the first three months of his stay in the Republic; and

<sup>262</sup> The difference between Category C and Category D third-country national applicants is that, in the first category, there need be no actual necessity for such profession in the Republic while in the latter Category there is such a necessity. As a result, the third-country national falling under Category D does not need to demonstrate that he has an unencumbered amount of 150 000 CYP (256 000 EUR).

- He has a clean criminal record.

Within 15 days from the date of arrival on the island, every student is required to present himself to the District Migration Office of his area of residence and submit several documents in order to secure a temporary residence permit.<sup>263</sup>

The Civil Registry and Migration Department is the competent Department to issue entry and residence permits for third-country national students in Cyprus.

The above permit is issued for the specific Educational Institute that the foreign student will attend; any change of the Educational Institute means that a new residence permit must be secured. Attendance of courses is compulsory and relates to the programmes and disciplines of study approved by the Ministry of Education and Culture.

According to Section 13B(9) of the Aliens and Immigration Regulations, a foreign student who is studying or being educated in the Republic is not allowed to exercise any profession, either as a self-employed person or at the service of an employer, unless he is the holder of a special employment permit related to practical training that is part of his study programme.

The student permit is valid for one year and may be renewed provided that the third-country national files an application at the immigration department one month prior to the expiry thereof. For undergraduate studies, the maximum time that the permit may be renewed is for the duration of the studies or, where they have not been completed, a further two years. For a postgraduate diploma, the maximum period is three years and for a doctorate five years. A change of school or specialization is allowed only once, provided the student notifies the immigration authorities.

It is not possible to change the purpose of the permit from studies to work unless a relevant application has been filed and a relevant employment permit has been granted by the Immigration Director.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Cyprus has transposed Council Directive 2003/86/EC on family reunification and Council Directive 2003/109/EC on long-term residents. It has not, however, transposed the EU Directive 2004/114/EC on the conditions of admission of third-country nationals

<sup>263</sup> According to the Aliens and Immigration Regulations, a foreign student must present the following documents to the immigration authorities: - A duly completed application for the granting of a student permit; - A copy of the student's travel documents; - Confirmation that the third-country national has been registered at the institute for the purpose of obtaining a diploma; - Confirmation from a bank that he is in a position to pay the necessary fees and to support himself, taking into account any certified scholarship; - A copy of a health insurance document demonstrating that the third-country national can cover any hospitalization or medical fees; - A copy of a private lease agreement for renting a house, certified by a Certifying Officer, or a copy of a confirmation given by the director of a student residence that the third-country national resides therein, or a confirmation that he resides in a hotel or private residence; - A medical certificate proving that he does not suffer from an infectious disease, as well as a chest x-ray; - Four passport size photos; and - A sum of 20 CYP (34 EUR).



for the purposes of studies, pupil exchange, unremunerated training or voluntary service. The Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research has also not yet been transposed.

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

According to commentators, immigrants' residence in Cyprus is dealt with as a temporary phenomenon and, as a result, no efforts are made towards their active participation in and full integration into the country's labour market and social life. In brief, three basic problems have been identified:

- An absence of integrated, long-term planning, emanating from the mistaken impression that immigrant workers' residence will be short-lived;
- Deficiencies at the legislative and institutional levels and a lack of control mechanisms with regard to the implementation and observance of the terms and conditions of employment, resulting in systematic discrimination against immigrants, both at work and in society as a whole; and
- A lack of political will regarding the full integration of immigrants into Cypriot society, on an equal footing with national citizens and taking into account the principles of diversity, multiculturalism and social solidarity.

In practice, the Immigration Department could be perceived as being unfriendly towards third-country nationals, with a certain feeling of xenophobia in the department due to the fact that most immigrants are viewed as being troublemakers or as a source of unemployment for Cypriot nationals. As a result, the general policy is to stall the granting of residence or other permits and not to grant any residence permits to third-country nationals for more than four years due to the fear that they may seek to apply for permanent residence status or even citizenship. Moreover, it is an explicit objective of the government to give priority to EU and future EU citizens.

The immigration legislation is quite complicated due to various factors: the sophisticated language used (older Greek) makes comprehension more difficult for average persons who do not have legal experience; the use of different terms to define identical subjects (for example, long-term residence has the same status as permanent residence) may be confusing; and the fact that it grants vague and unlimited discretionary powers to the immigration authorities. With regard to the latter, for example, the legislation does not define the time limit within which the immigration authority must issue a decision as to whether or not to grant a permanent or short-term residence. In addition, on various occasions the legislation does not specify the duration of validity of a permit and leaves it up to the discretionary power of the immigration authority to decide the said duration on an ad hoc basis. Thus the authority is granted excessive discretionary powers, which creates inconsistency and uncertainty for applicants, as well as apparent unfairness in some cases due to the lack of any legislative guidance.

## **5. Cooperation with Third Countries**

Benefits and social insurance contributions with respect to foreigners are covered by the Social Insurance Law of 1980 to 2006, which introduced a Wage-Related Scheme of social insurance. Contribution to the Scheme is compulsory, with a few exceptions, and covers all the salaried and self-employed people in Cyprus. The legislation dealing with social insurance provides for equal treatment between native Cypriots and foreigners. In accordance with the Scheme, foreigners have equal rights and obligations to the native Cypriots. Where a third-country national is not covered by the EU Regulations (and, in very limited circumstances, even when a third-country national is covered by these Regulations), the third-country national may be able to receive cash benefits because of the reciprocal agreements in social security between Cyprus and other countries. Cyprus has concluded social security bilateral agreements with the following non-EU Member States: Egypt, Canada, Quebec, Australia and Switzerland.

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## 1. General Immigration Policy and Trends

Present-day immigration trends in the Czech Republic developed primarily after the dissolution of the Communist regime in 1989. Some migration patterns had already developed through the 1970s and 1980s, such as the Vietnamese students invited by the Communist government and Slovaks moving within the common state. During the first half of the 1990s, the Czech Republic was primarily a country of transit from the East to the West, but more recently it has become a country of destination. In the four years between 1992 and 1996, third-country nationals registered as foreign residents grew four-fold. Since then, legal immigration has slowed, but nevertheless continued to increase. As of 2007, there were 350 000 legally residing foreigners within the Czech Republic. Most migrants are from Central and Eastern European countries such as Ukraine, Slovakia, Poland and Russia, with the notable exception of Vietnam and more recently Mongolia. The majority immigrate as labour migrants (employed, self-employed or businessmen), with a minority immigrating for the purpose of family reunification.

The 1965 Aliens Act of the Communist Czechoslovakia was replaced by the 1992 Aliens Act that introduced a standard modern structure of residence titles (short term residence up to six months, long term residence up to one year and permanent residence). However, this Act reserved permanent residence to family members of Czech citizens and humanitarian cases only. The remaining migrants were not permitted to change from long-term to permanent residence status. In addition, the Act allowed foreigners to submit long-term stay applications on the Czech territory, which – combined with the fact that the Czech Republic had visa-free relations with the most important countries of origin – posed almost no bureaucratic obstacles to a foreigner's legal stay and created a situation that was described by many commentators as both liberal and chaotic. Since 1994, the respective governments have striven to gain control over the situation, with the most significant developments being the adoption of the 1999 Aliens Act and the introduction of a visa requirement for citizens of Russia, Belarus and the Ukraine in 2000. These and other measures<sup>264</sup> have been considered very restrictive and, as a consequence of their application, tens of thousands of third-country nationals have lost their right to stay in the Czech Republic.

Despite the strict nature of the current legislation, the number of foreigners legally present on the Czech territory has continued to grow. Additionally, the influence of EU institutions has encouraged migration topics to come into public discussion, which has further influenced Czech immigration legislation. During the course of the implementation of the Common European Immigration Policy from 2002 until 2006, many liberal amendments were made to the Aliens Act. In July 2003, the Pilot project Selection of Qualified Foreign Workers (Pilot project) was launched by the Ministry of Labour and Social Affairs,<sup>265</sup> with only modest success so far, however. Still, all this was not able to significantly reduce the level of bureaucratic formalism of the legislation.

<sup>264</sup> There was also an attempt to limit the duration of labour migration to a period of five years only (after five years of stay, the Labour Office would not be allowed to prolong a work permit). However, this amendment of the then Employment Act was revised six months later.

<sup>265</sup> Inspired by the Quebec system, this project uses quite a strict scoring system to select among the potential migrants.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

The main immigration categories covered by Czech legislation are: family reunification, employment and studies.

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

In principle, short-term visas shall be obtained through the Embassy of the Czech Republic in the applicant's country of residence (or in another country)<sup>266</sup> prior to entry into the Republic.<sup>267</sup> Long-term visas are granted by the Police of the Czech Republic upon application at an Embassy (Aliens Act, Art. 30).

#### 2.2.2 Procedural Steps – Conditions to be fulfilled

A principal distinction is made by the Aliens Act between: short-term visas, including airport visas (category A visas), transit visas (category B visas) and visas for a stay up to ninety days (category C visas); and long-term visas, granted for more than 90 days (category D visas) (Aliens Act, Art. 17a; Art. 17b).

The standard immigration procedure is subject to the delivery of a long term visa. If granted a long-term visa, a foreigner is allowed to reside on Czech territory for a period longer than three months, but for no longer than a year. At the end of this period the long-term visa does not get “prolonged”, instead the foreigner may apply for a long-term residence permit with the same purpose of stay.<sup>268</sup>

In order to be granted a category C visa, a foreigner must possess the following: a travel document; the relevant photographs; an invitation certified by the Police or proof of sufficient funds to cover the stay; proof of accommodation; a deposit equal to the expenses of the third-country national's departure from the Czech Republic back to his country of origin by means of an air carrier; and a travel medical insurance certificate covering the costs of medical treatment associated with an injury or sudden illness, totalling a minimum amount of 30 000 EUR and including expenses incurred through transfer of the individual back to his country of origin if necessary. (Aliens Act, Art. 27).

An application for a category D visa shall include the following documents: a travel document; the relevant photographs; documents confirming the purpose of the stay; proof of accommodation; a criminal registry extract from the Czech Republic; and travel medical insurance for the period of stay in the Czech Republic (Aliens Act, Art. 31).

<sup>266</sup> The nationals of most states are allowed to apply at any Embassy of the Czech Republic.

<sup>267</sup> Nevertheless, under exceptional circumstances, a foreigner who has not been able to submit a visa application at an Embassy can submit an application for a category C visa (stay of up to 90 days) to the Police at a border crossing point (Aliens Act, Art. 26).

<sup>268</sup> It is not possible to change from a short-term stay to a long term stay because the long term visa application must be submitted at an embassy abroad.

Regarding both a category C visa and a category D visa, a medical examination may be required if well-founded suspicion exists that the applicant is suffering from a serious disease, designed for the protection of public health.<sup>269</sup> In addition, a criminal registry extract from the applicant's home State may be required.

Reasons for the rejection of an application include the following: the foreigner is included in the register of undesirable persons; evidence indicates that the costs associated with the foreigner's stay would be borne by the Czech Republic; the foreigner's stay may be a threat to public order; the foreigner's stay is not in the Czech Republic's foreign policy interests or any other significant obstacle to his stay in the Territory is discovered; or the foreigner has breached any obligation provided by the Aliens Act within the past five years (Aliens Act, Art. 56).

The application fee for a short-term visa is 25 or 30 EUR, whilst the application fee for a long-term visa is 80 or 95 EUR.<sup>270</sup> The established terms of delivery for visas are the following: for a short term visa, 30 days; for a short-term visa for an EU-citizen family member, 14 days; and for a long-term visa, 120 days.

## **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

Applicants for visas who apply to embassies are exempted from standard administrative procedural rights such as access to their file, the right to obtain a reasoned decision and the right to an appeal.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

In general, all newcomers should submit their applications for stay permits to an Embassy or consulate of the Czech Republic outside the territory of the Czech Republic.<sup>271</sup>

Additionally, Czech Embassies in EU countries have a policy of checking the validity of the applicant's stay permit in the country of application. If the applicant has no right to stay in the said country, the Embassy will not accept the application for process. However, this practice has no legal basis in current Czech legislation.

The Alien and Border Police in the Czech Republic decide on the vast majority of stay permits applied for by third-country nationals. The Labour Offices at the district level (subordinated to the Ministry of Labour and Social Affairs) are the authorities in charge of granting employment permits.

<sup>269</sup> The diseases that are considered dangerous towards public health are listed in the public notice issued by the Ministry of Health of Czech Republic and include, for example, diseases enumerated by the International Health Regulations (World Health Organization).

<sup>270</sup> On the basis of reciprocity, the consular fees can be higher or lower (for example, regarding long term visas, Ukrainians pay 89 EUR, Russians pay 142 EUR and nationals of Belarus pay 71 EUR).

<sup>271</sup> An exception to this rule notably exists for family members of EU-citizens who are required to apply at an Alien and Border Police office within the territory of the Czech Republic.



### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

With only some minor exceptions, the application procedure and documents required for a stay permit are the same for both temporary stay and permanent residence.

With almost identical requirements as regards the granting of visas, all applicants for stay permits should submit along with a completed official application form: a valid passport or other travel document; two passport-size photographs; proof of accommodation; a criminal registry extract from the Czech Republic; and an administrative fee of 1 000 CZK (36 EUR).<sup>272</sup> In addition, medical examinations and criminal registry extracts from the third-country national's home State are required in some cases.

Many applications for stay-permits require proof of sufficient funds or income, including either fixed sums or a monthly income.<sup>273</sup> Applicants for long-term residence permits and permits for business and studies are required to provide fixed-income sums. Employees do not need to present any proof of sufficient funds since they can present their work contract instead. The monthly income is used as a financial requirement in the application procedure for a long-term residence permit for the purpose of family reunification and for a permanent residence permit.

With regard to reasons for the rejection of an application, the same reasons applicable to visas are valid here.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

Applicants are granted the standard administrative procedural rights in relation to the refusal to grant a permit by the Police or the Labour and Trade Licensing Offices, including: access to the file, the right to obtain a reasoned decision and the right to an appeal. Within 15 days, the third-country national can lodge an appeal to the superior administrative body (for instance to the Alien and Border Police Headquarters or to a Ministry) that has the right to change that decision. This appeal usually has a suspending effect on the decision. If this administrative appeal is unsuccessful, the applicant can lodge a judicial appeal with the Administrative Courts. In this event, the court has the discretion to declare that the appeal has a suspending effect on the decision.

In practice, the administrative control provided for is reasonably effective; in the case of the Alien Police, the Prague headquarters corrects many of the excesses committed by the regional officials of the Alien Police. Contrastingly, the judicial control has not yet provided an effective appeal procedure.

<sup>272</sup> Family members of EU citizens are exempted from these fees.

<sup>273</sup> The amount of money needed as a minimum monthly income is derived from the Living Minimum (LM) and the amount of the normative costs for the purpose of housing allowance (NC). The LM is the socially recognized minimum level of income required for the purchase of basic provisions (such as food and other basic items). The LM should be valorized by the government according to the growth of the consumers' price index. The NC is determined according to the number of persons in the household, the location of the place of living (Prague is more expensive than smaller communities) and whether the place of living is owned by the alien or if it is being rented by him. The minimum amount is 2460 CZK (95 EUR) for a single person living in a small village; the highest amount is 8545 CZK (330 EUR) for a family of four or more persons. The alien can, however, prove that his actual housing expenses are lower than the NC.

## 2.3.2 Conditions according to Length of Stay

### 2.3.2.1 Temporary Residence

Regarding short stays in the Czech Republic, mention can be made of category C visas (granted for up to 90 days) and category D visas (granted for longer than 90 days, but no longer than one year) (see section 2.2.2). Even if long stay visas can be referred to as immigration visas – being the first procedural step on the standard immigration procedure – they can also be used as “short stay permits,” for instance, in order to perform short-term employment and studies.

The standard immigration procedure is to apply first for a long-term visa and, at the end of its period of validity, to be granted a long-term residence permit with the same purpose of stay (Aliens Act, Art. 42). Long-term residence permits are generally granted for a period of one to two years (Aliens Act, Art. 44); nevertheless, they can be granted for less than one year (Aliens Act, Art. 44(4)a). Permits can be renewed repeatedly, but generally not for a period of more than two years at a time (Aliens Act, Art. 44a).

Long-term residence permits are granted for a single purpose. A foreigner who intends to stay in the Czech Republic for another purpose must submit an application for a new long-term residence permit (Aliens Act, Art. 45(1)).<sup>274</sup>

### 2.3.2.2 Permanent Residence

Generally, after five years of continuous residence in the Czech Republic, a foreigner can apply for permanent residency (Aliens Act, Art. 68).<sup>275</sup> The exceptions to this rule are family members of Czech citizens, who can apply directly for permanent residency on entry. Permanent residence permits are also available without the requirement of a specified period of continuous residence in the Czech Republic for humanitarian reasons, or other reasons or categories of person worthy of consideration. The latter include: former Czechoslovak citizens; ethnic Czechs from Eastern Europe and Asia; minor children of a third-country national who is a permanent resident in the Czech Republic; famous sportsmen; and third-country nationals suffering from serious diseases requiring expensive health care (Aliens Act, Art. 66). In addition, participants of the Pilot project are promised the issuance of a permanent residence permit after only two and a half years of stay.<sup>276</sup>

The status of EC long-term resident is granted within the decision concerning the grant of a permanent residence permit if the foreigner: meets the condition of five years of

<sup>274</sup> A foreigner who was granted a long-term residence permit on the ground of family reunification has to stay in the Czech Republic for five years before being granted the right to submit an application for a residence permit for other purposes (Aliens Act, Art. 45(2)).

<sup>275</sup> The period of continuous residence includes any period of residence on the basis of a long-term visa or a long-term residence permit. Only half the time spent in the Territory for the purpose of studies is counted towards the period of continuous residence. Any periods during which the alien was not present in the Territory also contribute towards it, but on condition that such individual periods did not exceed six continuous months and the combined period did not exceed ten months (Aliens Act, Art. 68).

<sup>276</sup> This Pilot Project is not incorporated into the Aliens Act and as a result the immigrants have no legal entitlement to obtain a Permanent Residence Permit after two and a half years.

continuous residence in the Czech Republic; has not significantly disturbed public order or endangered the state security of the Czech Republic or any other European Union Member State; and provides proof of sufficient resources (Aliens Act, Art. 83).

There are no requirements concerning the knowledge of the Czech language. However, the government plans (provisionally within the year) to introduce Czech language tests as a condition for the acquisition of a permanent residence permit. Contrastingly, tests on knowledge of Czech culture are not even being discussed as an idea.

Permanent residency is granted for an unlimited period of time, however, the residence permit proving the status is issued for a validity period of ten years and is renewable upon request.

### **2.3.3 Conditions for Specific Immigration Types**

#### ***2.3.3.1 Family Reunification***

Three main family reunification types can be distinguished, depending on the status of the sponsor. The first type is that with a third-country national who holds a long-term residence permit or a permanent residence permit and has been staying in the Czech Republic for at least 15 months (Aliens Act, Art. 42a). In this case, family members are understood as: the spouse of the sponsor; minor children or dependent adult children of the sponsor or his spouse; a minor placed in the care of the sponsor; and any solitary parent (older than 65 years, or without regard to age if the said immigrant cannot care for himself due to health reasons) of the sponsor (Aliens Act, Art. 42a). When the sponsor holds a long-term residence permit, family members are granted a long-term residence permit for at least one year, which may be renewed. When the sponsor has been granted a permanent residence permit, family members are granted a two years residence permit that can be renewed in periods of five years (Aliens Act, Art. 44; Art. 44a). Family members have the right to be employed (under the condition that they obtain a work permit) and to pursue self-employed economic activity.

The second type of family reunification is that with a national of an EU Member State other than the Czech Republic. The following family members of the sponsor are entitled to family reunification in this situation: his spouse;<sup>277</sup> his parent (if the sponsor is under the age of 21 years); children (younger than 21 years old) of the sponsor or his spouse; a dependent direct relative in the ascending or descending line, or such a relative of his spouse; a person living in a common household with the sponsor and who cannot care for himself due to health reasons and thus require personal care provided by the sponsor (Aliens Act, Art. 15a). These aliens have a legal entitlement to be granted a long term residence permit with a card of residence valid for up to five years, which is renewable and which guarantees them more or less the same rights as the ones enjoyed by EU citizens in the Czech Republic.

<sup>277</sup> Registered partners are granted the permit on the basis of the provision concerning the citizen “living in a common household” (Aliens Act, Art. 15a).

The third type of family reunification is that with a Czech citizen. The persons entitled are the same as those for a national of an EU Member State. These family members have the right to be granted a permanent residence permit.

### **2.3.3.2 Work**

#### Employment

According to Article 89 of the Employment Act, all third-country nationals residing in the Czech Republic on a temporary basis must, in principle, fulfil two conditions in order to be employed: they must hold a valid individual work permit (this is necessary even for a part-time job or for short-term labour contracts) and they must simultaneously hold a stay permit (or, during the first year of their stay, a long-term visa). Normally the work permit is a precondition for the issuance of the stay permit, although foreigners already residing in the Czech Republic for a purpose other than employment (such as family reunification, studies or self-employment) may also apply for a work permit. A work permit and stay permit for this purpose has a maximum duration of one year. Permanent permission to work without a work permit is included within the permanent residence permit.

The Czech Republic has a complicated system of triple permission with regard to employment: firstly, the employer must obtain permission for the hiring of foreign employees; secondly, the foreign employee must be granted a work permit; and lastly, the foreigner must be granted a stay permit. The Labour Office will only issue permission for the employer to hire the immigrant and the work permit after the vacant position has been listed under the available job openings offered by the Labour Office and after it has been unable to staff the position with a person who is registered as “unemployed”.

The application for the employer’s permission must contain the exact number of foreign employees needed and the percentage of female employees among them, as well as a work contract proposal – including the planned duration of employment, professional composition of the future labour force (with, for example, the relevant qualification requirements), salary and a guarantee of accommodation for the foreign employees. These must be accompanied by a notarized copy of a document confirming the entrepreneur’s authorization to engage in business (for example, an excerpt from the Commercial Registry or trades license). The duration of this procedure is approximately one month.

Only after the employer is granted the first permission may the immigrant file an application for a work permit. This application must be submitted to the same Labour Office and must include: a photocopy of the foreigner’s travel document; a declaration from the employer that he will employ the foreigner; a notarized copy of a document of professional competence for the field in which the foreigner is to work (such as a vocational certificate, certificate of matriculation or university diploma); medical confirmation of the foreigner’s state of health (not older than one month); and an administrative fee of 500 CZK (20 EUR). The duration of this procedure is, again, approximately one month.

It can be noted that the permits granted are restricted not only to a particular employer but also to a particular position.

A special group of foreigners form the participants of the so called Pilot Project Selection of Qualified Foreign Workers. These workers enjoy special support from the Ministry of Labour and Social Affairs and have the possibility to apply for permanent residency after only two and a half years of their participation in the project. To be considered for participation in this project, the following main conditions apply:

- The applicant must be a citizen of certain specified countries (Belarus, Bosnia and Herzegovina, Croatia, Canada, Kazakhstan, Former Yugoslav Republic of Macedonia, Moldova, Russian Federation, Serbia and Montenegro and Ukraine) or a graduate from a Czech university of any nationality;
- The applicant must have completed at least secondary education;
- The applicant must obtain at least 25 points in the computerized selection procedure, which reflects criteria such as family situation, qualification, practice, previous stay in the Czech Republic and knowledge of the Czech, Slovak, English, French or German language;
- The applicant must have found a position in the Czech Republic and have been issued a category D visa for the purpose of employment.

### Self-employment

To start a business in the Czech Republic a third-country national must be issued a trade license, registered in the Czech Companies Register and granted a stay permit.

The business license application (or the announcement of the small business) must be submitted to the local Trades Licensing Office,<sup>278</sup> accompanied by the following documents: a completed declaration or application form; proof of his impeccable character (either a copy of his Criminal Record or an equivalent document issued by his State of origin); a certificate proving the legal use of the place of business; a certificate of his professional competence, if necessary; and an administrative fee of 1000 CZK (40 EUR) for each declared trade.

After presentation of the above mentioned documents, the Trade Licensing Office issue a statement certifying that the foreigner meets all the applicable general and specific conditions for the operation of a business. With this statement the foreigner can apply to the Alien Police for a residence permit for the purpose of business.

When the residence permit is issued, if the third-country national has applied abroad he may enter the Czech Republic and present this permit to the Trade Licensing Office, which shall issue the Trade License to him. Then the immigrant must register with the Czech Companies Register as a physical entity, supplying the following documents along with the registration form: the Trade License; a certificate proving the legal use of the place of business; a court fee of 5000 CZK (195 EUR); and an attestation of the signature.

<sup>278</sup> This institution is a department of the municipal offices.

The long term residence permit for the same purpose can be issued for a period of two years. The validity of the corresponding trade license is of the same duration.

### Seasonal work

There are no specific legal provisions for seasonal work in the Czech legislation, neither in the Aliens Act nor in the Employment Act. A work permit must always be issued following the standard application procedure, the only difference being that the period of validity may be shorter than one year. Regarding the stay permit, the short term visa up to 90 days might be issued if the duration of the “season” is not longer than three months. However, this practice is not frequently adopted as the work permit procedure is too complicated to be undertaken for a three-month period only. The demand of the Czech labour market for seasonal workers – if not covered by Czechs citizens – seems to be satisfied by third-country nationals already residing in the Czech Republic.

### **2.3.3.3 Studies and Training**

The only residence title for the purpose of studies is the long term residence permit for the Purpose of Studies, granted for a maximum period of one year and renewable. Foreign students must first obtain admission (or other recognized certification) to a University or other recognized institution. With this document they can then lodge an application at an Embassy.<sup>279</sup> The following documents must accompany the application: confirmation by the University or other host organization; the relevant travel documents and photographs; proof of sufficient funds or a declaration of support from the student’s host organization; proof of accommodation; a copy of his Criminal Record; if the student is a minor, the consent of his parent regarding his stay; and a travel medical insurance certificate (Aliens Act, Art. 42d). Upon request by the Embassy, the student must also present a medical report and/or a criminal record document from his State of origin.

Third-country nationals who have been granted this stay permit can be employed during their studies only after having been granted an individual work permit. Once they have completed their studies it is possible to apply for a change of the purpose of stay without leaving the Czech territory (Aliens Act, Art. 45).

## **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

The Czech legislation complies with the majority of the EU migration legislation and in many cases it provides for more favourable treatment than that required by the EU norms.

However, a major point of non-compliance with conditions established at the EU level is the fact that EU citizens and their family members are still obliged to present proof of accommodation when applying for a temporary or permanent residence permit. This requirement is in direct breach of Article 8 of Directive 2004/38/EC on freedom of

<sup>279</sup> A third-country national already residing in the Czech Republic on the basis of a long-term residence permit can apply for a change of the purpose of his stay (Aliens Act, Art. 45) and lodge an application to the police on the Czech territory.

movement of third-country nationals being family members of an EU citizen. Another possible infringement of EU legislation is a problematic interpretation of the Aliens Act that endangers the correct implementation of Directive 2003/109/EC, concerning the status of third-country nationals who are long-term residents. According to Article 4 of the Directive, long-term resident status should be granted to any third-country national who has “resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application”. However, the Czech Alien Police have interpreted the term “continuous residence” as an exact chronological follow-up of the immigrant’s long-term stay permits. Thus as soon as the third-country national has no valid stay permit (even for a single day), for instance when prolonging or changing his stay permit, the residence is considered to be “interrupted” and the five-year period has to start from the beginning again.

Regarding the situation of newcomers, there is risk of interference in the private and family life of the foreigners and of their family members (in breach of Article 8 of the ECHR) through the foreigner’s fall into illegality, which may occur in a wide variety of circumstances and very easily. For instance, the legal presence of any third-country national in the Czech Republic depends on his ability to extend his stay permit every year (in most cases) and so to repeatedly present all the necessary documents. Thus, if the foreigner loses his passport or is not able to present a new proof of accommodation, the application for the extension of the stay permit will be refused according to the provision of Aliens Act, Section 56(1)(e). Consequently, such a foreigner is obliged to leave the territory of the Czech Republic within a very short period of time. This will necessarily occur regardless of the level of his integration, his family, or other personal ties to the Czech territory, and regardless of any practical difficulties the third-country national may have in leaving the country.

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

Czech immigration law is moderately restrictive and conflicts with the governments approach to support immigration into the country and attract a greater number of migrant workers. The most significant restrictions result in an immense burden of proof being placed on the migrant.

Regarding the grant of stay permits, strong emphasis is laid on values such as the sovereignty of the state, national security and public order and strict formal legality, which are often applied to the disadvantage of third-country nationals. In contrast, too little emphasis is placed on the character of state administration as a service to the public (as well as to immigrants) and on the principle of transparency. In addition, the bureaux of the Alien Police are poorly equipped: there are no filing rooms in the offices, meaning that applicants must stand in a queue with all the required documentation; some of the administrative offices are open only twice a week; and more generally, as most observers agree, diffusion of information is unsatisfactory (Gabal 2004).

Moreover, public authorities often seem to discriminate against foreigners according to their countries of origin. This treatment can clearly be seen, for instance, within the



procedure for the granting of visas: according to the experiences of NGOs, it is more difficult to obtain a visa for the nationals of certain states (for example, several Arabic countries) than others, even if the applicant is a family member of an EU citizen or even of a Czech citizen.

Another problem concerns the proof of accommodation a migrant must produce when applying for a residence permit. Due to a gap in the relevant legislation, it is not possible to deregister a third-country national from the address of his place of residence against his will. Moreover, much accommodation is rented in breach of the law (for instance, for tax evasion purposes or renting without the landlord's agreement), hence the lessor is afraid to sign any official document proving the rental arrangement. As a result of this, many foreigners are not living at the addresses they are registered at and have to purchase proof of accommodation from third persons every year in order to renew their residence permit.

Regarding control procedures, it can be noted that the judicial control procedure has not been functioning effectively so far. The majority of administrative court actions are rejected because the judges refuse to review decisions when the third-country nationals have no legal entitlement to be granted the applied status.

Finally, there is a growing, or at least sustained influence of the intermediaries forming the so called client system, a semi-mafia exploitative structure of organizer-bosses (clients of mafia) lending or selling "their" workers to Czech entrepreneurs for a daily rate; the client takes about half of the worker's wages. This conclusion can be again supported by Gabal: "such [a] system based on resistance and bureaucratic obstacles discourages aliens who respect the given legal structure and rather attracts those who are capable to work on the edge of legality, or beyond it" (Gabal 2004); or by Černík: "One reason for the success of the client system is the economic profit, which is shared among clients, criminal structures, and legal Czech businesses. A second reason is the Czech Republic's restrictive regulatory framework on migration, which made it difficult for would-be migrants to access the Czech labour market without the help of intermediaries. Once established, it is very difficult or even impossible to rid our economy from the structures of the client system" (Černík 2006, p. 28). The crucial point is that many immigrants do not trust public authorities and therefore think that the help of professional intermediaries is unavoidable.

## 5. Cooperation with Third Countries

The Czech Republic prefers not to conclude bilateral labour migration agreements and, as a result, Czech legislation does not give preferential treatment to nationals from specific third countries. In practice, only foreigners of Czech origin (ethnic Czechs living in Eastern Europe or Asia) tend to be granted the humanitarian Permanent Residence status, this being on the basis of their nationality.

Accessing the social security and pension rights paid by the host state is possible for EU Member State nationals. As for third countries, there are bilateral agreements specifically for pension rights with Bosnia and Herzegovina, Chile, Croatia, Israel, Canada, Former Yugoslav Republic of Macedonia, Quebec, Russian federation, Serbia, Montenegro,



Switzerland, Turkey and Ukraine. There are no transfers of social security funds to the country of origin except for pensions.

Remittances are transferred to the countries of origin mostly via Western Union, or by any other private means (for example bus companies or private persons). The bank sector is not significantly involved since the composition of migrant workers in the Czech Republic is mainly from CIS countries and their banking system is not countrywide. There has been a discussion on Migration and Development (in other words, an inter-ministerial meeting of which the Ministry of Finance informed) about the plan to analyse the remittances from the Czech Republic. The ministry has asked IOM to provide any relevant information and similar analysis from other countries.

Circular migration is an important topic for the Czech administration and there is one pilot project covering Western Ukraine, which is traditionally a source for labour migration to the Czech Republic. The project is managed by the NGO Czech Catholic Caritas, which handles the recruitment of immigrants and facilitates the obtaining of visas and work permits. It also organizes immigrants' accommodation, health insurance and other necessary issues in the Czech Republic, as well as their return.

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## 1. General Immigration Policy and Trends

From the end of the 1970s up until the present day, there has been a political agreement that the underlying principle for the Danish immigration/integration policy should be to make certain that immigrants were put in a situation equal to that of Danish nationals.<sup>280</sup>

The first foreign workers arrived in Denmark in 1967, primarily from Turkey, Yugoslavia and Pakistan. Increasing unemployment led to almost a complete halt of immigration by 1973 and, by the late 1970s, the political discourse had shifted from an emphasis on temporary foreign workers to a discussion of immigrants who had “come to stay”, including refugees and those arriving for the purpose of family reunification.

Political conflict over the role of the State in promoting social cohesion continued throughout the following two decades. In the early 1980s, the debate centred on positive discrimination against formal equality, but there was also a new emphasis on Danish language courses for foreigners (Holm 2007).

In recent years, the State’s role has expanded through the Integration Act 2006 and the provision of introduction assistance to immigrants. Initially, newly arrived immigrants received a lower level of assistance than Danish nationals in order to encourage them to pursue employment. The reduced assistance was re-introduced in 2002, but in a slightly different form – now all individuals who have not resided in Denmark for seven out of the past eight years receive reduced assistance, a policy that largely targets foreigners (Holm 2007). The political discourse today remains focused on tightening migration, limiting asylum and promoting integration. Denmark’s legislation on immigration is mainly found in the Aliens Act 2006, as amended in 2007.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Danish immigration policy is primarily focused on individuals who meet an existing demand in the Danish labour market, with the exception of individuals accepted for the purposes of family reunification, study and training. In 2006, 28 449 residence permits were issued for the purpose of work or study, a substantial increase since 2004 when 19 881 were issued. Out of those 28 449 residence permits, 10 360 were given to nationals of the new EU Member States for the purpose of salaried work. In addition, 5032 were granted for the purpose of study, of which a majority were issued to Chinese and US citizens, and 1352 residence permits were granted for specialized work, a majority of which were issued to Indians.

Due to restrictions on family reunification, the number of residence permits granted for this purpose decreased from 11 250 in 2002 to only 5508 in 2006. The majority of residence

<sup>280</sup> The meaning of this, however, has changed over the years, and with this change of meaning the political parties have found it increasingly difficult to agree upon the means to obtain successful integration. There have been clear divergences on the individual’s and State’s responsibility in the process, on the relationship between majority and minority within society, and on the rights and duties of the “new Danes,” which have become more and more the centre of political discussion.

permits for family reunification were given to persons from Turkey and Thailand. The most recent statistics available estimate that 6.3 per cent of the total population are immigrants, with 4.3 per cent being immigrants from non-Western countries (Ministry of Integration).

## **2.2 Admission Rules – Visa Policy**

### **2.2.1 Competent Authorities**

Visas are primarily issued by the Danish diplomatic and consular offices abroad, but may also be issued by other Schengen countries' diplomatic and consular missions. The Danish authorities process approximately 70 000 visa applications annually. In approximately 50 000 cases, a visa is granted directly by Danish diplomatic representation abroad; the remaining 20 000 are processed by the Immigration Service from within Denmark (Visa Information).

### **2.2.2 Procedural Steps – Conditions to be fulfilled**

In order to be eligible for a visa, an applicant: must possess a national passport valid for three months past the visa expiration date; must possess the necessary funds to pay for his stay and return trip; will normally be required to show evidence of a travel insurance policy to cover possible medical expenses during his stay in Denmark;<sup>281</sup> must not be registered as an undesirable in the SIS; must not be a threat to the peace and order in Schengen States; and may be required to present documentation as evidence of the purpose and specific circumstances of the stay (Aliens Order, Art. 15).<sup>282</sup> In general, the application is presented to the diplomatic representation.

Only short-term visas (i.e. Schengen visas), which are issued for no longer than three months per half year, are granted (Aliens Act, Art. 2(b); Art. 4). In order for a business visa to be issued, a relationship must exist between the applicant and the company or organization in Denmark prior to the applicant arriving in Denmark, and the purpose of the visit must be related to the applicant's line of business in his home country. Visas for business visits are not issued if the applicant is subject to work permit regulations (Visa Information). For non-business visas the Ministry of Integration, Immigration and Refugee Affairs has divided those countries whose citizens are required to hold visas into three different categories - an asylum group, an immigration group and a tourist group.

Those countries classified as "immigration countries" are divided into two sub-groups: countries of origin for which applicants are required to have a certain connection to the individual he intends to visit, and countries for which no such connection requirement applies. Citizens from the former group are generally only granted visas in respect of

<sup>281</sup> The insurance policy must cover the individual while in any Schengen country at a minimum level of 224 000 DKK (30 000 EUR) (Aliens Order, Art. 15(iii)).

<sup>282</sup> The following exceptions to the general visa requirement apply: foreigners who hold a residence permit for another Schengen country; foreigners who are visa exempt before entry on the basis of the rules of the European Union; foreigners who are nationals of a country with which Denmark has concluded an agreement on visa exemption; foreigners who belong to a special group of immigrants who, as provided for by the Minister of Refugee, Immigration and Integration Affairs, are visa exempted.

spouses, cohabiting companions, partners and fiancés, children irrespective of age, parents and siblings and their spouses.

The Danish Immigration Service can, on the basis of an individual and thorough assessment, make a visa conditional upon a financial guarantee of 50 000 DKK (6700 EUR), paid by the person that the applicant intends to visit in Denmark. Applicants will be rejected for visas if immigration authorities believe there is sufficient reason to suspect that the applicant intends to seek permanent or extended residency in Denmark or any other Schengen country.

The visa applications that are processed and decided on by Danish diplomatic missions abroad will usually be decided within a few days. Some cases, however, may take up to 12 days. While cases handled by the Immigration Service in Denmark, including most applications to visit family, have an average processing time of five to seven weeks, the average processing time for other types of visa (e.g. business visas and visas for cultural visits) is four to six weeks. In the case of applications for business visas the processing time should be no more than 30 days. The average processing time for the extension of a visa or temporary stay is currently one to two weeks.

According to Council Decision 2006/440/EC of 1 June 2006, amending Annex 12 to the Common Consular Instruction and Annex 14a to the Common Manual on the fees to be charged corresponding to the administrative costs of processing visa applications, all fees were increased on 1 January 2007 from 35 EUR to 60 EUR (450 DKK). However, this increased rate does not apply to countries with which the Commission has been authorized to negotiate a visa facilitation agreement.<sup>283</sup>

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

Danish Embassies and Consulates should advise applicants who wish to appeal against a decision rejecting an application for a visa or a residence and/or work permit to file the appeal directly with the appeals body specified in the letter of rejection. A fee of 100 DKK (13 EUR) shall be charged where the applicant wishes to receive assistance from the Embassy or Consulate in filing the appeal.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### **2.3.1.1 Competent Authorities**

An initial application for a residence and/or a work permit should be submitted to a Danish diplomatic or consular office in the applicant's country of origin. Upon submission, the application will be forwarded to the Danish Immigration Service for assessment (Aliens Act, Art. 46). In those instances where an applicant is permitted to submit an application

<sup>283</sup> Until further notice, a fee of 35 EUR (260 DKK) shall be charged from the following countries: Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Russia, Serbia and Ukraine.

in Denmark, the Danish Immigration Service will determine whether it will be examined or not.<sup>284</sup> The local council may in some cases be asked for an opinion on an individual's case, and the police, regional officials, Ministry of Foreign Affairs, and Ministry of Immigration, Refugee and Integration Affairs may be involved in gathering any relevant information (Aliens Act, Art. 46(b)). The Accommodation Operator involved in the integration of the foreign national may also give an opinion (Aliens Act, Art. 42; Art. 46).

### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

Non-EU and non-Nordic citizens are required to obtain a residence permit in order to stay in Denmark for reasons other than those covered by temporary visas (Aliens Act, Art. 5).<sup>285</sup> A foreign national is normally required to have a work permit in addition to a residence permit in order to seek paid or unpaid work in Denmark. An application for a residence permit must usually be submitted and issued prior to arrival in Denmark.<sup>286</sup> As a general rule, individuals who currently have a residence permit in Denmark can usually submit an application for a residence permit renewal or an application for permanent residency from within Denmark. A residence permit may be refused if the applicant is considered a threat to national security or a serious threat towards public order or health.<sup>287</sup>

Permits can be changed (for example, from study to work or from self-employment to dependent employment), but new applications for the relevant permit must be filed. In these cases the exception to filing the application from abroad comes into play.

Once a residence permit is granted, foreign nationals over the age of 18 must be offered an “introduction programme” (Integration Act, Art. 16; Art. 21; Art. 22; Art. 23), which should be at least 37 hours in duration (Integration Act, Art. 17).<sup>288</sup> Even if such a programme is not obligatory, those who are offered the introduction programme are obliged to participate actively in the components of the programme. The extent and content of the programme components are to be determined in an integration contract, which is stipulated between the foreign national and the local council in accordance with Article 19 of the Integration Act.

It should be suggested to foreign nationals between the age of 18 and 25 that they enrol within a specific time-limit in one or more relevant educational programs. These programs accept persons who: have applied for or are receiving introduction assistance; do not already possess relevant qualifications; and are considered to be capable of completing the programme (Integration Act, Art. 16(a)). If the foreign national is accepted, there is a duty on his part to start and complete the education.

<sup>284</sup> If the application is examined, the applicant will be permitted to reside in Denmark until a decision is issued.

<sup>285</sup> Children under the age of 18 may be exempted from this request if they reside with the person who has legal custody over them; regulation of this remains the responsibility of the Minister of Refugees, Immigrants and Integration (Aliens Act, Art. 5(2)).

<sup>286</sup> When submitted abroad, an application for a residence and a work permit must be submitted to a Danish representative office in the applicant's country of origin.

<sup>287</sup> Nevertheless, it can be noted that no specific health examination is required.

<sup>288</sup> In certain cases foreign nationals may be offered help in accordance with other laws, such as the social law or the law on active occupation efforts instead of the introduction programme.

Persons applying for residence and/or work permits, including with respect to family reunification in Denmark, shall as a rule be charged hourly-based payment, but not for more than two hours (in other words, a maximum of 1460 DKK (196 EUR)).

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

In the case of rejection of an application, the applicant may appeal the decision to the Ministry of Integration, Refugee and Immigration Affairs.<sup>289</sup> Generally, the foreign national must appeal within 14 days (Aliens Act, Art. 52). All refusals include a time limit of no longer than 15 days within which the unsuccessful applicant must leave Denmark (Aliens Act, Art. 33); however, an appeal will prolong this time limit as long as the final decision is pending.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

A residence permit issued for the purpose of work, study or family reunification may either be valid for a defined time period with the possibility of permanent residence, or may be valid for temporary stay only. In deciding whether to issue the residence permit with the potential for eventual permanent residence or one only valid for a temporary stay, particular regard is given to the purpose of the residence or stay (Aliens Order, Art. 28; Art. 29; Art. 30). Generally, a residence permit for the purpose of family reunification is time-limited with the possibility of permanent residence (Aliens Act, Art. 9(1); Art. 11). Similarly, an individual with a permanent contract will be more likely to obtain a time-limited residence permit with the possibility of eventual permanent residence, while a student will likely receive a permit for the duration of the period of study only.

A time-limited residence permit may be issued and initially renewed for not more than a two-year period, however, subsequent renewals can be for up to three years at a time (Aliens Act, Art. 7; Art. 8; Art. 9(1(i))). In “special cases” the first time-limited residence permit may be issued for up to three years.<sup>290</sup> Most often, a first time-limited residence permit is issued for no longer than one year. In any event, no time-limited residence permit will be issued for a time period longer than the contract of employment or programme of study.

### ***2.3.2.2 Permanent Residence***

A permanent residence permit may be issued upon application by a foreign national who has lived lawfully in Denmark for at least the previous seven years and who throughout this period has been issued with a residence permit for the same purpose, unless there is a basis for revoking the residence permit (Aliens Act, Art. 11).<sup>291</sup> A permanent residence permit may also be issued upon application by a foreign national who has lawfully lived

<sup>289</sup> Regarding the role of Danish Embassies and Consulates, see section 3.2.2.1.

<sup>290</sup> Refer to, for instance, provisions regarding the Job Card Scheme, see section 3.2.3.3.2.

<sup>291</sup> A foreign national issued with a residence permit as a minor in accordance with Article 9 of the Aliens Act cannot be issued a permanent residence permit until 18 years of age (Aliens Act, Art. 11(3)).



in Denmark with a resident permit for the same purpose for at least the last five years, and who has had significant ties with the labour market as an employee or self-employed individual in Denmark for the last three years.<sup>292</sup> This employment status must continue until the permanent residence permit is issued and must be assumed to continue beyond the time of issuance. Such individuals must not have received any social assistance for three years prior to submitting the application. An additional requirement is that the foreign national must have obtained an “essential attachment” to Danish society (Aliens Act, Art. 11(4)).<sup>293</sup> As can be seen, the time-limits for granting a permanent residence permit depend upon the applicant’s “integration” into Danish society. In the case of foreign nationals who are included under the Integration Act, a permanent residence permit can only be granted if their integration programme has been completed and if the individual has passed the required Danish language test (Settlement Order, Art. 4; Art. 5). A foreign national not included under the Integration Act can only be granted a permanent residence permit if he has passed a Danish test in accordance with the law on Danish Education to Foreigners.

The local council may issue an opinion to the Danish Immigration Service that includes information regarding whether the foreign national has been or is receiving introduction assistance and if this has ceased due to the foreign national’s own circumstances. In addition, information should be provided regarding whether the foreign national has been offered a programme similar to the introduction programme and, if he has, whether he has completed at least 85 per cent of the programme. The council should also report whether the individual has passed the Danish test. Furthermore, the Immigration Service will, with the foreign national’s consent, retrieve information relating to him and his spouse from the criminal register and the central register of debts and, lastly, information on whether the foreign national has applied for economic assistance during the past three years (Settlement Order, Art. 10; Art. 11; Art. 12; Art. 13).<sup>294</sup>

For permanent residence permits the maximum duration for the procedure is four months from the day the application is filed for simple cases (where full documentation is provided) and a maximum of seven months where documentation is lacking.<sup>295</sup>

<sup>292</sup> Ties with the labour markets should be “significant”, which implies that the foreign national should be self-employed or in a job that is not time-limited, and in both cases the business should not be bankrupt or under liquidation (Settlement Order, Art. 2). It is also possible that the foreign national will be asked to declare himself to be employed for a year after the issue of the permanent residence permit (Settlement Order, Art. 2).

<sup>293</sup> “Essential attachment” means that the foreign national has achieved a high level of contact within the Danish society, that the foreign national promotes his own integration through various activities, or that the foreign national has concluded a longer education in Denmark (Settlement Order, Art. 3).

<sup>294</sup> A foreign national cannot be issued with a permanent residence permit if he has been sentenced to a custodial sentence of more than two years’ imprisonment, or any other criminal sanction involving or allowing deprivation of liberty in respect of an offence that would have resulted in a punishment of this duration for violation of various specified provisions (Aliens Act, Art. 11(7)). Certain debts to the public will also prevent a foreign national from obtaining a permanent residence permit (Settlement Order, Art. 8).

<sup>295</sup> Information given by the press contact at the Danish immigration services, July 2007.

### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 Family Reunification

Family reunification can be obtained by children and spouses, as well as registered or cohabiting partners. There are no possibilities regarding family members of the ascending line (Aliens Act, Art. 9). Residence permits are initially issued for a limited period of time with the possibility of extension. For spousal reunification, the individual living in Denmark must have held a permanent residency permit for at least three years and the marriage or registered partnership must be recognizable according to Danish law.<sup>296</sup> In addition, spousal reunification is conditioned by a series of requirements, including the 24-year requirement,<sup>297</sup> an attachment requirement,<sup>298</sup> a support requirement,<sup>299</sup> a housing requirement and a requirement stating that applicants may not have received certain types of public financial support within the past twelve months.<sup>300</sup> Exemptions from the 24-year requirement and the attachment requirement are given if the person living in Denmark is employed in a field covered by the job-card programme (described below). The spouse living in Denmark must be in possession of a reasonable dwelling within three months of the application (Aliens Act, Art. 9(6)).<sup>301</sup> The spouses or partners must be living together at the same address in Denmark after the residence permit has been granted.

With regard to the reunification of children with their parents or legal guardians in Denmark, the child must be under 15 years of age when the application is submitted.

<sup>296</sup> The marriage must have been entered into voluntarily, and there can be no doubt as to whether the marriage was entered into solely for the purpose of obtaining a residence permit for one of the parties.

<sup>297</sup> The 24-year rule establishes that it is possible to grant a residence permit upon request to a foreigner above 24 years of age who is in a steady partnership of long duration with a person who is a permanent resident in Denmark and also above 24 years of age. "Long duration" is determined by evaluating the entire situation, but normally a period of 12 to 18 months in a shared dwelling will be required, although this is not defined in either the Aliens Act or the Aliens Order.

<sup>298</sup> The attachment requirement demands that the combined attachment of the spouses or partners to Denmark be greater than their attachment to any other country. It quickly became clear after the attachment requirement was introduced in 2002 that it would concern many Danish citizens who had lived and been married for long periods abroad. In order to avoid including such marriages the 28-year rule was added, under which possessing Danish citizenship for more than 28 years "neutralizes" the demand for a superior attachment to Denmark (Aliens Act, Art. 9). Special consideration is made if it is in Denmark's interest to ensure that a qualified worker remains living in Denmark.

<sup>299</sup> The spouse or partner living in Denmark must have the ability to support the applicant (Aliens Act, Art. 9(3)). In most cases this requirement will be met if he has not received public support for at least 12 months prior to the application (Aliens Act, Art. 9(5)). The spouse or partner living in Denmark may also be required to provide a financial security to cover any future public expenses for assistance granted to the applicant under the Act on an Active Social Policy or the Integration Act (Aliens Act, Art. 9(4)). The amount is currently 50 DKK (6700 EUR), although this amount may be decreased in cases where the foreigner *with* a residence permit has passed an exam in Danish (Law on Danish Education).

<sup>300</sup> The person living in Denmark may not have been sentenced by final judgment to imprisonment or any other criminal sanction involving or allowing deprivation of liberty for violent assault on a spouse or cohabitant within the last ten years (Aliens Act, Art. 9(10)). In addition, no application for family reunification from the applicant's accompanying child may be refused on the basis of Article 9(16) (Aliens Act, Art. 9(11)). According to Article 9(16) a child's application may be refused if within the last ten years the person living in Denmark, or his spouse or cohabitant, has been sentenced by final judgment to imprisonment or any other criminal sanction involving or allowing deprivation of liberty for violent assault on under-age children.

<sup>301</sup> Reasonable size is defined as a maximum of two persons living in the house per room and there should be at least 20 square metres per person in addition to facilities (Housing Order, Art. 7).

Furthermore, the child's parent residing in Denmark (or the parent's spouse) must have a residence permit with a view to permanent residence, if he is not Danish or Nordic national or a refugee. In addition, the following criteria must be fulfilled: after the family reunification the child must live together with his parent(s); the child must not have started his own family through marriage or cohabiting partnership; and the parent living in Denmark, or his spouse or partner, must not have been convicted of abuse of a child under the age of fifteen within the ten years prior to the decision. Moreover, whether the parent living in Denmark can provide appropriate housing and can support the child financially, as well as the child's potential for integration in Denmark may also be considered. In cases where the applicant and one of the applicant's parents are residents in the country of origin or any other country, permission for reunification will only be given if the applicant has the possibility to obtain a strong attachment to Denmark and there is a basis for a successful integration in Denmark. In December 2006, 80 per cent of applications for family reunification were decided upon within 137 days.

### 2.3.3.2 *Work*

#### Employment

In general, work and residence permits are granted only if professional or labour-market demand exists, in other words where there is a shortage of available Danish or foreign residents qualified to perform the job in question.<sup>302</sup> The responsibility to acquire a work permit rests with the applicant and not with the employer.<sup>303</sup> In all circumstances, it is a requirement that salary and employment conditions correspond to Danish standards. An individual applying for a work and residence permit for salaried work must do so prior to entering Denmark and must present an employment contract containing a job description as well as the wage, job duties, place of employment and working hours.<sup>304</sup> For those who have a residence permit for the purpose of employment, the issuance of this residence permit implies that a work permit will be issued.<sup>305</sup> A work permit is issued for

<sup>302</sup> The following foreign nationals are exempt from the requirement of a work permit for a period of three months from entry: (i) Scientists and lecturers, in regard to teaching or similar activities to which they have been invited; (ii) Artists, including musicians, performers and the like, if they are of major importance to an important artistic event; (iii) Representatives on a business trip in Denmark for foreign firms or companies having no business address in Denmark; (iv) Fitters, consultants and instructors who have entered Denmark to fit, install, check or repair machinery, equipment, computer software or the like or to inform on the use thereof, if the enterprise with which the foreign national is connected has supplied the machinery, equipment, computer software or the like or, upon agreement with such enterprise, has undertaken to fit, install, check or repair the machinery, equipment, computer software or the like; (v) Persons employed in the private household of foreign nationals who are staying in Denmark on a visit for up to three months; (vi) Professional athletes, coaches and trainers, in regard to the exercise of sports and sports training or coaching.

<sup>303</sup> In cases where a foreign national works illegally in Denmark, he can be deported from the country. Both the employee and his employer can also be punished with fines or imprisonment.

<sup>304</sup> Some professions may require the presentation of a more elaborate job description, including a description of the applicant's educational and professional qualifications. I.T. specialists are required to present documentation for a minimum of three years college-level I.T. studies, in the form of education documents such as transcripts or diplomas from the degree institution, translated into English or Danish. In cases where an original residence permit has been revoked, documentation for terms of employment is required, such as a current employment contract, pay stub or annual tax return.

<sup>305</sup> Generally speaking, it can be noted that work and residence permits are not granted separately, in the sense

employment in a particular position and if the position and/or company should change, a new permit must be obtained. A work permit is valid for the same period of time as the foreign national's residence permit, unless otherwise stated in the permit (Aliens Order, Art. 31; Art. 33). Members of the clergy, missionaries, and other such individuals may be granted work and residence permits.<sup>306</sup>

In 2002, special rules were introduced for certain professional fields indicated on a "positive list" as currently experiencing a shortage of specially qualified workers.<sup>307</sup> These regulations are detailed in what is commonly referred to as the Job Card Scheme. Under this scheme, foreign nationals who have been hired for work within one of the selected professions will be immediately eligible for a residence and work permit. In these cases, the Danish Immigration Service will not request a statement from the relevant branch organization but will immediately grant a permit, so long as the applicant is in possession of a concrete job offer and the proposed salary and employment conditions correspond to Danish standards. In uncomplicated cases, the processing time for these applications must not exceed 30 days.

Foreign nationals occupying professions identified on the positive list are eligible for a residence permit of up to three years at a time for their first application, with an opportunity for extension. If the foreign national loses his job, the requirements for a residence permit in Denmark are no longer valid. Any foreign national who has received a residence permit based on the job-card scheme can bring to Denmark his spouse, cohabitating companion or under-age children living at home.

The obligation to apply for a permit in the country of origin gives the Danish authorities the possibility of pre-screening applicants, allowing entry only to those who fit the needs of the labour market. As a result, unskilled labour migrants find it increasingly difficult to obtain residence permits.

### Self-employment

A foreign national must have a residence and work permit in order to be self-employed or to operate an independent business in Denmark. When examining applications, the Danish Immigration Service will pay particular attention to Danish business interests related to

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that generally it is impossible to obtain a residence permit without having work. As noted above a residence permit granted with proof of employment automatically triggers a work permit.

<sup>306</sup> Members of the clergy or missionaries must present a written statement from the denomination stating that the foreigner will purvey a religious message, spread a specific religion, or work within the congregation, along with a description of the anticipated work the applicant will provide during the stay. Also included must be a description of the foreigner's connection to the denomination in Denmark and documentation for any relevant professional background within the denomination in the home country, related to the denomination's Danish branch, and/or any relevant education acquired in the home country. In addition, a statement from the denomination or applicant is required stating that the said denomination or applicant will support the applicant during his stay in Denmark and that neither the applicant nor any accompanying family members will draw public welfare aid. Finally, a declaration is required from the applicant that he will not engage in any activity that poses a threat to the public safety, order, health or decency or the rights and duties of others.

<sup>307</sup> The list is "periodically" updated in consultation with the different actors on the job market (such as employer organizations), as a kind of a labour market test.

the establishment of a business in Denmark. An annual statement of accounts and/or a budget signed by an accountant must be submitted. Also required is documentation of any shared ownership and, if appropriate, a business plan including an anticipated number of workplaces and book-keeping structure. A description of any possible cooperative ventures with Danish businesses should be included, along with documentation of any deals or partnerships already entered into. Personal information about the individual, including documentation of the applicant's education and work experience, personal capital and language skills are also considered.

The applicant's presence and involvement must be vital to the establishment of the business and he must actively participate in its day-to-day operation. Applicants with only economic and financial interests in the business are not eligible for a permit on these grounds. As a rule, a foreign national is not eligible for a residence and work permit for the purpose of opening a restaurant or retail shop in Denmark. A self-employed foreign entrepreneur will receive a residence permit for a period of one year at a time, with the possibility of extension. A foreign national who is granted a residence and work permit as an independent entrepreneur does not have the automatic right to bring his family to Denmark, although spouses, cohabiting companions and underage children living at home may be granted a residence permit.

### Seasonal Work

Seasonal work does not exist as an immigration category in Danish immigration law.

### **2.3.3.3 Studies and Training**

Residence permits can be granted for study or other educational purposes to students pursuing post-secondary education, students pursuing public school and youth education programmes, and students attending folk high schools (Aliens Act, Art. 9(c)). Requirements for obtaining a permit in relation to post-secondary education include documentation showing: that the individual has been admitted to a post-secondary educational programme at a publicly accredited learning institution; that he will be self-supporting for the duration of the stay in Denmark; and that he has sufficient ability in the language of instruction as well as either Danish, Swedish, Norwegian, English or German.<sup>308</sup> A residence permit for the purpose of participation in a course at a folk high school or in basic and youth education may be issued for a temporary stay for the duration of the course in question or for one year, whichever being the shorter period (Order on Residence Permits for Students, Art. 10). Upon application, a work permit is issued to foreign students for part-time employment for up to fifteen hours a week. Furthermore, upon application, a work permit is issued to the foreign students referred to in Article 15

<sup>308</sup> It is a condition that either a Ministry or institution of higher learning has arranged the applicant's participation in the educational programme, or that the educational programme is part of a post-secondary curriculum that the applicant has already commenced in his country of origin. This means that a foreign student may be granted a residence permit either in order to complete an entire education programme or in order to participate in part of an educational programme. In cases where the applicant is under the age of 18, parental or guardian consent has to be given and it must be proved that the place of study will assist in ensuring proper residence and study conditions.

of the Order on Residence Permits for Students, entitling them to full-time employment during the months of June, July and August.

There is also the possibility of obtaining a temporary residence permit as an intern. The applicant must be at least 18 years of age, but not yet 35, at the time of the application. The internship must have an objective of supplementing an educational programme that the applicant is already undertaking or has completed. The place of internship must be able to provide an adequate educational experience. Wage and employment conditions must also correspond to Danish standards. A description of the intern's responsibilities and the goals of the internship, as well as a description of how the internship will complement the applicant's on-going or completed education in his home country must accompany the application.<sup>309</sup> Interns receive a residence permit for the length of the internship agreement, which must not exceed 18 months. In December 2006, 80 per cent of applications for study and traineeships were decided upon within 40 days.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Danish policy relating to family reunification is in several ways more restrictive than Council Directive 2003/86/EC on the right to family reunification. For example, the attachment requirement and the requirement that the resident in Denmark has been a permanent resident for at least three years are not required under the EU Directive. In addition, reunification with children is further limited by the rule that neither parent must be residing in the country of origin, or if they are a sufficient link to Denmark must be proven. Furthermore, children must be no older than 15 years upon application for family reunification, contrary to the definition of a child established by the Convention on the Rights of the Child, which sets the limit at 18 years.

It is of further concern that the criteria for attachment and also the requirements for documentation to obtain specific residence permits, such as those for study, internships and au-pairs, are not specified in the Aliens Act or the Aliens Order. The information is available online, but these are not legal documents on which legal claims can be made. Another example of such uncertainty is the demand for a partnership to have been of "long duration" with regard to the 24-year rule. This is left to an extremely high degree of interpretation and the afore-mentioned period of 12 to 18 months, which is found on the ministry website, seems to be an estimate with no legal foundations.

It should be noted that Denmark has a special arrangement with regard to EU legislation under Title IV of the Treaty establishing the European Community (TEC). According to a Protocol on the position of Denmark, annexed to the Treaty on the European Union (as amended by the Treaty of Amsterdam), Denmark is not taking part in measures proposed under Title IV. However, Denmark is expected to conform to legislation under

<sup>309</sup> In addition to the general requirements, agricultural, forestry and horticultural interns must, along with the intern's host, complete and sign a special information form, which includes a list of intern tasks. As regards healthcare interns, the supervising physician must submit a written statement to the Immigration Service attesting to the intern's capabilities, as well as accepting responsibility for the intern's work and to personally supervise the intern.

the Schengen *acquis*, to which it adheres, and Danish law does generally follow EU legislation.

#### 4. Real Impact of Immigration Legislation on Immigration in Practice

The Danish policy emphasizing labour migration, especially from Eastern European countries, has had a significant impact. In 2005, 4932 residence permits were granted to applicants from these countries, while by 2006 the number had risen to 10 360. The number of permits granted for study or work purposes, or to EU and EEC citizens, represented almost 90 per cent of the total number of permits granted in 2006. Between 2004 and 2006, work and study permits increased from 20 773 to 25 807, while in the early 1990s the number of such permits was below 10 000. This increase is mainly due to the increase in applicants from the Eastern European States (Ministry of Refugees, Immigration and Integration). The job-card programme, which focuses on obtaining specially qualified persons, has had a relative impact, even if the numbers are not high – in 2005 there were 609 granted permits, while in 2006 the number had risen by 50 per cent to 902 (Immigration Statistics 2007). With regard to family reunification, there has likewise been an effect, but in this case a restrictive one: between 2001 and 2006 the number of applications fell from 15 370 to just 5508. In 2005 the number of granted family reunification permits was one third of the number in 2001, totalling 3533 (Ministry of Refugees, Immigration and Integration), while in 2006 the figure was 3594 (Immigration Statistics 2007). As the numbers show, the actual impact of the legislation has been quite noteworthy and the desired results seem to have been obtained.

The Committee on Economic, Social and Cultural Rights expressed its concern in 2004 (E/C.12/1/Add.102) over reports of cases of ill-treatment, particularly of migrant women, at the hands of their spouses or partners. These incidents often remain unreported for reasons of economic dependency and fear of deportation. The Committee notes that the situation has been exacerbated by the 2002 amendment to the Aliens Act, which increased the required number of years of residence before a permanent residence permit may be obtained by migrant women married to Danish citizens to seven. The link between a fear of deportation and maltreatment is important and has also been underlined by Amnesty International Denmark.

#### 5. Cooperation with Third Countries

Traditionally, Danish foreign assistance does not focus on cooperation linked to migration (with the exception of refugees), but on development. However, this may change; during the time of writing this study, the Danish Ministry for Foreign Affairs published the government's new development assistance plan for the period 2008 to 2012, "A world for all" (Danish MFA 2007). The plan addresses, *inter alia*, migration and development, for example by supporting international initiatives (including other EU Member State initiatives) that are generally targeted at facilitating, through knowledge and resources, the opportunities of migrants to contribute to the financing of development in their home country.



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# Estonia

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## 1. General Immigration Policy and Trends

Estonia has a long history of both emigration and immigration that has coincided with periods of colonization, independence and occupation. During the period of independence from 1918 to 1940, Estonia was already a multi-ethnic country with recognized Russian, Swedish, Jewish, German and Latvian minorities, all of which had almost completely disappeared by 1945 due to the acts of occupation regimes (Matiisen 1993; Demuth 2000; Estonian State Commission on Examination of the Policies of Repression 2005; Estonian International Commission for the Investigation of Crimes Against Humanity 2006). The Second World War, a Soviet occupation (1940-1941), a German occupation (1941-1944) and another Soviet occupation (1944-1991), had a devastating impact on Estonian demographics (Tamm 2005; Rand 2006; Mälksoo 2005 and 2006; Zimele 2005). The population loss was offset by the Soviet occupying power via forced industrialization and by allowing and encouraging the entry of constant waves of migrants from different parts of the Soviet Union, including Russia, Belarus, Ukraine, Moldova, the Caucasus and Central Asia (Sarv 1997; Mettam and Williams 2001; Kukk 2005). Since that time, there have been four distinct periods of immigration in Estonia: (1) 1945 to the mid-1960s, when migration was most intensive, ideological and managed; (2) the mid-1960s to the end of the 1970s, when migration was indirectly managed, but motivated mostly by economic factors and industrialization; (3) the end of the 1970s to the end of the 1980s, when migration started to decrease and family reunification became prevalent; and (4) the end of 1980s until the present day, when independence was declared and migration almost completely halted (Tammaru 1999).

Comparing the 1989 census data with the indicative figures of 1945, the Estonian population was 1 565 622 persons, almost double (1.8 times) that of 1945, including 963 000 Estonians (61.5 per cent) and 602 381 persons of other ethnic backgrounds (the remaining 38.5 per cent). Furthermore, almost uniquely in Europe, 26 per cent of the Estonian population was foreign-born (36 per cent with the inclusion of the second generation), whilst the native population was still ten per cent less than before WWII (Katus and Puur 2006).

This provides the perspective for Estonia's post-1990 period of restrictive migration policy and relatively conservative naturalization policy. Recent changes in immigration policy, however, have been facilitated by the relative success of integrating past immigrants into Estonian society,<sup>310</sup> a declining and ageing population, rapid economic growth and the resulting projected lack of labour.

The primary legislative corpus regulating migration (except forced migration and movement of EU, EEA and EFTA nationals) consists of the following elements: The Aliens Act 2004 regulates the admission of aliens into Estonia, their stay, residence and employment and the bases for liability; additional legislation, which includes the Obligation to Leave and Prohibition on Entry Act 1998; the Identity Documents Act

<sup>310</sup> If measured in numbers this amounts to around 130 000 naturalizations between 1992-2003 (approximately ten per cent of the whole population).

2000; and finally the Citizenship Act 1995. Following well established case-law of the Supreme Court, the Estonian constitution does not provide for general rights of admission for third-country nationals, nor does it contain an explicit right of asylum or an individual right of naturalization.

It is important to note that due to the particular historical circumstances described above, Estonian migration management has so far been much more centred on managing the applications of migrants from inside the country, in other words, managing and processing the applications of third-country nationals who have already lived in Estonia for long periods of time. It is only now, when the situation has become more stable (because most of the past residents have either been naturalized or obtained permanent residence), that more attention is being paid to external services and more focus being devoted to the management and administration of new admissions.

## **2. Laws and Conditions of Immigration**

### **2.1 Overview of Immigration Types**

The Aliens Act provides the following grounds for residence in Estonia: admission for the purposes of paid activity (employment, self-employment and business); family reunification; studies, vocational training and research; residence following from an international agreement (although this basis has never been detailed); exceptional temporary residence (for example, victims and witnesses in human trafficking proceedings); and permanent or long-term residence.

Section 6(1) of the Aliens Act establishes a fixed annual immigration quota as follows: “The annual immigration quota is the quota for aliens immigrating to Estonia which shall not exceed 0.05 per cent of the permanent population of Estonia annually.” Although not unique in itself, the quota actually works quite differently from quotas in some other countries; it is a control measure that is intended to constitute an absolute ceiling for admissions *per annum*, rather than a “desirable quota” based on estimations of need. The annual immigration quota is fixed and centrally determined without any involvement of local government, social partners or the civil society.

Several exemptions to the quota system have been inserted throughout the Aliens Act, establishing categories of migrants that do not fall under the quota. For instance: ethnic Estonians; most family members entering the country following the family reunification procedure; citizens of the United States of America and Japan (this category previously included Canadian, EU and EEA nationals as well, but was changed due to non-reciprocity in visa waivers and, secondly, due to being regulated by a separate act since EU membership); specific persons in the national interest for economic, educational, scientific or cultural development; persons who apply for a residence permit for studies; and aliens holding an EU long-term residence permit.

## 2.2 Admission Rules – Visa Policy

### 2.2.1 Competent Authorities

The Aliens Act provides that the visa application should, in principle (border procedure being an exception), be submitted to the foreign representation of Estonia. The consular officials shall then decide upon the issuing of a visa, which means that Estonian foreign representations – subordinate to the Ministry of Foreign Affairs – have a central role in the processing of visa applications. As this issue has been highly controversial, there were some flanking measures designed, limiting the rights of a consular official's decision-making autonomy. For example, the creation of a compulsory automated digital consultation system (involving the Citizenship and Migration Board, the Board of Border Guard, the Central Criminal Police and the Security Police), in practice constituting a component added to the current Visa Register, itself being a national component of the future EU Visa Information System (VIS).

### 2.2.2 Procedural Steps – Conditions to be fulfilled

According to the Aliens Act, the following categories of visa may be granted: airport transit visas (category A); transit visas (category B); short-stay visas (category C), for a period of stay up to 90 days; and long-term visas (category D), for a period of stay up to six months.

In terms of procedures, Estonia issues the types of visa that are prescribed by the Schengen Common Consular Instructions (CCI). In order to obtain a visa, an applicant must meet the following conditions: he must hold a valid travel document; the purpose of the planned stay must be in accordance with the provisions of legislation regulating the temporary stay of aliens in Estonia; the cost of accommodation during the stay must be secured; the applicant must prove his intention to leave Estonia upon termination of the period of stay; the cost of return to his country of origin must be covered; he must hold a valid health insurance policy guaranteeing that the costs related to his medical treatment as a result of illness or injury during the period of validity of the visa will be covered (Aliens Act, Section 109).

The Aliens Act specifies very detailed grounds for refusing a visa application (Aliens Act, Section 1010). These include seven grounds on which the visa shall automatically be refused; notably including cases where, for instance, the conditions of issuance of a visa are not met, the applicant is subject to an entry ban, or he constitutes a threat to public order, public safety or national security. In addition, the Act enumerates a further ten grounds which provide the issuing authority with a discretion to refuse a visa; notably including cases where, for instance, the applicant has committed an offence and/or has not paid a fine for committing an offence, or simply when a consulting authority has not given an approval.

Following Government Regulation No 150 from 27 April 2004, there is a time limit of thirty days from the submission of the application within which the visa must be issued (with an additional thirty days to register the invitation if this is the basis for the visa).

### 2.2.3 Appeal and Administrative or Judicial Control of the Decisions

Although the procedures for obtaining a visa were extensively codified in the Aliens Act 2004, the decision-making itself is highly discretionary in nature. This is mainly due to the fact that Section 1(4) of the Aliens Act provides that the Administrative Procedures Act does not apply to any of the visa procedure. According to Section 10<sup>10</sup>(3) the Aliens Act, visa refusals do not have to be substantiated and neither the Aliens Act nor the relevant implementing Acts provide for a written indication concerning the details of an appeal. Nonetheless, Section 10 of the Aliens Act does provide for an explicit right of (judicial) appeal within ten days of the refusal. However, the effectiveness of this remedy remains questionable. Although Section 57 of the Administrative Procedures Act compels applicants to be familiarized with the possibilities for an appeal, as already stated, the Act does not apply to the visa procedure.

## 2.3 Stay and Residence Rules

### 2.3.1 General Rules regardless of the Immigration Category

#### 2.3.1.1 Competent Authorities

The Citizenship and Migration Board (CMB) is the authority primarily responsible for migration management. CMB has a central department and four regional departments, as well as various local bureaux under the regional departments. In addition to the CMB, the Ministry of Foreign Affairs handles applications for residence permits from abroad;<sup>311</sup> the Labour Market Board handles applications for work permits and migration for employment purposes; and the Board of Border Guard and Police Board deal with enforcement. Like migration policy, migration management is centralized, thus governmental institutions rather than local governments are responsible for the issues related to admission, stay and residence of aliens.

#### 2.3.1.2 Procedural Steps – Conditions to be fulfilled

Applications can be written in Estonian, Russian and English. Applications for a residence permit should be submitted, in person, to Estonian foreign representation (Aliens Act, Section 11(4)). However, this general rule is, in practice, an exception (primarily applicable to first-time applicants) due to two factors: firstly, visa-free country nationals and their family members are exempted from the requirement; and secondly, there is a long list of exceptions (including one which provides that the CMB can grant permission to submit an application in-country).

Applicants must provide the required supporting documentation and the relevant fee at the time of application. Many applicants will be required to provide proof of means of subsistence and a legal income. Section 4<sup>3</sup> of the Aliens Act provides that legal income is lawfully earned remuneration for work, income received from lawful business activities, property, pensions, scholarships, support or benefits paid by a foreign State and

<sup>311</sup> The foreign representations only identify the applicant and primarily put the documents in order, they have no role in the decision.

maintenance ensured by family members earning a legal income.<sup>312</sup> Applications should include information regarding housing (for example, the size of the accommodation, the number of persons staying there, etc.) and medical insurance.

In general, applications should be decided within six months where the immigration quota is calculated; within three months if it is not calculated (it should be pointed out that there are procedural pre-steps like permission to work in cases of admission for employment or affirmation by the educational institution in cases of admission for studies); within two months in cases of renewals; and one month in cases of issuance of work permits. It should be noted that it is planned to curb significantly the application deadlines, in particular for admission for employment; in practice, this means bringing the specified legal deadlines closer to those already applied in practice (rather than taking specific additional steps for more efficient procedures).<sup>313</sup>

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

Although not a legal remedy itself, it can be noted that, before refusing a residence and/or a work permit (including renewal of such permits), the administrative authority must give a right to a hearing. This is usually conducted in written format: the applicant is provided with the grounds and details of a possible negative decision so that they can contest it before the decision is officially taken.

The Supreme Court has found that the constitutional right to appeal (as reflected in Sections 13 to 15 of the Constitution) foresees both a right to submit an appeal and a positive obligation on the State to introduce a procedure for the effective protection of Constitutional rights (RT III 2003, 13, 125). With regards to migration procedures (except visa procedures), the applicant has a right to submit an administrative appeal before going to the Administrative Court. As the Aliens Act does not provide for an automatic suspension of the decision on filing for an appeal, the alien must also apply for initial protection from the Administrative Court to postpone the effect of the administrative decision (Administrative Court Procedures Act, Sections 12(1) - 12(2)).<sup>314</sup>

There are no procedures established to exercise an effective right of appeal in the case when an alien resides in a third-country; therefore, the effectiveness of submitting an appeal and possible judicial protection against arbitrariness of decisions remains questionable, as in cases of visas (see section 3.2.2.3). There is no obligation to issue a visa for the purposes of exercising a right to appeal.

<sup>312</sup> The legal income is required in order to obtain temporary residence for studies, residing with a close relative, family reunification with a spouse, residence for the purpose of having sufficient legal income, residence for business and long-term residence.

<sup>313</sup> Lengthier deadlines have been specified in the regulations for the purpose of allowing procedural flexibility during peak application periods, during the rest of the year applications have, in general, been considered much faster. Due to historical reasons, the flow of applications has always been in peak and low periods (as the first ever documentation took place after the adoption of the Aliens Act, the renewals have always mounted at regular intervals; as most of those persons have obtained permanent residence, this period has been increased to ten years now, but it was every two to three years previously).

<sup>314</sup> The Court itself, on its own initiative, may also impose an initial protection at any stage of the procedure. The same applies for administrative appeals, where there is no automatic suspension either (in cases where the alien is already in the territory of the country).



The Administrative Procedures Act applies in residence permit procedures, including for the notification and details concerning the right of appeal.

### **2.3.2 Conditions according to Length of Stay**

#### ***2.3.2.1 Temporary Residence***

Section 10<sup>7</sup> of the Aliens Act provides that a long-stay visa (category D) may notably be issued for single or multiple entries into and stays in Estonia to an alien who: has registered his short-term employment in Estonia; or is the spouse, a minor child, or an adult child who due to their state of health or disability is unable to cope independently, of a person who has registered for short-term employment in Estonia, if he enters into Estonia together with the specified person or to stay with the specified person. A category D visa may be issued for a period of stay up to six months and a period of validity up to twelve months.

A temporary stay permit may be issued for a maximum period of five years. Such a permit may be renewed on the condition that the basis for the issue of the first permit has not ceased to exist.

Section 12(4) of the Aliens Act non-exhaustively lists fifteen grounds for refusal of a temporary residence permit, such as: submitting false information; non-observation of the constitutional order and laws of Estonia; activities directed against the Estonian State and its security; incitement of racial, religious or political hatred or violence; and commission of a criminal offence for which the applicant has been sentenced to imprisonment for a term of more than one year. In addition, a residence permit will be refused if the immigration quota is full and the person falls under the quota requirement (see section 2.1).

It is noteworthy that there is no reference to public health as a criteria for either admission or refusal of a residence permit (except where this is part of the job description). Despite several governmental defeats in the Supreme Court in cases of refusals, the most controversial issue with the list remains that it provides for certain acts to be automatically considered as a threat to the security of the Estonian State and provides for an automatic refusal of a residence permit, without any discretion or consideration of individual circumstances. In addition, the Aliens Act also enumerates eight grounds on which the issuance or renewal of a temporary residence permit may be refused (Aliens Act, Section 12(10)), including posing a threat to the public policy or order of Estonia.

It deserves to be mentioned that, until permanent or long-term residence status is granted, the Aliens Act does not provide for autonomy of family member's residence rights or employee's residency rights. Their rights are always closely linked to and derived from the original sponsor or employer. Despite the fact that concrete cases are not known, this has at least the potential for misuse and exploitation by the sponsoring family member or employer.

#### ***2.3.2.2 Permanent Residence***

Following the harmonization of the Aliens Act with Council Directive 2003/109/EC concerning long-term residence, there are three statuses of permanent residence (instead

of a single status, as before): long-term residence of EU and EEA nationals, EC long-term residence and (national) permanent residence. Estonia has opted for one single long-term residence status of third-country nationals, with the difference that the national permanent resident status does not bear the indication of an EC long-term resident and, therefore, does not entail the mobility rights of the EC long-term resident status.

Five years of continuous residence is required in order to be granted long-term residence status. In addition to that, an integration criterion in the form of a basic level language requirement has been introduced as a pre-condition for long-term residence, both for EC and national long-term residents. Other conditions that have to be met are: possession of a valid residence permit; fulfillment of the registration requirement; satisfaction of the legal income requirement; possession of adequate health insurance; and absence of any of the refusal grounds. Long-term residents have an automatic right to work. Categories that are excluded from long-term residence are persons holding: residence permits for studies,<sup>315</sup> residence permits for employment if the work is of a temporary nature, or an exceptional temporary residence permit.

### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 Family Reunification

The Aliens Act provides for two possibilities of family reunification: admission for the purpose of living with a spouse<sup>316</sup> (Section 12<sup>1</sup>) and admission for the purpose of living with a close relative (Section 12<sup>3</sup>). When an applicant falls outside these two categories, there is a distant third possibility for reunification based on the ground of having sufficient legal income.

As articulated in Section 12<sup>1</sup> of the Aliens Act, a temporary residence permit may be issued to an alien for the purpose of settling with their spouse, if the latter is of Estonian nationality and resides in Estonia permanently<sup>317</sup> or an alien who has resided in Estonia for at least two years<sup>318</sup> and the spouses share close economic ties and a psychological relationship, the family is stable and the marriage is not one of convenience. In general, Estonia has taken full use of the maximum residence period (two years) as provided for in Article 8 of Council Directive 2003/86/EC concerning the right to family reunification. An exemption from the residence period is provided to holders of residence permits for enterprise, doctoral students and a limited number of residents who have arrived for the purposes of employment.<sup>319</sup> According to the Aliens Act, Subsection 4(1), persons who

<sup>315</sup> In this respect, Estonia takes into account half of the residence period for studies. The Directive took a more restrictive approach than previously adopted by Estonia in practice (the requirement used to be three years of continuous presence – 183 days a year – within five years).

<sup>316</sup> It should be noted that Estonian family law and migration law do not recognize same-sex marriages, or any form of cohabitation other than marriage, and therefore that family reunification on these grounds is not possible for persons in such relationships.

<sup>317</sup> At least 183 days *per annum* is required.

<sup>318</sup> There is no strict requirement to reside permanently, as compared to the above-mentioned requirement for a national.

<sup>319</sup> These categories are: employment as a teacher or lecturer in an educational institution that complies with the requirements established by the relevant Estonian legislation; artistic activities or scientific research;

have obtained a residence permit for the purpose of studying are not granted the right of reunification with a spouse, with the exception of doctoral students as provided for in Subsection 1(1) of the same Act.

In addition, according to the subsection 12<sup>1</sup>(7) of the *Aliens Act*, an application for reunification between spouses shall be declared manifestly unfounded if both the resident alien and his spouse fail to verify that they cannot move to their joint country of nationality, the country of nationality of the spouse or the country of habitual residence of the spouse (the so-called “third-country first” principle). This provision manifestly infringes the provisions of at least Directives 2003/86/EC and 2003/109/EC, which do not recognize such a criteria for the acceptance, refusal or withdrawal of a residence permit application or permit.

According to Section 12<sup>3</sup> of the *Aliens Act* the following categories of persons are eligible for family reunification as close relatives: a minor child in order to settle with a parent who permanently resides in Estonia; an adult child if the child is unable to cope independently due to health reasons or a disability; a parent or grandparent in order to settle with their adult child or grandchild who permanently resides in Estonia, if the parent or grandparent needs care and it is not possible for them to stay in the country of their location or in another country; and a person under guardianship in order to settle with the guardian who permanently resides in Estonia, if the permanent legal income of the guardian ensures that the person will be maintained in Estonia. According to Subsection 12(1<sup>1</sup>), third-country nationals holding a residence permit have the right of reunification with the same categories of persons mentioned above (in relation to Estonian nationals) except dependent ascendants are excluded. Close relatives are granted a temporary residence permit if family reunification is permitted.

The following conditions must be met in order for the reunification of spouses or close relatives to take place: the sponsor must have a permanent legal income, or the joint permanent legal income of the two spouses must ensure that the family is maintained in Estonia; the family member must have insurance coverage guaranteeing that any costs related to his medical treatment as a result of illness or injury during the period of validity of the residence permit applied for will be met; and the family must have a registered residence and an actual dwelling in Estonia.

Section 12(4<sup>2</sup>) provides that dependent adult children or ascendants of the sponsor that are eligible for family reunification do not have a right to work, nor do they have a right to obtain a work permit. However, the Cabinet Memorandum of 2007 proposes to

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employment in the position of a member of the management body of a legal person registered in Estonia with the duty to perform directing or supervisory functions; making a direct foreign investment, founding a branch of a foreign company in Estonia, or performance (by way of rotation) of the right of representation or directing functions in a company registered in Estonia and belonging to an international group of undertakings; engaging in professional activities in the capacity of a sportsman, coach, referee or sports official; employment as an expert, adviser, consultant or installer of equipment or skilled worker; activities in the framework of an international programme of co-operation involving agencies with state or local government participation; performing management and control functions as a member of the management body of a legal entity which is registered in Estonia; and posted workers.

abolish this restriction. It should be noted that a residence permit may be refused if it is considered not to be in the interest of the child and/or the child's economic and social status may become worse by residing in Estonia. Estonian law requires both parents' consent if custody of the child is shared.

### 2.3.3.2 *Work*

The Aliens Act recognizes different possibilities for immigrants working in Estonia: residence for the purposes of employment (ordinary labour migration scheme); short-term work (including seasonal work); the work permit scheme (being primarily for those who originally came for other reasons, such as family reunification); and a possibility to work without any authorization.<sup>320</sup>

#### Employment

Estonia's system is a mixture of a fixed quota, labour market testing and an employer selection process combined with verification by the State. Apart from short-term work and the work permit scheme, residence for the purposes of employment entails satisfaction of the labour market needs test, which is provided by the Labour Market Board (LMB) through a permission system.<sup>321</sup> Permission for work can be obtained from a local LMB Office within fifteen days. The procedure requires verification of the following: if the employer has spent two months looking for a qualified and suitable Estonian national or resident who is willing to undertake the relevant work; if the advertisement has been published in a national newspaper or internet job portal; if there were any suitable job seekers on the labour market during the previous two months; if the immigrant's qualifications match the respective professional standards of the job (done through a portal of Estonian Qualification Authority) and whether he meets the relevant requirements for education, health, experience, skills and knowledge; and if the language requirement has been met for certain professions, where it is required.

Additional requirements include registration and income. The granting of permission is well-reasoned and no grounds for refusal (independent of failing the requirements

<sup>320</sup> A work permit is not required for persons who are residing on the basis of overwhelming public interest (Section 14<sup>2</sup>), for example, persons who have co-operated in criminal procedures relating to human trafficking cases. In addition to that, long-term residents, prisoners while in prison, persons who have a residence permit for work, and transport workers (locomotive drivers and crew, train personnel, truck drivers etc.) do not need a work permit to work in Estonia (Aliens Act, Section 13<sup>1</sup>(4)), nor do the persons who work following the registration scheme (which may be considered a work permit in itself) and asylum seekers if they meet certain conditions of the Act for Granting International Protection for Foreigners. Also, an alien who has a legal basis to stay in Estonia other than a residence permit may be permitted to take employment in Estonia without being issued a work permit or a residence permit, and without registering short-time employment with the Citizenship and Migration Board, for a period of up to six months as a member of the management body of a legal person registered in Estonia with the duty to perform directing or supervisory functions.

<sup>321</sup> Apart from some very basic rules in the Aliens Act and in Regulation 364 (documents and data to be submitted and deadline for processing), there is no procedure or method established by the government; thus, labour market testing is conducted according to the internal (and therefore not publicly accessible) rules of the Labour Market Board: 2-19 Tööturuameti luba välismaalase töölevõtmiseks. Kinnitatud 03.2006/01.04.2006. Given the centrality of this test, a proper method and transparent procedure should be legally established so as to avoid arbitrariness.

enumerated) exist, even availability within the migration quota. For the extension of a permit, the same procedure applies. There is also an “in kind” preference system for citizens of the United States of America and Japan, who are not subject to quotas.

In terms of upcoming changes, the Cabinet Memorandum of 2007 foresees introducing a sector-specific average salary as an income requirement, exempting some categories from the income requirement and labour market test and cutting procedural deadlines to three months (under the current rules, the whole process may take up to nine months).

The following categories are exempt from a labour market test according to Section 13<sup>3</sup>(12) of the Aliens Act: clergy or religious workers with permission from the Ministry of Interior; journalists accredited by the Ministry of Foreign Affairs; posted workers; and EC long-term residents. A residence permit is given for a job with a particular employer (Aliens Act, Section 13<sup>3</sup>(6)), which means that the hired labour force is strictly tied to that employer and cannot even circulate within that specific sector, even after having been employed for a certain period.

In contrast to the residence permit for work, the primary objective of third-country nationals benefiting from the work permit scheme is not to enter Estonia to work (for example, foreigners coming under family reunification procedure) and, as a result, these persons are not linked to a specific employer and would be free to choose and change their occupation and profession. The work permit may only be issued to an alien who has a residence permit and may not exceed the validity of that residence permit. The Cabinet Memorandum of March 2007 proposes eliminating the work permit requirement for temporary residents who have come to reside with a close relative, a spouse, or on the basis of a Treaty.

### Self-employment

A residence permit for enterprise may be issued to an alien who has a holding in a company or who operates as a sole proprietor, provided that the company or the sole proprietorship is entered in the commercial register of Estonia and that, based on the interests of the State, the intended enterprise is necessary for the development of the Estonian economy and, furthermore, that the alien's settling in Estonia is of essential importance to the enterprise.

In addition, the following requirements apply, applicants must: have sufficient monetary resources for engaging in enterprise in Estonia, including capital in the amount of at least 1 000 000 EEK (63 900 EUR) controlled by the alien, and have invested in business activities in Estonia (the amount of capital which an alien must invest in Estonia in order to be granted permission to operate as a sole proprietor is at least 250 000 EEK (1600 EUR)); present a business plan that describes the nature and extent of the intended business activities, as well as setting out the number of the staff needed for such activities; possess the requisite qualifications and skills; and not be employed by another person in Estonia, although a person who has been issued a residence permit for enterprise for the purpose of participation in a company may be employed by the company indicated in the residence permit for performance of directing functions. Apart from these specific

requirements, health insurance and registration requirements also apply. For a permit extension, the same conditions apply and the housing requirement must also be fulfilled. A residence permit may be refused if a person, their business plan, or their sources of financing and/or business partners are unreliable. Estonia does not provide for any specific measures, in terms of access to labour market, for attracting specific kinds of investment/enterprise, such as creating advantages for certain sectoral investments (for example, knowledge-based and/or high-technology rather than investments into manual labour, subcontracting or any other labour-intensive and/or low-skilled industry), allowing inter-sectoral mobility and co-operation in research and industry or admission of persons with uncommon (professional) knowledge or skills for the setting up and/or running of an enterprise. Also, there are no preferential schemes provided for intra-corporate mobility.

### Seasonal work

Section 13<sup>2</sup> of the Aliens Act outlines admission for the purpose of short-term or seasonal employment. This scheme is applicable to aliens who arrive or stay in Estonia either on the basis of a visa or on a visa-free basis. The duration of work is a maximum of six months *per annum*. A more flexible scheme is provided under the long-stay visa scheme under Section 10<sup>7</sup> (category D visa), provided that short-term work was registered before applying for a category D visa. A category D visa may be issued with a validity of twelve months and with the right of a six-month consecutive stay, but a long-stay visa for short-term work may not be issued for a stay of more than six months in total. It is interesting to note that the initial motivating idea for introducing such a scheme in 2003 was not the specific need for particular labour, but “regularization” of the short-term work that had been carried out without proper legal basis, when staying on the basis of a visa or when staying without a visa. Being less bureaucratic in terms of procedures and waiting times and without application of the labour market needs test and quota requirement, it seems to be that, in addition to providing a scheme for short-term work and “regularization”, it has actually introduced a perfect avenue for circumventing the ordinary admission scheme.

### **2.3.3.3 Studies and Training**

A residence permit for study may be issued to an immigrant for studies in primary school, basic school, upper secondary school, a vocational educational institution, university or institution of applied higher education, for participation in pre-degree foundation courses offered by such institutions, for research or exploratory research at a university or institution of applied higher education or for participation in field training intermediated by an international students’ organization (unremunerated training). The following conditions must be met: payment of a State fee, satisfaction of the legal income requirement,<sup>322</sup> and health insurance and housing requirements.<sup>323</sup>

<sup>322</sup> Art. 7(1)(b) only provides for “sufficient resources for subsistence, study and return,” but the concept of “legal income to stay” (1800 EEK (115 EUR) per month starting from 1 January 2007) goes well beyond the “level of subsistence” (900 EEK (58 EUR) per month starting from 1 January 2007 in Estonia) etc. foreseen in Directive 2004/114/EC. The draft does not state which costs the student should be able to cover (as listed in Art. 7(1)(b)), nor does it provide for separate calculation and publishing of those resources (the combined amount).

<sup>323</sup> There is no “housing requirement” provided for in Arts. 6-9 of Directive 2004/114/EC. Article 7 provides only for “sufficient resources for subsistence, study and return.” Both the current and the draft Aliens

The Draft Aliens Act includes fulfillment of a language requirement (beforehand this was left to the student) and also provide for a training agreement to be submitted in case of unremunerated trainees (currently only the data about traineeship has to be provided by the institution).

Estonia grants an automatic right to work without the work permit requirement for all persons having a residence permit for studies when the work-practice is foreseen in the person's study plan or the work is considered to be unremunerated practice. For other economic activity (employed or self-employed) the student is required to obtain a work permit, but the conditions are added that any work should be outside study time and not intruding the studies.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

The EU accession process has had a significant impact and resulted in several changes to Estonian legislation relating to visas, border control, asylum, and migration and naturalization processes. As far as residence statuses are concerned, Estonia has harmonized its legislation with the relevant Directives, except for those concerning studies and research (2004/114/EC and 2005/71/EC respectively). Although in most instances the harmonization with EC legislation has been to the lowest common denominator rather than towards more favourable conditions (with the exception of family reunification, where EU standards are below that of Estonia's domestic standards), harmonization has brought significant changes to the status quo in migration legislation and has provoked a domestic debate on specific policy issues.

Regarding compliance with Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, there are no specific rules planned for the mobility of students (as required by Article 8 of the Directive), nor does Estonia foresee the introduction a specific voluntary service scheme. The Draft Aliens Act foresees satisfaction of the housing requirement in addition to the sufficient legal income requirement, which is not foreseen in Article 7 of the Directive. Additionally, the current Aliens Act does not require "parental authorization for planned stay" for minors (Aliens Act, Art. 6(1)(b)). In respect to work, the Aliens Act requires the work "not to intrude the studies" of the applicant, but does not specify maximum hours, days, weeks or months; it therefore seems to be partially incompatible with Article 17 of the Directive, leaving a possibility for arbitrariness that may not be to the benefit of the person concerned.

In addition, Estonia has not yet harmonized the Aliens Act with Directive 2005/71/EC relating to educational and scientific migration and mobility. Although there is a body of law regulating student migration, currently no scheme for researchers has been provided. The Draft Aliens Act will introduce the new scheme, but will take a very narrow approach to the scope - "research organizations" (Directive 2005/71/EC, Art. 2(c)) that could

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Act provide for "housing requirement" in addition to the "legal income requirement," which may be too burdensome and contrary to the Directive.



benefit from the scheme will only be the ones that deal with research and science as their main activity (at the moment not a single private organization has been evaluated and designated as such).<sup>324</sup> There is no alternative scheme present or foreseen to attract foreign skills to Estonia, including to the private sector.

Regarding family reunification, according to the Aliens Act an application for reunification shall be declared manifestly unfounded if both the resident immigrant and his spouse fail to verify that they cannot move to their joint country of nationality, the country of nationality of the spouse or the country of habitual residence of the spouse. This provision manifestly infringes the provisions of at least Directives 2003/86/EC and 2003/109/EC, which do not recognize such a criteria for acceptance, refusal or withdrawal of a residence permit application or permit. Moreover, the Aliens Act does not provide for any rules concerning adopted children and therefore the correct transposition of Article 4(1) of the family reunification directive remains questionable to a degree. Students other than doctoral students do not have a right of reunification with a spouse, which is incompatible with Article 3(1) and Article 3(2) of Directive 2003/86/EC.

Regarding long-term residents, the only major shortcoming in terms of harmonization with Council Directive 2003/109/EC concerning long-term residence are the mobility and residence provisions for long-term residents of other Member States (Council Directive 2003/109/EC, Chapter III and Chapter IV). Except for a single provision stating that a “long-term residence permit will provide an alien with the rights as provided for in the Chapter III of the Directive 2003/109/EC” (Aliens Act, Section 14<sup>3</sup>), there are no provisions concerning the rights of entry and residence of long-term residents of other EU Member States and their family members.

#### 4. Real Impact of Immigration Legislation on Immigration in Practice

Although there are no known national studies, a recent PhD thesis on the provision of social services and sustenance in Ida-Virumaa county (in north-east Estonia, where the regional concentration of migrants is highest), revealed that there were no significant differences between Estonians and Russians in coping with everyday problems. Some specific daily problems are related to the fact that families are falling apart due to emigration, loss of accommodation and workplace (including on return to Estonia) and problems related to children’s partial residence in Estonia and elsewhere (parental care, etc.) (Madar 2004). No instances of discrimination were revealed, but the thesis highlighted many problems related to access to information about social benefits and services, naturalization and the renewal of residence permits (Madar 2004).

Regarding the quota policy, as there are no scientific studies conducted on the practicality and necessity of exactly such a mechanism (size, exemptions, etc.) and on the real needs as regards the number of migrants (numerical, by sector, etc.) arising from demographic and economic dynamics and challenges, the immigration quota remains the sacred cow of Estonian immigration law. Many “Kafkaesque” exceptions to the system hidden

<sup>324</sup> It is worth mentioning that a specific emphasis has been placed on the private sector in terms of meeting Lisbon programme targets (three per cent of GDP in innovation and 700 000 newly recruited researchers).



throughout the Aliens Act, including for labour migration, put the usefulness of the current quota system even as a control mechanism into question. All reform efforts in that sector should start from looking into and studying the real needs first (including methodology and the establishment of a proper labour market needs tests) and then address policy options. Institutionally, the primary responsibility for a quota distribution should be given either to the Minister of Economics and Communication or to the Ministry of Social Affairs, being responsible for the management of local economy and labour market, rather than dealt with in the Ministry of the Interior, which should primarily continue to be responsible for necessary checks and controls regarding applicants. Greater engagement of local governments, social partners and civil society should be foreseen.

## **5. Cooperation with Third Countries**

Although having developed quite rapidly in recent years and joining most multilateral institutions, Estonia itself still remains a transitional country and has so far been on the receiving end of the development cycle. Only in very recent years, coupled with economic growth, has Estonia stepped up to start providing development assistance and create a consistent policy in this field, therefore starting to become a fully fledged member of the international development community. As Estonia has managed to create fairly modern migration legislation and to build up its administrative management capacity from scratch into a modern migration management institutional system with extensive e-applications (electronic ID card, digital online databases, query system, e-applications, biometric travel documents and databases etc), it is well-placed to share that technical expertise and knowledge in terms of institution building to developing countries and countries in transition.

Estonia has a Memorandum of Understanding with Australia relating to Working Holiday Visas (entered into force on 26 May 2005) and a Working Holiday Scheme with New Zealand (which entered into force on 2 April 2007). Estonia also has several visa-free agreements dating to the period before EU enlargement on 1 May 2004 (when competence was transferred to the Union), some bilateral visa facilitation agreements and arrangements, primarily relating to the visa fee and/or visa-free travel for diplomatic and service passport holders (for example Ukraine, Georgia, Western Balkan countries, etc.) and several readmission agreements (most of them with the fifteen EU Member States dating to pre-accession time). In addition to the EU schemes on cross-border provision of social security, Estonia has some agreements concerning reciprocal provision of social security (for example with Finland, Latvia, Lithuania, Ukraine, Russia and Canada), which do not cover portability of pensions, but instead provide for reciprocal payments of social security and welfare benefits and provide that even if a person moves to the other party's territory, his pensions will continued to be paid by the first party.

Estonia does not have any bilateral agreements on labour recruitment and/or migration (seasonal/contract/guest/cross-border workers, project-linked workers or trainee agreements or any sector or skill-based schemes), nor anything specific on service provisioning (for example, similar to GATS Mode-4 or Mode-3).

Although some of the studies put the share of remittances in Estonia's GDP relatively high (2.5 per cent as a portion of GDP in 2004), apart from creating a generally conducive environment for investment and development, there have been no attempts to specifically target the flow of remittances with a purpose of enhancing its development effect (Mansoor and Quillin 2006).

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# Finland

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## 1. General Immigration Policy and Trends

Finland has traditionally been a country of emigration. Currently, about 1.3 million Finns live abroad (Forsander 2002). Traditionally low levels of immigration coupled with a very restrictive immigration policy have resulted in a low presence of migrants in the country (Sandlund 2004, p.5).

By the end of 2006, 121 739 foreigners lived in Finland, composing 2.3 per cent of the population (Nat. Inst. of Stat. 2006). In 2006, a significant sector of immigrants applied for entry into Finland for the purpose of family reunification, with 5440 applications to the Directorate of Immigration and an 80 per cent success rate (Directorate of Immigration 2006, p.28). The Directorate received 15 900 applications for residence permits, with the number of employment-based residence permits totalling approximately 5000 (Directorate of Immigration, 2006 p.28).

Of the estimated 20 000 persons who enter Finland as seasonal workers, approximately 85 per cent are Russian or Estonian working in farming and forest economy (Directorate of Immigration 2006). Finland is actively seeking to attract immigrants but has not been able to overcome the restrictions to mobility posed by a nationally protected and structured labour market, controlled by employees' and employers' organizations (Ristikari 2006).

The Aliens Act, completely renewed in 2004, replaced the old Alien's Act from 1991 and aims to tackle the difficult issues concerning the rights and duties of foreigners. According to Section 1, the purpose of the Act is to implement and promote managed immigration and provide international protection and respect for human rights, all in consideration of Finland's international agreements. The Aliens Act has been amended several times since last spring; the latest changes taken into account in this report entered into force on 1 September 2007.

Recently, the government approved Finland's first Government Migration Policy Programme (Govt. Migration Policy 2006), based on Finland's need for more work-related immigration. The programme envisages simplified procedures regarding residence permits for employed persons and their family members and easier processing for students to obtain permits after completing their studies in Finland. Finland has also started creating strategies for getting foreign experts and high-level professionals to come to, and remain in, the country (Raunio 2005, p.28). Finland's goal is to increase cooperation in the Schengen-area so that in the future residence permits for an employed person can be filed with any Schengen consulate or embassy (Govt. programme 2007, p.22). The new government also shifted immigration responsibilities (especially issues concerning asylum and refugee status and integration) from the Ministry of Labour to the Ministry of the Interior in order to avoid overlapping tasks between the two. A new office – the Minister for Migration – was created within the Ministry of the Interior with this purpose (Govt. programme 2007, p.70).

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Finnish law envisages different immigration categories: family reunification, studies or training, seasonal work, and employment or self-employment. Special status for victims of trafficking and for nationals of the former Soviet Union of Finnish origin, by which they can be issued continuous residence permits, are also provided for. These latter two categories will not be discussed further as they fall outside the scope of this study.

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

Immigration issues fall within the scope of various authorities in Finland. Embassies and consulates, operating under the Ministry of Foreign Affairs, have an important role in visa decision-making and are the first authorities to receive applications for residence permits. The Ministry of Labour participates in the decisions concerning work permits by assessing the needs of the labour market and is also responsible for certain integration measures. The new Government Program envisages radical changes: “A unit responsible for migration and integration will be established within the Ministry of the Interior. It will include the Immigration Department and the Directorate of Immigration operating under its auspices. Other units to be relocated from the Ministry of Labour will include at least the Immigration Policy Team of the Policy Department, the Immigration and Work Permit Team of the Labour Market Policy Implementation Department, the Advisory Board for Ethnic Relations, Reception Centres, the Office of the Ombudsman for Minorities and the National Discrimination Board. For the new entity to be formed within the Ministry of the Interior, a special unit for integration will be created which, in the discharge of its duties, will work in close collaboration with the Ministry of Education, the Ministry of Social Affairs and Health, the future Ministry of Labour and Industry, and the Ministry of the Environment. The unit will support the ministry in shouldering general responsibility for integration issues and related coordination. The importance of smooth cooperation between the individual ministries is underlined in the implementation of the reform for the purpose of developing work-related immigration, etc.”

The Immigration Department, police and border guards also handle issues concerning foreigners. The Department is responsible for policies and legislation regarding foreigners, coordination between different administrative sectors and representing Finland abroad in immigration matters. The Department leads and develops administrative immigration matters and supervises the Directorate of Immigration which, in turn, decides on individual permissions, asylum, deportation, and naturalization. The police department provides license services and establishes the legality of an alien’s residence in the country. This includes different competence areas such as permission services (extension of visas, residence permits, reception of asylum applications and registration of EU-citizens) as well as deportations and prevention of irregular immigration and trafficking. The Border Guard Office’s main responsibility is pass control at international borders.

## 2.2.2 Procedural Steps – Conditions to be fulfilled

The types of Schengen visas are single-entry, multiple-entry, transit, airport transit and re-entry visas (Aliens Act, Section 20). The single-entry visa is for a maximum of three months, while the multiple-entry visa allows for several entries during a period of six months, with a maximum stay of three months (Aliens Act, Section 20(1)).

Citizens of countries with a visa requirement for Finland must apply for a visa at the nearest Finnish embassy before arriving in Finland. Aliens may enter Finland if: they hold a valid travel document that entitles them to cross the border; they hold a required valid visa, residence permit; they have secure means of support, or they can legally acquire such funds; they can (if necessary) produce documents which indicate the purpose of their intended stay and prove the afore-mentioned requirements are met; they have not been prohibited from entering the country; and they are not considered a danger to public order, security or health or Finland's international relations (Aliens Act, Section 11).

Although a visa may be granted by the embassy if all the conditions are met, the conditions of entry are re-evaluated upon arrival at the Finnish border. If the person does not meet the requirements listed above, he can be refused entry at this point. Foreigners coming from countries with a visa requirement and staying on a non-permanent basis need to prove they have 30 EUR per day for their maintenance and a return ticket. The applicant can also be refused entry if there is reason to suspect that he intends to earn money dishonestly or to sell sexual services (Aliens Act, Section 148(1)). The same conditions apply to the approval or denial of a visa.

The length of the procedure is seven to fifteen days, depending on the nationality of the applicant (Embassy homepage). The fee for a visa, transit visa or airport transit visa is 60 EUR.<sup>325</sup>

## 2.2.3 Appeal and Administrative or Judicial Control of the Decisions

Visa decisions cannot be appealed (Aliens Act, Section 191(1)).

## 2.3 Stay and Residence Rules

### 2.3.1 General Rules regardless of the Immigration Category

#### 2.3.1.1 Competent Authorities

See section 2.2.1 for elaboration on this topic.

#### 2.3.1.2 Procedural Steps – Conditions to be fulfilled

A foreigner applying for a residence permit (temporary or permanent), must demonstrate his ability to support himself and any of his dependents. On principle, an adult applicant has to demonstrate that he has 900 EUR available monthly; the requirement for a student

<sup>325</sup> Nationals of Russia, Ukraine, Albania, Bosnia and Herzegovina, Macedonia (FYROM), Montenegro, Serbia and Moldova will still be charged 35 EUR (pursuant to the EU Council decision of 1 June 2006, Art. 2).

is 500 EUR monthly (DOI income requirement). Other documents may be requested depending on the applicant's citizenship, such as a valid certification or passport.

Currently, previous knowledge of Finland and its language is not required. However, it is notable that knowledge of the host country and language is required for the accelerated process of naturalization reserved for Ingrian Finns. Moreover, students applying for international programs may need to prove proficiency in English. The municipalities and the Ministry of Labour offer a range of integration courses, including language training.

The immigrant has the responsibility of ensuring that all important documents are translated before arrival. These include work documents (detailing last working place and the reason for ending the employment), birth certificates and marriage certificates.

A residence permit may be refused if the applicant is considered a danger to public order, security or health or Finland's international relations (Aliens Act, Section 11(1)-(2)), or if there are reasonable grounds to suspect that he intends to evade the provisions on entry into or residence in the country (Aliens Act, Section 148).

The fees for permits range from 55 EUR for a first residence permit for students or minors to 200 EUR for a standard residence permit.

The Immigration Directorate specifies the average processing times for different kinds of permits (DOI processing time). For instance, a residence permit for an employed person is estimated to take 1.7 months to process, a residence permit for a self-employed person takes on average 2.4 months, a student residence permit 0.7 months, and a residence permit based on family ties 4.4 months. In practice, however, the application for a residence permit for a person with a working contract in Finland takes closer to three months, depending on how complex the case is (Interview Forsander). Family reunion for a person with permanent residence shall not take longer than nine months (Aliens Act, Section 69a); on average in 2006, it took 3.5 months (Directorate of Immigration 2006, p.28).

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

Decisions made by the Directorate of Immigration may be appealed to the Administrative Court and, further, to the Supreme Administrative Court.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

Residence permits are either for a fixed-term or permanent.<sup>326</sup> Fixed-term residence permits are issued for residence of a temporary (indicated with the letter B) or continuous (indicated with the letter A) nature. The first fixed-term permit (B permit) is valid for one year or, if it is issued for carrying out a legal act, an assignment or studies that will be completed within a set period, the permit can be extended for up to two years (Aliens Act,

<sup>326</sup> Citizens of Nordic states and their family members do not need a residence permit.

Section 53(1); Section 53(3)). Such permits are issued to persons residing abroad for the purpose of working on a temporary basis, pursuing a trade on a temporary basis, studying, or for some other special reason such as family reunification with a person holding an A permit. (Aliens Act, Section 45(1))

The A permit is granted for a maximum of four years (Aliens Act, Section 55(1)). A continuous residence permit is issued in cases where the stay is of a continuous nature (for example, a longer working contract, family ties exist, etc.) and in cases where a B permit would not apply but a permanent permit cannot yet be granted, (for example, to persons of Finnish descent applying for citizenship who are living abroad permanently, as well as their family members). An B permit holder is issued an A permit after 2 years of continuous residence in Finland, as long as the requirements for issuing the permit are still met. (Aliens Act, Section 54(3)).

### **2.3.2.2 Permanent Residence**

A person who has lived in Finland for four years with a continuous residence permit, who still fulfils the grounds for a permit and to whom no other obstacles against his application are found will be issued a permanent residence (permit P). A person who was issued a fixed-term permit A on the basis of family ties may be issued a permit P even if the sponsor does not meet the requirements for a permit P (Aliens Act, Section 56(1)). Such a permit is valid until further notice.

A long-term resident's EC residence permit is issued to a third-country national who, after being issued with a permit A, has lawfully resided in the country for five years immediately before submitting the application (Aliens Act, Section 56a(1), amended by 358/2007). A long-term resident's EC residence permit is considered equal with a permanent residence permit in terms of its period of validity (Aliens Act, Section 33(3)).

## **2.3.3 Conditions for Specific Immigration Types**

### **2.3.3.1 Family Reunification**

Family reunification is possible for persons holding a residence permit if they can secure the funds to support their family. The immigrant's family member (the applicant) may apply for a residence permit after the immigrant (his sponsor) has received a residence permit, or the sponsor may initiate the procedure by filing an application with the District Police (Aliens Act, Section 62(1)). Both applicant and sponsor shall be provided with an opportunity to be heard (Aliens Act, Section 62(2)). The Directorate of Immigration and District Police may obtain opinions on applications for residence permits from social welfare and health care authorities. Social situation may be requested if the sponsor is an unaccompanied minor (Aliens Act, Section 63(1)). The biological kinship may, if no other adequate evidence on family ties is available, be proved through a state paid DNA-test (Aliens Act, Sections 65-66).

Spouses, children or adopted children under the age of 18 years old, partners with registered partnerships and cohabitantes with whom cohabitation has lasted for at least two years before arriving in Finland, all benefit from family reunification. The sponsor's

parents, however, are not entitled to enter Finland under the family reunification scheme (Aliens Act, Section 37(1)).

If the person residing in Finland is a minor, his guardian is regarded as a family member (Aliens Act, Section 37(1)). Any decision issued according to the Aliens Act concerning a child less than 18 years of age shall be carried out in the best interest of the child. The child has the right to be heard and the concern has to be processed with urgency (Aliens Act, Section 6(1)-(3)). If accompanied minor children are issued a residence permit, their minor siblings living abroad are also issued a residence permit if they have lived together and their parents are no longer alive (or the parents' whereabouts are unknown) and this course is in the best interest of the child (Aliens Act, Section 52(4)).

The family members generally receive the same residence permits as their sponsors, including the right to work (Aliens Act, Section 45(3); Section 47(3)). Normally, family members must wait for the decision in the country of residence, but exceptions can be made in extreme circumstances. The decision must be served on the applicant no later than nine months after the filing of the application (Aliens Act, Section 69a).

### **2.3.3.2 Work**

#### Employment

Generally, coming to Finland as a job-seeker is not possible; only citizens of Nordic States and EU citizens or the equivalent may stay for up to three months seeking work.

In order to engage in remunerated employment, persons who require an employment permit must obtain a residence permit for an employed person. For visa-required and non-visa-required individuals alike, this residence permit can be granted on the basis of either temporary or continuous work.

The application for a residence permit for an employed person may be filed by the alien, or by his employer on his behalf, either in the Finnish Mission, Employment Office or with the District Police (Aliens Act, Section 2(1)). The employer will need to request the Employment Agency to allow the foreigner to be employed and will also need to provide written information on the principal terms of work (Aliens Act, Section 73(1)). The employment office estimates both the labour political requirements and the sufficiency of the means of support for the alien (Aliens Act, Section 72) (see section 2.3.1.3). If the preliminary decision of the Employment Agency is positive, the Directorate of Immigration can supply the employee with a first residence permit (Aliens Act, Section 83(2)).

A residence permit for an employed person is granted in respect of one or several professional fields, but the employee is not precluded from changing employers within these fields (Aliens Act, Section 77). If the applicant's new residence permit is for the same profession, the employment office does not carry out a new consideration of national need (Aliens Act, Section 83(3)). Applications for the extension of these residence permits are dealt with by the local police.

The alien has an unlimited right to work in Finland if he: has been granted a permanent or continuous residence permit based on grounds other than employment; has been granted a fixed-term Finnish residence permit on grounds that he serves as a professional athlete or trainer; works for a religious or non-profit association, or professionally in the fields of science, culture, or the arts; works as a company executive or mid-management, or holds an expert position that requires special skills; or is an engaged professional in the field of mass communications (Aliens Act, Section 79).

The alien has a limited right to work (for an average of 25 hours per week) if he: has been granted a student's residence permit or a residence permit for various teaching, lecturing and research assignments; has arrived in Finland in connection with work related to a contract for the delivery of a machine or installation and is residing for a maximum of six months; participates in a programme subject to an inter-state agreement, programmes of educational institutions and students' associations supported by the EU, international work camp operations or other equivalent work, or practical training that lasts for a maximum of one year; or is an au pair (Aliens Act, Section 80(1)).

Aliens have the restricted right to gainful employment without a residence permit if they arrive in the country on the basis of an invitation or agreement to work as interpreters, teachers, athletes, professional artists, umpires, experts etc. for a maximum of three months, or to work in a traineeship in an exchange programme inter alia for a maximum of 18 months (Aliens Act, Section 80(1)). Other exceptions to the residence permit requirement for an employed person include: professional artists or athletes; sailors who work on a vessel that is entered in the list of merchant vessels as a vessel operating in international transport or sailing mainly between foreign ports; and permanent employees of a company operating in another EU or EEA country who perform temporary acquisition or subcontract work in Finland, as long as the alien has valid and appropriate residence and work permits in the other country (Aliens Act, Section 81(1)-(3)).

### Self-employment

Third-country nationals are required to obtain a residence permit for a self-employed person in order to engage in business activities in Finland. An application for a residence permit for a self-employed person may be filed with the Finnish Mission or with the District Police (Aliens Act, Section 82(2)). In order to be granted this type of permit, the business in question must be profitable. Profitability is assessed by the Employment and Economic Development Centre on the basis of various reports obtained in advance, such as the business plan or binding preliminary contracts and funding agreements (Aliens Act, Section 84(1)). The self-employed person must have a guaranteed means of support and, in addition, he must have a regular income that is above the threshold for basic income support (from the operations of the business, personal funding withdrawals, etc.) throughout the residence permit's period of validity. If the alien already has a residence permit, the District Police issues him with a new residence permit for a self-employed person; otherwise, the Directorate of Immigration issues the first permit (Aliens Act, Section 84(3)).



*Seasonal work*

Aliens who arrive in the country for a maximum of three months in order to pick or harvest berries, fruit, specialty crops, root vegetables or other vegetables, or to work on a fur farm, are exempted from the residence permit requirement.

*Holiday Agreement*

Finland has a bilateral agreement, the so-called “Holiday Agreement”, with Australia and New Zealand, whereby nationals of these countries can apply for one-year visas with the primary aim of conducting a holiday.

An applicant for this type of visa must: intend primarily to holiday in Finland; be between 18 and 30 years of age at the time of application; not be accompanied by dependent children; have been granted no previous working holiday permission; have a valid passport and return travel ticket (or sufficient funds with which to buy a ticket); possess reasonable funds for support during his stay in Finland; and have a good health and sound background in order to be eligible (Agreement with New Zealand 2004; Memorandum with Australia 2002).

**2.3.3.3 Studies and Training**

Third-country nationals can enter Finland as students either through well-established exchange programmes or by applying directly at a Finnish university. They need to take care that they possess all the necessary documents upon arrival. For universities, the potential student may have to pass an entry examination in Finland, for which he can apply for a short term visa if needed. They must also show adequate funds (see section 2.3.1.3) and health insurance for the period of stay in Finland, as well as apply for a residence permit at the nearest Finnish embassy or consulate before arriving in the country. No permit is needed for study programs of less than three months.

Students have a restricted right to employment, whereby the student may be employed if the work is part of a traineeship required for qualification and if the working hours do not exceed 25 hours per week, or if the employment (either part-time or full-time) is carried out when there are no classes (including holiday jobs) (Aliens Act, Section 80(1)). After the alien has gained his degree at a Finnish educational institute, he can be issued with a temporary residence permit for one six-month period for the purpose of seeking work.

**3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

In contrast with some other EU Member States, the definition of family members in Finland only covers the sponsor’s spouse (or partner) and children or adopted children (as well as those of the spouse or partner), not the sponsor’s parents.

**4. Real Impact of Immigration Legislation on Immigration in Practice**

The Directorate of Immigration has been widely criticized for its very strict and confusing handling of immigration issues. This confusion in many instances is caused by the wide

discretion that the Aliens Act leaves the Directorate and is further increased by the fact that the Directorate is understaffed.

Even if the Directorate of Immigration has received more personnel during the last reforms, this has not proved to be sufficient to handle the applications fast enough. Presumably, the origin of this problem is the lack of regulation within Finnish legislation concerning time limits for the processing of applications. The only established time limits originate from EU Directives and are relatively long.

The Finnish consensus policy is also partly to blame for the slow and restrictive immigration measures, given that all parties – government, employers' and employees' organizations – have to agree to the widening and restructuring of markets, even in professional fields where urgent refreshment from abroad is necessary. Another reason why attracting high quality labour may be problematic is the policy that restricts the right of workers to automatically bring their families with them. The Aliens Act has, in part, already been corrected in this regard.

Also, while Finland requires an influx of high quality labour, it lacks a comprehensive approach to immigration and thorough investigation of its effects on the national economy. The system has been criticized for being too complex and not easily understandable. Employers have complained about the complexity of hiring foreign workers and have asked the Directorate of Immigration to simplify the process. Several counterparts have assessed the necessity of a completely new law replacing the Aliens Act, rather than simply amending it. This trend of trying to simplify the process and make it more understandable can also be seen in some official policy documents. The fourth Policy Guideline of the Government Migration Policy Programme assesses the necessity of simplifying the permit system for labour immigration; whilst the fifth Policy Guideline points out the need for improving the possibility for foreign workers to come and look for work in Finland.

It is the opinion of some commentators that registration of all employees should be made obligatory in order to avoid subcontracts that would violate Finnish law. Currently many smaller companies opt to employ people for short-terms without informing workers about their rights; the workers travel back and forth between Finland and their country of origin as de facto residents of Finland, but lacking any rights (Interview Tuomainen; Interview Forsander on Estonian workers; Interview Marius).

There are no discriminative practices as such, but, depending on the nationality of the applicant. Certain officials have stated that the most notorious cases are related to Turkish nationals, some of whom have in the past been found to defraud the system in order to bring their relatives from Turkey to Finland.

Finland has implemented the anti-racism directives of the European Union with its Non-Discrimination Act of 2004 (Non-Discrimination Act). This Act is broader in scope than the directives and provides a good legal basis to combat discrimination in both the realms of employment and services. However, a recent poll by the Finnish newspaper Helsingin Sanomat revealed that around 40 per cent of the respondents were of the opinion that

Finland should not take any further foreigners (Mashaire). These attitudes pose the biggest challenge for an effective immigration recruitment policy.

## **5. Cooperation with Third Countries**

Two old-age pension systems exist in Finland: the employment pensions which are based on all gainful employment, calculated by the number of working years and the wages earned, and the national pension. It is the employer's responsibility to arrange pension coverage for the employee under the employment pension.

Where the recipient of the pension lives abroad, whether they are able to receive the pension is dependent upon which country they are residing in. The earnings-related employment pension is paid abroad to all countries, regardless of the person's nationality, whereas the unemployment and the part-time pensions are only paid to EU and EEA countries.

Finally, "Finland is of the opinion that third-country nationals who have temporarily left the EU labour market must have secured access back to the labour market. The opportunity of the third-country workers to move between the country of origin and the country in which they work, not only encourages 'brain circulation,' but also promotes efforts to avoid the adverse effects that their migration to the EU may have on the countries of origin." (Finland's Responses on Green Paper on EU approach).

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## 1. General Immigration Policy and Trends

According to the latest statistical data, 4.3 million immigrants were residing in France in 2004, including 2.9 million foreign immigrants.<sup>327</sup> The migration flows towards France in the 1950s and 1960s were mainly composed of nationals from southern Europe and the Maghreb. Since 1975, immigration from southern Europe has been in constant decline, whereas that from the Maghreb has been increasing since the 1950s, even if more slowly since 1990. New immigration flows are mainly from countries that have links to France but who only started experiencing migration recently, often due to political instability (for example African countries such as Côte d'Ivoire and Congo). Finally, there have been low levels of immigration from highly developed countries, as well as a small quantity of immigrants from Eastern Europe (Barou 2006, pp. 107-112).

The origin of the modern French alien's law can be found in the Ordinance of 2 November 1945, which aims to organize immigration flows that were widely accepted as necessary in order to face the situation following World War II. From the early 1970s, French immigration policy evolved towards a stricter legal regime and, in 1974, the decision to stop flows of foreign salaried labour was taken. The two decades after 1980 show a general tendency towards stricter legislation applicable to foreigners.

In 2004, the Ordinance of 2 November 1945 was replaced by the Code regarding entry, residence and asylum in France, which is a clearer codified text. In 2006 an ambitious law, the 24 July 2006 law on immigration and integration, was adopted. It aimed to re-open the borders for salaried employment according to a conceptual distinction made between chosen and non-chosen immigration. In other words, its goal is to favour immigration flows that benefit the French economy and to restrict other types of immigration, such as family reunification.

After the presidential elections of 6 May 2007, a Ministry of Immigration, Integration, National Identity and Co-Development was created in order to supervise all the administrative departments in charge of immigration policies. This new administrative structure should start operating early this year (Mariani 2007, p. 30). The new Minister's objectives are organized around six priorities: the preparation of yearly immigration quotas regarding the different immigration types in order to reach the objective of 50 per cent economic migration within immigration flows; the control of family reunification; the development of more effective and constraining integration measures; the simplification of administrative procedures; the fight against irregular migration; and the development of a more dynamic co-development policy (Mission letter 2007).

The implementation of this programme will be executed originally through the application of the Immigration and Integration Law 2006. Regarding the stricter measures to be adopted, within areas such as family reunification and integration, a new law regarding control of immigration, integration and asylum was adopted on 20 November 2007

<sup>327</sup> See Borrel 2006. It can be noted that, according to the National Institute for Statistics and Economic Studies (INSEE), an immigrant is a person residing in France who was born as a foreigner in a foreign country. Consequently, all immigrants are not foreigners and some foreigners are not considered as immigrants.



(Immigration Law 2007), which can be seen as a continuation of the Immigration and Integration Law 2006.

## **2. Laws and Conditions of Immigration**

### **2.1 Overview of Immigration Types**

Despite its complexity, the French legal system is organized around two main types of stay permits: a temporary stay permit that is, in principle, granted for a maximum of one year and identifies the foreigner according to his specific situation; and a residence permit that is granted for a period of ten years, with a right to renewal. It is through this bipartite distinction that the different immigration flows towards France (for example, members of family, workers and students) are managed. Moreover, entry control for foreigners is closely integrated with the immigration policy given that, in principle, immigration to France depends on the granting of a long-term visa.

### **2.2 Admission Rules – Visa Policy**

#### **2.2.1 Competent Authorities**

The granting of visas falls within the competence of the Consul, whose responsibilities are carried out according to the Minister of Foreign Affairs' instructions (Decree of 13 January 1947, Art. 4).

#### **2.2.2 Procedural Steps – Conditions to be fulfilled**

A primary distinction can be made between short-term visas and long-term visas. The former, mainly comprising Schengen visas, do not regulate immigration issues as such and will not be described any further. The latter, also known as immigration or settlement visas, are delivered to aliens who express their wish to stay within French territory for longer than three months (C. Foreigners, Art. L 311-7).

In principle, immigration is currently subject to the issuance of a long-term visa.

Several long-term visas exist that are applied for and granted under distinct legal regimes: visitor visas;<sup>328</sup> student visas;<sup>329</sup> visas justified by professional activity;<sup>330</sup> visas justified for family reasons.<sup>331</sup>

<sup>328</sup> In order to obtain a visitor's visa, the applicant must prove the existence of sufficient financial means; he must agree not to exercise any professional activity requiring authorization; and he shall also present evidence of adequate housing and medical insurance (C. Foreigners, Art. L 313-6).

<sup>329</sup> The delivery of a student visa is dependent upon regular registration to an educational institution and upon the proof of sufficient financial means (C. Foreigners, Art. L 313-7; Circular of 26 March 2002).

<sup>330</sup> The provision of a visa related to a professional activity is granted only after the approval of a work authorization by the International Migration Office and presentation of a medical certificate and a work contract initialled by the relevant administrative authority (Labour Code, Art. 341-2; Art. 341-4; Circular of 16 January 2002).

<sup>331</sup> Regarding visas justified for family reasons, several situations can be distinguished: visas granted on the basis of the right to family reunification; visas granted to ascendants who are dependant upon a French national; visas granted to parents of French children; visas granted to minor children or children who are dependant upon a French national; and visas granted to spouses of French nationals.

Consular authorities are requested to verify the purpose of the intended stay and the identity of the applicant, in order to ensure that he does not constitute a migration risk or a threat to public authority.

In derogation of a law of 11 July 1979, and contrary to the wishes expressed by the European Commission (Counter-report on immigration and the right to asylum 2006, p. 6), the reasons for which a visa application is rejected do not have to be stated (C. Foreigners, Art. L 211-2). Moreover, even if this principle is subject to exceptions,<sup>332</sup> the reasons that can justify rejection of an application remain very wide.

Regarding the length of the procedure under which a visa is granted or rejected, French legislation does not provide a general obligation.<sup>333</sup>

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

A direct appeal to an administrative court against the decision to reject a visa application is not possible (Decree of 10 November 2000). A first procedural step has to be made to the Commission of appeals, whose decision can then be challenged in front of the Council of State. A hierarchical claim can also be made to the Minister of Foreign Affairs.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

The granting of a stay permit falls within the competence of the Prefect (C. Foreigners, Art. R 311-10). However, alongside the Prefect, the procedure for delivery of stay and residence permits involves other administrative authorities.<sup>334</sup>

#### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

In principle, any foreigner over the age of 18 who intends to stay in France for a period of longer than three months must possess a stay permit (C. Foreigners, Art. L 311-1). The first application for a stay permit has to be made within the first two months of being present in France (C. Foreigners, Art. R 311-2).

In all cases, the applicant must provide information regarding his civil status, as well as domicile justifications, identity photographs, and his passport (C. Foreigners, Art. R 313-1; Art. R 313-2; Art. R 313-3). In the case of a first application, foreigners are subject

<sup>332</sup> Exceptions apply to foreign family members of an EU or EEA national, spouses, children under 21 years of age or dependent upon a French national as well as his or her ascendants, minor children subjected to an international adoption, beneficiaries of family reunification, aliens allowed to exercise a professional activity in France and aliens subjected to description under SIS (C. Foreigners, Art. L 211-2).

<sup>333</sup> The only exception is with regard to the spouses of French nationals. Under the Immigration and Integration Law 2006, these decisions have to be made as soon as possible (C. Foreigners, Art. L 211-2-1).

<sup>334</sup> The Agency for the Reception of Foreigners and Migration is notably in charge of receiving newly arrived immigrants. Depending on the type of immigration status granted, different administrative authorities will play a role, such as the National Employment Agency and the Directorate of Labour, Employment and Professional Training, French consulates, etc.

to a health assessment organized by the Agency for the Reception of Foreigners and Migration.<sup>335</sup> The granting of a stay permit is also dependent on a lack of threat to public order, the latter notion being interpreted broadly.<sup>336</sup>

A “reception and integration contract” is required to be entered into by adult newcomers and foreigners between 16 and 18 years old who frequently enter the French territory and are looking for long-term residency (C. Foreigners, Art. L 311-9).<sup>337</sup> Within the framework of this contract the foreigner will follow civic training and, if necessary, language lessons. The objective of this contract is to establish a strong link between integration and settlement.

The new immigration law complements the “reception and integration contract” by an evaluation of the applicant’s knowledge of the French language and “values of the Republic” conducted in the country of residence. If necessary, a training of a maximum period of two months will be organized, at the end of which a further evaluation will be conducted. The granting of a visa will be tied to participation in the training (Immigration Law 2007, Art. 1).

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

The legal and factual reasons upon which a decision has been made have to be stated in the decision. Regarding appeals made against the rejection of a stay permit, a direct appeal to an administrative court is possible. An administrative claim to the Prefect or a hierarchical claim to the Minister of Interior can also be made.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

The temporary stay card is generally delivered for a period not exceeding one year and, in any case, cannot exceed the period of validity of the documents or visas relating to the stay in France (C. Foreigners, Art. L 313-1).<sup>338</sup> The specificity of the temporary stay permit is its categorization according to the type of stay in France. Hence there are several types of temporary stay cards, including the following titles: visitor, student, salaried employment, scientist, artistic and cultural profession, private and familial life, merchant, craftsman, farmer, etc. (C. Foreigners, Art. L 313-1 to Art. L 313-13; Art. R 313-1 to Art. R 313-36).

<sup>335</sup> A general clinical examination and a chest X-ray are obligatory; in some cases a urinary test is required. The health assessment could lead to rejection of a stay permit in the following situations: presence of a disease mentioned in the International Sanitary Regulations, title V; progressive and evolutionary tuberculosis; severe mental illness; or incompatibility of health with the purpose of the stay. However, in practice, rejection of an application on medical grounds is very rare.

<sup>336</sup> The assessment of the threat to public order takes into account the whole of the factual and legal elements that characterize the behavior of the foreigner. As such, a criminal conviction is neither necessary nor sufficient to qualify the behavior as a threat to public order.

<sup>337</sup> Foreigners who do not intend to settle in France, such as students or seasonal workers, as well as foreigners who have studied in a French secondary school for at least three years, are not subjected to this requirement.

<sup>338</sup> For instance, the validity of a card delivered to a worker, student, or intern, cannot exceed the duration of the work authorization or the duration of the studies or internship.

The granting of a first temporary stay permit depends on the payment of a fee to the Agency for the Reception of Foreigners and Migration. The amount of the said fee should be set by a forthcoming decree according to limits comseized of 160 and 200 EUR (or 50 and 70 EUR for students).

Some conditions on the issuance of a temporary stay permit are common across the different classes: regular entry within the French territory, as certified by the corresponding travel documents; a long-term visa; regular stay at the time of the application; and the lack of threat to public order (C. Foreigners, Art. L 313-3).

Regarding the procedure for the issuance of a stay card, the common regime described above applies (see section 2.3.1.2).

A competence and talent card can be issued with a validity of up to three years. The corresponding regime will be analysed below (see section 2.3.3.2).

### **2.3.2.2 Permanent Residence**

The long-term residence permit is valid for ten years, with an automatic right to renew (C. Foreigners, Art. L 314-1). It also gives full access to the labour market. The conditions of delivery of such a permit have been subject to important restrictions during the past years.<sup>339</sup>

The common delivery regime of a long-term residence permit implements the Council Directive 2003/109/EC of 25 November 2003, concerning the status of third-country nationals who are long-term residents. The permit is labelled “long-term resident - EC”. The applicant must establish his regular presence in France for a period of five years prior to the submission of the application (foreigners staying in France under student or seasonal worker status are excluded from this provision) (C. Foreigners, Art. L 314-8). Moreover, the applicant must prove stable and sufficient financial means, as well as possession of medical insurance. A more recent and important requirement for long-term residence permits relates to the republican integration of the applicant within the French society. This is notably assessed by his respect for the guiding principles of the French Republic and a sufficient knowledge of the French language. The integration assessment also takes into account the signing of and respect for the “reception and integration contract”.

Several types of foreigners having family ties in France benefit from a slightly more lenient legal regime.<sup>340</sup> In these cases, the applicant does not have to establish his wish to settle durably in France or to provide evidence related to his financial resources (Permanent dictionary, p. 335).

<sup>339</sup> Originally, the right to delivery of the permit was common to several categories of foreigners wishing to settle durably in France. As a result, a stable status was granted to them (Counter-report on immigration and the right to asylum, 2006, pp. 25-26). This approach has changed with the adoption of the Immigration and Integration Law 2006. In most cases, its granting is now subject to a number of conditions under the Prefect’s discretion (Permanent dictionary, p. 333).

<sup>340</sup> These are: members of the family who came to join a spouse or a parent who has been granted a long-term residence permit, foreign parents of a French child and spouses of French nationals.

Despite drastic restrictions to the right to receive long-term resident permits, it continues to be applicable to several categories of foreigners, mainly foreign children of a French national who are either under 21 years old or who are dependent upon their parents or dependent ascendants of a French national or his spouse (C. Foreigners, Art. L 314-11). In this situation, the granting of a card depends upon the absence of a threat to public order and the regularity of the stay in France.

Regarding the delivery procedure, the common regime described above applies (see section 2.3.1.2).

The long-term residence permit is renewed as of right (C. Foreigners, Art. L 314-1). One major consequence of this principle relies on the impossibility to refuse the renewal even in cases of threat to public order. In this situation, the only legal procedure is expulsion.

The new immigration law foresees the creation of a permanent resident permit to be delivered after expiration of the validity period of the long-term residency permit (Immigration Law 2007, Art. 17). As the long-term residency permit is renewable as-of-right, the benefit of this new provision should not be of major importance. According to the government, the purpose of this new permit is to “facilitate the life of foreigners who reside for a very long time in France, respect [French] values and therefore have accomplished an exemplary integration way” (Amendment n°263).

### **2.3.3 Conditions for Specific Immigration Types**

#### **2.3.3.1 Family Reunification**

##### Family reunification

Under French law, family reunification can be defined as the procedure organising the right of foreigners living in France to be joined by their family. It is notable that several categories of foreigners (such as EU nationals) are not subject to this regime, but instead benefit from an alternative, more favourable, regime.

With regards to conditions of exercise of the right to family reunification, the applicant, i.e. the foreigner living in France, must: hold a stay permit valid for at least one year (C. Foreigners, Art. L 411-1); have stayed regularly in France for at least 18 months prior to the submission of the application; possess – or establish that he will be in possession of – accommodation considered as normal for a similar family living in the same region (C. Foreigners, Art. L 411-5); possess stable and sufficient financial means; and respect the fundamental principles recoseized by the laws of the Republic, including the principle of equality between genders, the principle of secularity and the rejection of discrimination on the basis of origin.

Family reunification applies to the applicant’s spouse, if 18 years of age or older, and the couple’s minor children (C. Foreigners, Art. L 411-1 to Art. L 411-3). In principle, family reunification must be complete.<sup>341</sup>

<sup>341</sup> Partial family reunification is not allowed unless it is in accordance with the best interests of the child (C. Foreigners, Art. L 411-4).

Family members are granted a temporary stay permit for “private and family life” that allows the exercise of any type of professional activity (C. Foreigners, Art. L 431-1).

The new immigration law sets the amount of financial means required in relation to the size of the sponsor’s family (Immigration Law 2007, Art. 3). Moreover, in addition to the existing “reception and integration contract”, a further contract for the family shall be signed by parents of children who have entered the country through the family reunification procedure. This new contract will include, notably, a requirement to attend training on the rights and duties of parents in France (Immigration Law 2007, Art. 6). Moreover, the parliament has adopted, somewhat contentiously, a provision that envisages the possibility of DNA tests for foreigners who require a visa for family reasons in cases of non-existent civil status registers or serious doubts as to their authenticity. Such tests would be organized following the will of the applicant, controlled by a judge and financed by the French State (Immigration Law 2007, Art. 13).

*Admission to stay of family members (third-country nationals) of EU nationals<sup>342</sup>*

The right of admission to stay applies to applicant’s spouse, any dependent descendants under 21 years of age and the applicant’s or his spouse’s dependent ascendants.

The applicant must possess sufficient financial means to support himself and his family. Family members are granted a temporary stay permit for a “member of family of an EU citizen”, which is valid for five years or for the expected duration of stay of the EU citizen, if this is less than five years.<sup>343</sup> Regarding the exercise of a professional activity, the spouse and descendants of the EU citizens do not need a work authorization, in contrast with any ascendants

*Admission to stay of foreign family members of French nationals*

The Code regulating entry, residence and asylum in France envisages the granting of a temporary stay permit for “private and familial life” to the foreign spouse of a French national. Such a permit is conditional on continuity of marital consortium, conserving French nationality and transcription of the union to the French civil status register if the marriage has been celebrated abroad (C. Foreigners, Art. L 313-11, 4).<sup>344</sup> After three years of marriage, the foreign spouse can request the granting of a long-term residence permit.

Foreign parents of French children have the right to a temporary stay permit for “private and familial life” provided that they have effectively contributed to the education of the child for at least two years (C. Foreigners, Art. L 313-11).

Foreign children of a French national who are under 21 years of age or who are dependants of the French national have the right to a long-term residence permit upon delivery of a long-term visa (C. Foreigners, Art. L 314-11, 2).

<sup>342</sup> Nationals from EEA States and Switzerland benefit from the same legal regime.

<sup>343</sup> Members of the family who have lived in France legally and without interruption during the preceding five years are granted a long-term residence permit valid for ten years.

<sup>344</sup> It can be noted that the legal status of foreign spouses of French nationals has been considerably jeopardized during the last decade, mainly through the revocation of the right to long-term residence permits and the obligation to request a long-term visa, the purpose of which was to combat marriages of convenience.

Upon delivery of a long-term visa, dependent foreign ascendants of a French national or his spouse have the right to a long-term residence permit (C. Foreigners, Art. L 314-11, 2).

The new immigration law applies to foreign spouses of French nationals, introducing the new integration process in the country of origin (Immigration Law 2007, Art. 10) (see section 2.3.1.2).

### **2.3.3.2 Work**

Despite the official decision to stop labour immigration in 1974, it has not disappeared completely. Nevertheless, in light of complex and constraining legal procedures, labour immigration *per se* is very limited. In 2005, only 11 400 persons entered France under worker categories, amounting to seven per cent of the total migration flows towards France (Mariani 2006, p. 241).

For a couple of years, a debate has arisen regarding a controlled opening of labour migration; more specifically, the introduction of an immigration quota system. Following this debate, the Immigration and Integration Law 2006 appears to be a renovation of the labour migration policy, at least from an ideological point of view if not from a normative perspective. The basis for this important change was the acknowledgement that the immigration policy conducted since 1974 would have let a high unemployment rate coexist with a lack of workers in several economic sectors. Relying on the dialectical opposition between chosen and non-chosen immigration, the French government considers that familial immigration does not benefit the French economy. Therefore, the idea is to establish a close link between immigration and economic needs. This ambitious project<sup>345</sup> has not resulted in major legal changes.

Since 1984, a single permit authorizes both stay and work in France. Nevertheless, several categories of temporary workers have to be granted two distinct permits: a provisional stay authorization and a provisional work authorization.

#### Employment

The temporary stay permit for “private and familial life” and the residence permit grant the right to exercise a profession without the need to apply for work authorization. These two permits will not be discussed in more detail.

The exercise of a salaried activity depends upon a complex and constraining procedure that starts with the existence of a work contract between the potential migrant and an employer. The employer must then present a dossier to the National Employment Agency, which publishes a similar job offer in order to ensure that there is no suitable candidate within the local labour market. The administrative authorities are asked to examine with benevolence work authorization requests related to highly skilled workers (Permanent dictionary, p. 2251). Moreover, the Immigration and Integration Law 2006 provides

<sup>345</sup> However ambitious, the project is nevertheless questionable from a human rights perspective with regards to family reunification and from a moral perspective regarding migrants only considered from an economic point of view (Counter-report on immigration and the right to asylum 2006, pp.73-83).

an exception to the labour market test system with regard to professional activities or geographical areas featuring difficulties regarding recruitment (C. Foreigners, Art. L 313-10, 1).

The work authorization is issued by the Prefect according to the following criteria: employment situation (both present and expected) in the considered profession and geographical area; respect for labour regulations by the employer; equal treatment with national workers regarding conditions of employment and remuneration; and housing measures taken by the employer in favour of the foreign worker (Labour code, Art. R 341-4). The main criterion is undoubtedly the employment situation.

When the work contract is for more than a period of 12 months the stay permit mentions “salaried employment”, whereas a shorter period grants a “temporary worker” permit (C. Foreigners, Art. L 313-10, 1).

Special, more favourable, regimes apply to several categories of foreigners (Algerians, Andorrans, Monegasques, Tunisians, Central Africans, Gabonese, and Togolese). Nevertheless, there is a general trend to bring these special regimes closer to the common legal one.

The Immigration and Integration Law 2006 creates a new type of temporary stay card for “employees in mission” (deployed workers from a firm established outside of France).<sup>346</sup>

One of the major innovations of the Immigration and Integration Law 2006 is the competence and talent card that can be granted to foreigners who participate in a significant and durable way to the economic development and influence of both France and their country of origin in intellectual, cultural, scientific, humanitarian, and sports-related matters (C. Foreigners, Art. L 315-1). This specific permit is delivered for three years and can be renewed. It authorizes the exercise of any professional activity linked to the project which justifies granting the permit, but is not meant to be widely delivered.

### Self-employment

Under the common legal regime, the exercise of a self-employed activity depends upon the granting of a Foreign Tradesman Identity Card (Commercial Code, Art. 122-1) and a temporary stay permit for the activity exercised (C. Foreigners, Art. L 313-1, 2). The delivery of the card and the permit is subject to the following conditions: the applicant must be over 18 years of age; he must not have a criminal record; he must not be under a special prohibition pronounced by a court; he must not exercise a profession incompatible with the quality of tradesman; and he must not have been declared bankrupt. Moreover, the applicant must justify the economic viability of the activity foreseen and the legality of his stay in France, as well as producing bank documents relating to his fiscal situation. He also has to fulfil the specific conditions related to his particular profession. The

<sup>346</sup> The planned remuneration must be 1.5 times the French minimum salary (SMIC). The permit is granted for three years and is renewable. It offers the advantage of allowing the permit holder to request a temporary stay permit for his spouse or children labelled “private and familial life” in cases where the holder stays in France without interruption for more than six months (C. Foreigners, Art. L 313-10, 5).



prefectoral service's examination of the application is to be completed within three months. The Foreign Tradesman Identity Card is delivered for the same period as the temporary stay permit (one year).

### Seasonal work

Regarding seasonal workers, the Immigration and Integration Law 2006 creates a specific temporary stay permit for a "seasonal worker". This permit allows for the exercise of work for a period not exceeding six months within a year. It is granted for a maximum of three years and is renewable (C. Foreigners, Art. L 313-10, 4). This card was created in order to protect seasonal workers in a more efficient way by suppressing the direct link between the work contract and the stay permit (Mariani 2006, p. 97). Consequently, seasonal workers should not be as dependent on their employer as they could have been under the previous status. Procedural issues are similar to the common legal ones and the labour market test system applies.

### **2.3.3.3 Studies and Training**

The stay of foreign students in France depends upon the issuance of a temporary stay permit for a "student". The conditions of delivery are as follows: possession of a long stay visa, registration at an educational institution,<sup>347</sup> and possession of sufficient means for living (C. Foreigners, Art. L 313-7).

Derogating from the common legal regime and in order to recruit the best candidates, the Immigration and Integration Law 2006 creates a more favourable regime applicable to students selected in their country of origin.<sup>348</sup>

The Immigration and Integration Law 2006 also grants the holders of a temporary stay "student" permit the right to exercise a salaried part-time activity within the limit of 60 per cent of the annual working duration (C. Foreigners, Art. L 313-7).

With regard to change of status and, in particular, the exercise of a professional activity, in principle students are supposed to return to their country of origin at the end of their studies in France.<sup>349</sup> Nevertheless, within the framework of a policy aiming to retain highly skilled persons, the Immigration and Integration Law 2006 gives foreign students access to the labour market under several conditions.<sup>350</sup>

<sup>347</sup> Registration at an educational institution depends on two conditions: first, the applicant must possess a diploma which allows the planned studies in the country where it has been obtained (Decree of 13 May 1971, Art. 16) and, second, the applicant must have a sufficient knowledge of the French language and must pass a corresponding examination. A registration request must be made to the desired educational institution. According to the principle of autonomy of universities, the institution will freely decide to accept or to reject the registration request, according to its own policy and its receiving capacities.

<sup>348</sup> Selection will be made by Centres for Studies in France (which will progressively be set up within the French embassies) according to several criteria: study project, quality of past studies, linguistic abilities and the relations and common interests of France and the country of origin. These selected students will be granted a temporary stay permit as of right. Consequently, the student will not have to produce the usual documentation (certificate of registration in an educational institution, proof of means of living, etc.).

<sup>349</sup> Consequently, if nothing prevents a former foreign student from requesting a work authorization, he will be treated as any other foreigner, i.e. under the criterion of the opposability of the employment situation.

<sup>350</sup> After getting a degree not inferior to a masters, a provisional work authorization of six months can be

### 3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level

Regarding Council Directive 2003/86/EC on the right to family reunification, French legislation is not only in accordance with European law, but offers a more favourable regime than the directive.<sup>351</sup>

France has also transposed Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents through the Immigration and Integration Law 2006.

The Immigration and Integration Law 2006 has transposed Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service. It seems to have only partially transposed Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research.

Regarding admission to stay of family members (third-country nationals) of EU nationals, French law does not mention partners or registered partners. As with the second category of migrants, in this regard French law breaches Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Regarding the specific situation of French nationals' spouses, the obligation for long-term visas can, under certain circumstances, impose the return of a spouse to their country of origin in order to submit a visa application. In this regard, French legislation could be deemed to conflict with European Court of Justice jurisprudence (Weil 2006, p. 81).

Finally, regarding foreigners who do not fall into categories of family immigration, but whose strong personal or family ties in France imply that a refusal of stay would affect their right to respect for private and family life in a disproportionate way, such persons may contest the rejection of an application (C. Foreigners, Art. L 313-11, 7). This provision is strictly interpreted by the Council of State, which accepts the rejection of an application based on the fact that although the applicant could, in principle, benefit from the process of family reunification it is, in practice, not feasible (Permanent dictionary, pp. 357-358). This interpretation could contravene the letter of Article 8 of the ECHR regarding the right to private and family life.

### 4. Real Impact of Immigration Legislation on Immigration in Practice

As a general assessment, it can be said that the French immigration policy conducted since 1974 has led to a diminution of work migration, which in turn has been replaced by family reunification.

delivered to the former foreign student in order to supplement his theoretical training with an initial professional experience that participates in a direct or an indirect way in the economic growth of both France and the country of origin. If the former foreign student finds a corresponding professional position, he is granted a stay permit (C. foreigners, Art. L 311-11).

<sup>351</sup> Nevertheless, the European directive could have been a justification for the implementation of a stricter regime in this regard.

The legal status of foreigners in France has progressively been jeopardized in the last two decades. For instance, the long-term residence permit, after previously being the norm has now become the exception.

More specifically, the implementation of some parts of the legislation can be challenged due to lack of human resources, especially in consulates and diplomatic missions. For instance, regarding the reasons for rejection of a visa request in 2006, only three per cent of the decisions specified reasons for the outcome. In order to meet the European Commission's wishes in this regard, several hundred civil servants would need to be hired.

## **5. Cooperation with Third Countries**

The Immigration and Integration Law 2006 envisages several mechanisms intended to participate in aiding developing countries.

Firstly, the law creates a savings account for development purposes, which will receive the savings of migrants from developing countries who hold a stay permit for the exercise of a professional activity. The purpose of this savings account is to finance investments beneficial to the economic development of the migrant's country of origin.

Secondly, the legal provisions adopted in order to attract and retain high skilled workers and the best foreign students are combined with measures intended to assist developing countries. The delivery of the competence and talent card is conditioned by a significant contribution to the economic development and to the influence of both France and the country of origin. Moreover, the competence and talent card cannot, in principle, be delivered to nationals of countries belonging to the priority solidarity zone. Regarding students holding at least a master's degree, a provisional work authorization of six months can be delivered to the foreign student in order to provide a first professional experience, which contributes directly or indirectly to the economic growth of both France and the country of origin. Therefore, the Immigration and Integration Law 2006 provides several measures to limit brain drain. Nevertheless, the main objective of the law is to attract the most competent migrants; the economic development of countries of origin is merely a secondary objective.

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## 1. General Immigration Policy and Trends

In 1955, ten years after the end of World War II, the unemployment rate in the Federal Republic of Germany was at 5.1 per cent. However, there were strong regional differences: in Baden-Wuerttemberg the rate was 2.2 per cent, while in Nordrhein-Westfalen it was 2.9 per cent, and in Schleswig-Holstein 11.1 per cent. In September of 1955, unemployment within the male population was at only 1.8 per cent. During the following decades this strong labour shortage was responded to by the signing of recruiting agreements with Italy, Turkey, Portugal and Yugoslavia. As a result, the proportion of foreign workers within the total number of employees in the Federal Republic rose from 0.8 per cent (166 000 persons) to 4.9 per cent (1 014 000 persons) between 1959 and 1968 (Herbert 2001). In 1972, 2.5 million foreign workers lived in the federal territory (Bade 1983). At the same time, unregulated immigration from the German Democratic Republic occurred until the construction of the Berlin Wall in August 1961.

It was expected that guest workers would stay in Germany only temporarily and that they would return to their countries of origin in the foreseeable future. This was the belief of both the immigrating workers and the German politicians.

The Aliens Act of 1965 (and the executive order issued for its fulfilment) regulated access to the federal territory. The green card ordinance, which was separate and became effective in 1971, regulated access to the labour market for legally present migrant workers. In addition, a number of agreements under international law were adopted, including goodwill clauses and most favoured treatment clauses.

The Aliens Act of 1990 was a response to the long standing criticism of the Aliens Act of 1965, relating to uncertainty caused by the former legislation. As a result, there was no longer only one kind of residence permit; the generic “Residence Permit” was divided into the “Residence Permit, Not Temporary”, which was assigned to foreigners who immigrated to the federal territory for permanent stay, and the “Temporary Residence Permit”, which was granted for the purpose of temporary stay. The new law had the advantage that, for the first time, a foreigner could understand whether or not he had the prospect of a permanent right of residence. However, the size of the regulations had increased fivefold, resulting in a significantly more complicated process. In practice, for example, the transition from a temporary permit issued to students to a permit for durable stay proved to be too difficult to execute.

The Residence Act was passed in 2005 with the promise of simplification. Today there is the generic term of the stay title, a settlement permit and only one residence permit. However, the latter splits into 35 different forms, instead of the two previous permits under the Aliens Act of 1990.

After a hearing of experts in May 2007 (Interior Committee 16(4)209), the Bundestag passed the Law for Transposition of Residence and Asylum Relevant EU Directives, changing the requirements for immigration in the federal territory. In total, 11 EU directives were either fully or further transposed into national law, as well as some changes being made to various existing laws, including the Residence Act. The law entered into force on 28 August 2007.



## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Generally speaking, residence permits regarding either temporary or permanent stay in Germany may be granted for the purpose of family reunification, studies and training, or employment.

Regarding the latter category, it must be noted that a proof of special abilities is a precondition of entry. German law specifies a number of different categories of person who satisfy this criteria, including: highly qualified persons;<sup>352</sup> executives; individuals engaged in science, research and development; individuals engaged in business activities; scientists and artists; professional sportsmen or professional coaches who are working in German sports clubs; journalists; volunteer services and persons mainly employed for charitable or religious reasons; persons who are sent by an employer established abroad for up to three months within a period of 12 months for services such as installation or repairing of machinery and the like; nurses and caretakers for the elderly employed according to an agreement with the country of origin; qualified employees with a university or technical college education, or a comparable qualification, in the context of the staff exchange within international active enterprises; and qualified employees of an international active enterprise trained for an occupation abroad.

The Employment Regulation also permits entry for certain non-expert occupations, including: seasonal work; au-pair occupation; domestic help in households with persons in need of care; and social work.

Also subject to permissive regulations for entry and stay are those individuals belonging to German ethnic groups in Eastern European countries or those States formerly part of the Soviet Union, persons displaced in World War II and their descendants, and foreigners who lived in the federal territory as minors and who have a right to return after a durable departure (Residence Act, Art. 37).

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

Generally, applications for visas shall be submitted to German embassies and consular offices abroad.

As a rule, visas for a stay of longer than three months require of most third-country nationals the prior consent of the Foreigner police that is responsible in the federal territory of the intended residence.<sup>353</sup> Such consent is also required if the foreigner wishes to work in the federal territory (Residence Order, Art. 31). In these cases the employment office must agree before the granting of a visa.

<sup>352</sup> Highly skilled persons are defined in Article 19 of the Residence Act as scientists with special technical knowledge, teaching persons or scientific employees in an outstanding position, and specialists and executives with a special professional experience and with a salary which exceeds an established limit.

<sup>353</sup> There are exceptions listed in Article 17 of the Residence Order.

## 2.2.2 Procedural Steps – Conditions to be fulfilled

Germany issues transit visas for the purpose of passing through the country, Schengen visas (short-term visas) for stays of up to three months<sup>354</sup> and national visas for stays of longer duration (Residence Act, Art. 6). As a general rule, it can therefore be said that the granting of a national visa is a condition in order to be granted immigrant status. Issuance of national visas is dependent on fulfilment of the conditions of issuance of the relevant residence permit (Residence Act, Art. 6(4)).

The general criteria required to be met by a visa applicant are: he must indicate the journey's purpose; he must be in possession of a valid passport (Residence Act, Art. 3); his stay must be secured financially (Residence Act, Art. 5(1));<sup>355</sup> and he must possess sufficient health insurance while staying in Germany. Medical examinations are not carried out and health insurance is not necessary in order to obtain a visa.

Immigrants listed in Annex 2 of Regulation 539/2001/EC, as well as nationals of Australia, Israel, Japan, Canada, South Korea, New Zealand and the United States of America, are allowed to enter the country without a visa. Moreover, if citizens of these countries want for any reason to stay in Germany longer than three months, there is no need to make an application for this purpose prior to entry (Residence Act, Art. 41).

The charges for the processing of an application for a visa are low: for an airport transit or a Schengen-visa of the categories A, B or C, there is a fee of 60 EUR; for a collective visa in respect of five to fifty persons, the fee is 60 EUR plus 1 EUR per person; for the issuance of a national visa, 30 EUR; and for a combined national and Schengen visa (categories C and D), 60 EUR (Residence Order, Art. 46).

## 2.2.3 Appeal and Administrative or Judicial Control of the Decisions

The rejection of a visa application does not have to include any statement of grounds or information regarding legal remedies (Residence Act, Art. 77(2)).

An appeal is possible to the Administrative Court of Berlin, however, procedures are long and may take from two years to more than three years.

## 2.3 Stay and Residence Rules

### 2.3.1 General Rules regardless of the Immigration Category

#### 2.3.1.1 Competent Authorities

Residence permits are granted by the Foreigner police (Residence Act, Art. 71(1)).

<sup>354</sup> Short-term visas may also be issued for several stays with a validity period of up to five years, on condition that the respective stays must not exceed three months within a period of six months beginning on the date of initial entry (Residence Act, Art. 6(2)).

<sup>355</sup> In practice, insurance coverage amounting to at least 30 000 EUR is required.

### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

In most cases, a first residence permit shall be applied for in the country of origin. When a visa is not necessary, or in the case of renewal of a permit, applications may be made from within Germany.

As a general rule, the granting of a residence permit is dependent on the following conditions: the applicant's livelihood is secure;<sup>356</sup> no grounds for expulsion apply; the applicant's residence does not threaten the interests of Germany; the passport obligation is met; and the necessary visa has been granted (Residence Act, Art. 5).

Knowledge of the German language is not required prior to entry; however, this may change. At present, immigrants are expected to make the effort to learn the German language only after their entry, to which end language courses are offered. Immigrants with insufficient language skills can be required to attend these courses (Residence Act, Art. 44(a)). In practice, the courses are used most frequently by the first generation of immigrants that have already been living in Germany for a long period of time. Currently, in order to obtain a permanent residence permit, the applicant must show a basic knowledge of the German language. The applicant does not, however, have to prove knowledge of the host country's history.

In most cases, the administrative process with regards to the issuance of a residence permit takes between two and four months.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

The refusal of a permit application shall include information regarding the legal remedies available to challenge the administrative act and the respective deadline that is to be observed if a remedy is sought (Residence Act, Art. 77(1)).

In cases of rejection of an application, an objection may be submitted to the authority who took the decision within one month of the decision being made. If this objection is again rejected, a further appeal may be submitted to the local administrative court. However, in some Federal states no administrative control is available, thus the applicant only has the right to a direct appeal to the local administrative court, which must be submitted within one month of the decision being made.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

Third-country nationals may stay in Germany for short periods of time with either a visa or a residence permit. Visas may be issued for up to two years for the purpose of performing contracts for services concluded on the basis of an international agreement (Employment Regulation, Art. 39). Alternatively, they can be issued for up to three years to qualified employees in the context of a staff exchange within an international company

<sup>356</sup> A foreigner's livelihood is secure when he is able to earn his living, including adequate health insurance coverage, without recourse to public funds (Residence Act, Art. 2(3)).

(Employment Regulation, Art. 31), or up to three months within a period of 12 months to an employee sent temporarily for the supply of services (Employment Regulation, Art. 11).

Generally speaking, a temporary residence permit may be issued for no more than three years, and in practice it is most often only issued for a single year. The maximum length of stay varies according to the purpose of stay. Generally, renewal of a temporary residence permit is subject to the same conditions that apply to its first issuance (Residence Act, Art. 8(1)).

### 2.3.2.2 *Permanent Residence*

German legislation foresees the granting of two permanent residence titles: a settlement permit and an EC long-term residence permit. Both statuses are very similar.

The following conditions apply to the granting of a settlement permit: the applicant has held a residence permit for five years; his livelihood is secure; he has paid contributions into a statutory pension scheme for at least 60 months; the applicant does not constitute a threat to public safety or order; he shows knowledge of the German language at a low level; he possesses a basic knowledge of the legal and social systems and the way of life in Germany;<sup>357</sup> he possesses sufficient living space for himself and any family members (Residence Act, Art. 9).<sup>358</sup> A settlement permit authorizes its owner to exercise an economic activity.

In order to be granted an EC long-term residence permit, an immigrant must: have been a legal resident in Germany for five years; have a guaranteed subsistence for himself and his dependents; have an adequate knowledge of the German language; possess a basic knowledge of the legal and social systems and the way of life in Germany; and not constitute a threat to public safety or order (Residence Act, Art. 9(a)). The time of the applicant's studies or vocational training can be counted for up to half of the required stay time.

A permanent right of residence can be given immediately after entry into Germany to specialists and executives with a special professional experience who draw a salary amounting to at least double the contribution assessment limit in the legal health insurance.<sup>359</sup>

<sup>357</sup> Courses in the German language are offered with written examinations (Residence Act, Art. 43; Integration Order, Art. 3(3)). The course lasts for 300 hours (Integration Order, Art. 10). For obtaining knowledge of the host country, a 30-hour integration course is offered, for which the immigrants shall pay 1 EUR per hour. Germans coming from Eastern Europe and the Asian regions of the former Soviet Union are allowed to attend these courses free of charge (Integration Order, Art. 9). Third-country nationals who received a stay permit prior to 1 January 2005 have no obligation to participate in the courses. Requirements regarding German language and culture are considered to be fulfilled when an integration course has been completed (Residence Act, Art. 9).

<sup>358</sup> The space required to accommodate a person in need of accommodation in state-subsidised welfare housing constitutes sufficient living space (Residence Act, Art. 2(4)).

<sup>359</sup> This income limit was 85 500 EUR for the years 2006 and 2007.

### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 Family Reunification

Family members of German citizens from certain states may be restricted from applying for family reunion after their entry into Germany for other purposes due to factors such as frequent falsification of documents by immigrants from that country. For example, if a national of Congo or Pakistan who is married to a German enters Germany with a tourist visa, he may not receive a residence permit for family reunion after entry. Thus a national from one of the specified countries may be subject to the cost of return travel to their country of origin, in order to apply from abroad. In this respect family members of Germans are treated more unfavourably than family members of EU citizens, because applications from family members of EU citizens may not be dismissed for such reasons.

#### *Family reunification for German citizens*

Spouses and minor children of German citizens may be issued a residence permit for the purpose of family reunification, as may the parents of minor unmarried Germans for the purpose of care (Residence Act, Art. 28).<sup>360</sup> In practice, a residence permit is issued for between one and three years. Foreign family members of Germans have the right to be employed or self-employed without examination of the labour market or other restrictions (Residence Act, Art. 28(5)). The residence permit shall be prolonged as long as the long-term family relationship persists.

The right of residence for spouses becomes independent from the purpose of family reunification if the long-term family relationship existed for at least two years (with the possession of a residence permit) and the spouses divorce or the German family member dies. If the long-term family relationship exists for more than three years, a permanent right of residence is to be given, without proof of the assurance of livelihood (Residence Act, Art. 28(2)). New legislation now demands that both spouses be at least 18 years of age, although this condition is dubious if the spouses are already parents despite minority. Linguistic proficiency is also a prerequisite. This can be seen as discrimination against German citizens, as linguistic proficiency is not demanded of third-country national family members of Union citizens.

Foreign children of German citizens who are not yet 18 years old also qualify for family reunification and will initially receive a temporary residence permit. Children who are older than 18 years and dependent direct relatives in the ascending line may only have a right of residence in cases of exceptional hardship, although the definition of hardship is subject to interpretation. Generally speaking, family members of Union citizens are in a better position than family members of German nationals; after three years, the child receives a permanent residence permit upon request if he is not younger than 16 years of age. In comparison, the foreign children of Germans receive a permanent right of residence without further requirements only after reaching the age of 16 and possessing a right of residence for five years (Residence Act, Art. 28(3); Art. 35(1)).

<sup>360</sup> The specifications for subsequent immigration of spouses accordingly apply to partners.

*Family reunification for EU Citizens*

Corresponding to Council Directive 2004/38/EC, the family members mentioned therein possess the right to family reunification (Law of Free Movement in the EU, Art. 3). After entry into Germany for other purposes, such persons receive a residence permit without application (Law of Free Movement in the EU, Art. 5(1)). If they are third-country nationals, they are granted a residence card (Law of Free Movement in the EU, Art. 5(2)).

*Family reunification for third-country nationals*

Spouses of third-country nationals have a right to family reunification if the spouse living in Germany is in possession of a permanent residence permit, a residence permit for at least two years, or a residence permit that already existed at marriage and the duration of stay is expected to be longer than one year (Residence Act, Art. 30(1)).

The family reunification is only approved if both spouses are of age (Residence Act, Art. 30(1)). In addition, it is required that the coming spouse is able to speak the German language with a low level of proficiency; however, those third-country nationals who have the right of family reunification without a visa are exempt from this requirement (Residence Act, Art. 30(1)). It can be noted that Turkish associations protest of ethnic discrimination as a result of this exemption. Other exceptions to the language requirement are also made in cases where: there is a recognizably low integration need; the marriage existed when the spouse entered Germany; or the moving spouse cannot prove simple linguistic proficiency due to a specific hindrance.

If the spouse and parents are allowed to practice a gainful employment their entry into the labour market is unrestricted (Residence Act, Art. 28(5) No. 1). In other cases, the labour market entrance is permitted without consideration of the labour market only after two years (Residence Act, Art. 29(5) No. 2). Contrastingly, Article 14(2) of Directive 2003/86/EC allows this restriction for the duration of one year only.

After a stay of five years in Germany, the spouse of a third-country national may receive a permanent right of residence, but only if he draws a secured income. The income of the spouse is only considered if he is already in possession of a permanent residence permit or applies for a permanent residence permit at the same time.

There is no legal specification regarding the duration of residence permits, however, in practice they are most often granted for the duration of one year. The right of residence for spouses becomes independent of the purpose of family reunification if the long-term family relationship existed for at least two years (with the possession of a residence permit) and the spouses divorce or the German family member dies. The time limit of two years is disregarded in hardship cases (for example, maltreatment by the spouse). In this case, the foreigner has one year to prove the assurance of his livelihood (Residence Act, Art. 31(1) No. 1), except in cases of abuse of social security or welfare aid. After two years, the spouse maintains the right to apply for any job or to be self-employed even if the relationship ends (Residence Act, Art. 31(1) No. 2).

Until two years has passed, the spouse of a third-country national cannot be self-employed. Taking up an employment may only be permitted prior to two years if no German employees, EU citizens, or third-country nationals with pre-emptive entry to the labour market under the laws of the European Union are available to undertake the work. Employment is also possible prior to two years of residence with respect to some occupational groups or economic sectors where there is a benefit to the labour market and integration.

The subsequent immigration of children under the age of 16 is admissible if the parents have a right of residence in Germany and their livelihood is assured (Residence Act, Art. 32(1)). The same process applies where a single parent living within the federal territory has sole custody of the child. A residence permit is usually assigned for a period of one year, although there is no legal specification concerning duration.

There are further requirements for the reunification of older children, up to the age of 18 years, who are obliged to have good skills in the German language, or expected to integrate after finishing their education (Residence Act, Art. 32(2)). However, these requirements are not strictly observed in practice. Children who are older than 18 years may move to Germany for the purpose of family reunification only in cases of extreme hardship (Residence Act, Art. 36).

Children who have entered the federal territory as a result of family reunification, have the right to attend schools and universities (except in some parts of Germany if the family has no right of staying or if the family has made an application for asylum). Taking up employment has to be permitted without examination of the labour market if the foreigner who moved to Germany in his childhood has completed a school-leaving qualification from a school with general educational value or a one-year professional preparation course at school.

Children receive a permanent residence permit at the age of 16 if they have been in possession of a residence permit for at least five years. Income is not required, but the applicant's police record may not exceed a certain level (Residence Act, Art. 35).

### **2.3.3.2 Work**

#### Employment

The admission of foreign employees is dependent on the requirements of the German economy, according to consideration of the labour market situation and the need to effectively combat unemployment (Residence Act, Art. 18(1)). As a principle, a residence title that permits employment may only be granted with the approval of the Federal Employment Agency (Residence Act, Art. 39(1)). The Agency may approve such a granting provided that the employment of immigrants does not have negative consequences on the labour market and there are no suitable German workers or foreigners holding the right to take employment. Alternatively, permission to undertake employment may be granted if the Agency has established that the filling of vacancies with foreign applicants

is justifiable in terms of labour market policy and integration aspects (Residence Act, Art. 39(2)). The approval may stipulate the duration and form of occupational activity and restrict the employment to specific plants or regions (Residence Act, Art. 39(4)).

A visa for the purpose of a working visit or a temporary occupation (such as a business trip or providing services across the border as an employee or employer) is restricted to the purpose for which it was assigned and, as a rule, may not be prolonged for a different purpose. The time limits for such visas are diverse, for example: nine months for the assembly of a prefabricated house (Employment Regulation, Art. 35); up to two years for the execution of contracts for service, concluded on the basis of an international agreement (Employment Regulation, Art. 39); up to three years for qualified employees in the context of a staff exchange within an international company (Employment Regulation, Art. 31); and up to three months within a period of 12 months for an employee sent short-term for the supply of services (Employment Regulation, Art. 11).

Residence permits can be prolonged without renewed examination of the labour market after employment of at least one year with the same employer (Employment Regulation, Art. 6).

A visa is always necessary for initial entry and only highly qualified persons receive a permanent residence permit immediately after entry. In such cases, the purpose must be indicated on the application for the visa and in the case of every petition for a visa. The embassy or the consulate generally requests the contract of employment from the Aliens Department. The Employment Office is consulted with regard to the occupation; if the Employment Office agrees, the Aliens Department can transmit its consent to the granting of the visa to the embassy, which assigns a national visa valid for up to three months. The foreigner enters the country with this and must contract the Aliens Department in order to obtain a settlement permit.

### Self-employment

A foreigner can be granted a residence permit for the exercise of a self-employed occupation if a superior economic interest or a special regional need exists, or if positive effects on the economy are expected from the occupation. It can also be granted if the funding of the realization is assured through equity or a credit approval. The law states, for example, that the investment of at least 500 000 EUR and the creation of five new jobs meet these criteria (Residence Act, Art. 21(1)). The local authorities responsible for trade shall be consulted on applications of this type.

Such a residence permit shall be limited to a maximum period of three years (Residence Act, Art. 21(4)). Exceptionally a settlement permit may be issued.

Since 2007, it is also possible for an immigrant to undertake free-lance work or to work on his own if a stay permit has been granted for a different reason (for example, family reunification) (Residence Act, Art. 21(4); Art. 21(5)).



Seasonal work

Seasonal work occurs primarily in the agricultural sector. Seasonal workers must be employed for a minimum of 30 hours per week with a daily average labour time of at least six hours, but for not more than four months in the calendar year. Migrants from Poland especially engage in this type of work and, having the advantage of being EU citizens, they do not require a residence permit, merely a work permit.

**2.3.3.3 Studies and Training**

The period of validity of a residence permit assigned for the purpose of preparation for study at a university shall not exceed two years. However, it is renewable where the purpose of residence has not yet been achieved and is achievable within a reasonable time period. Necessary requirements include a secure livelihood and medical insurance cover. Such a permit is usually issued within two months of the submission of the application.

For the purpose of applying for admission to a university, a residence permit may be assigned for no longer than nine months. In practice, changes concerning the field of study are allowed only once and only to a maximum duration of the complete studies of ten years. During the course of study, dependent employment of up to 90 days or 180 half days is permitted, as well as the practice of student secondary employments at the university (Residence Act, Art. 16(3)). After a successful final degree, a residence permit can be prolonged for up to one year in order to search for a job. The job must be one for which it is permissible for immigrants to be hired.

**3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Several provisions in the German legislation appear to contradict EU legislation. For instance, spouses from countries listed in Annex I of Regulation 539/2001/EC do not receive a residence permit without a visa granted especially for that reason. This could be seen as contrary to Article 3(1) of Council Directive 2003/86/EC on the right to family reunification, but on the other hand it could be regarded as in accordance with Article 5(3) of the same Directive. Moreover, the requirement for foreigners not making progress in learning the German language to enrol in language courses, and particularly the sanctions attached to its failure, may not be consistent with conditions established at the EU level.

According to EU legislation, linguistic proficiency may not be required of family members of EU citizens. Thus the new German legislation (requiring such proficiency of family member of German citizens) places German citizens in a situation of unequal treatment with other EU citizens, constituting a breach of Article 7(2) of Directive 2003/86/EC.

Entry to the labour market is unrestricted if spouses (and parents) are allowed to practice a gainful employment (Residence Act, Art. 29). In other cases unrestricted entrance into the labour market is permitted only after two years (Residence Act, Art. 29(5) No. 2). In contrast, Article 14(2) of Directive 2003/86/EC allows this limitation for the duration of one year only.

New legislation enables competent authorities to decline the reunification of spouses with German nationals in exceptional cases, including cases where the German spouse has dual citizenship or has lived for a long time in the country of origin of the foreign spouse and speaks the language of the country of origin. This may be a violation of Article 3 of the Constitution, as it treats naturalized Germans and Germans with migration in their background in an unequal manner in comparison with “autochthonous” Germans.

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

The regulation concerning highly trained employees can be used to demonstrate the practical results of the modification of the regulations regarding entrance into the labour market. When this regulation was introduced, 10 000 applicants annually were expected to receive a residence permit; subsequently, this figure was increased to 20 000. The actual numbers fell far short of this: between 2000 and 2004 the number of persons affected by the regulation ranged from 4341 to 2273. An interpretation is not easy, with the development being affected by the crash of the new economy. It is possible that the requirements were too high for the issuance of a residence permit.

It can be stated that, in the course of the European Union’s enlargement, the difficulties of German farmers to find seasonal workers has increased. The immediate opening of the labour market, for example in Great Britain, led the seasonal workers from Poland to realign and aim for labour markets that have no entry barriers. The federal government aims to increase the proportion of German nationals within the seasonal work sector, although the farmers unions appear sceptical.

#### **5. Cooperation with Third Countries**

Measures aimed at cooperation with developing countries to deploy members of the labour force periodically do not exist. As a result, even the basic requirements to transfer rights acquired in the interior to a foreign country or to benefit from these rights in the foreign country, including treaties on social insurance, are missing. Pensions for unemployment are paid after an insurance period of 60 months. However, they are not paid abroad in every case. The same applies to the payment of pensions due to invalidity. Pensions due to age are paid after a 180-month insurance period and not before the age of 63 years. The level of pensions paid in developing countries is 70 per cent of that for nationals.

Contributions paid to social insurance are restituted after leaving Germany, but only 24 months after departure and even then only the 50 per cent of the contributions that were paid over by the employer after subtraction from the gross pay (50 per cent of the contributions are paid in the name of the worker and 50 per cent are paid in the name of the employer; but all is paid by the employer). The other 50 per cent of the insurance contributions paid over by the employer expire. It shall be understood that the contributions restituted – without any interest payments – are less valuable than the actual insurance value. Such a measure ultimately expropriates the foreign insurant. With restitution, the insurance is dissolved and the individual cannot then assert any right to German social insurance.

There are no measures enabling brain circulation. There are also no mechanisms to facilitate the transfer of remittance to the countries of origin.

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## 1. General Immigration Policy and Trends

Traditionally, Greece has been a migrant-exporting country, mostly of unskilled labour. At the end of the 1960s and the beginning of the 1970s, when Greece went through a period of rapid economic development, there was a serious lack of unskilled labour. This shortage, which was at the time met by allowing immigration mainly from Asian and African countries, still continues today due to a combination of different factors.

Greece's accession to the European Communities in January 1981 was followed by a complete transformation of its society. Some new trends emerged, including the employment of domestic help from Asia, in particular from the Philippines. During the 1980s, the number of legal work permits issued yearly ranged from 23 000 to 26 000. Due to geopolitical events taking place at the time, there was a surge in immigration flows, primarily from Albania, but also from other Balkan and Central European countries (Cavounidis 2004).

According to the government census, the population of Greece in 2001 was almost 11 million. The official number of immigrants at that time stood at 762 000, a figure widely believed to be too low. The four main countries of origin for immigrants were Albania (58 per cent), Bulgaria (five per cent), Georgia (three per cent) and Romania (three per cent), followed by Ukraine, Poland, Philippines, Iraq, Egypt, Syria and other nations. The number of employed aliens stood at 391 600, which was equal to roughly 9.5 per cent of the employed population of Greece.

The primary legislative instrument governing immigration in Greece is Act 3386 of 18 August 2005 on Entry, residence and social integration of third-country nationals into the Greek territory. The Ministry of the Interiors is primarily responsible for its execution and has issued two Circulars regarding its application: Circular No. 26 of 1 September 2005 and Circular No. 38 of 23 December 2005. Act 3386/2005 has been revised once by Act 3536 of 22 February 2007 on Determining matters in migration policy and other issues falling into the competence of the Ministry of the Interiors, Public Administration and Decentralization.

According to its Explanatory Report, Act 3386/2005 has the following principal aims: (a) to rationalize the planning of migration flows by taking into account the needs of the Greek social and economic life; (b) to refrain from altering haphazardly the status of lawfully residing foreigners; (c) to guarantee that migrant workers are employed under conditions commensurate to a modern rule-of-law state; (d) to introduce a regime for the social integration of migrants; (e) to apply Greek legislation in an effective manner so as to avoid the uncontrolled entry and exit of foreigners; (f) to introduce incentives for attracting foreign investment in Greece; and (g) to ensure that third-country nationals exercise their rights without any constraints, develop their personality in the way they choose, as well as participate freely in the Greek social and economic life.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Greek legislation envisages the following instances of immigration status: family reunification; work, including general employment, self-employment and seasonal employment; and studies and training. There are specific residence permits available for people of “other” status including: financially independent persons; adult children of diplomats serving in Greece and third-country nationals serving as “members of the service staff” and “private servants”; foreign press reporters and correspondents; clergymen of all known religions; participants in research programmes;<sup>361</sup> humanitarian cases;<sup>362</sup> and victims of trafficking in human beings.

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

Visas are issued by the consular office in whose jurisdiction the place of domicile or habitual residence of the third-country national belongs.

#### 2.2.2 Procedural Steps – Conditions to be fulfilled

Visas are divided into two categories: visas of short stay (the so-called Schengen visas with a validity of up to three months) and visas of long stay (the so-called national visas with a validity of more than three months).<sup>363</sup> As a general rule, immigration is subject to the delivery of a long-term visa.

The general conditions envisaged in Article 5 of Act 3386/2005 require that the third-country national wishing to be issued with an entry visa must:

- Make a personal appearance before the competent consular office and produce a passport, which must be valid for at least three months after the visa will have expired;
- Provide a copy of his criminal record from the competent authorities of his place of domicile;
- Produce a medical certificate showing that he does not suffer from an illness which could pose a risk to Greek public health;

<sup>361</sup> A one-year renewable residence permit is issued to allow third-country nationals to participate in programmes that are carried out by research entities of the public sector or research institutions, which are supervised by the Greek state. The alien must have concluded an agreement of cooperation with the relevant entity, which must also undertake his living expenses and the cost of return to the country of origin.

<sup>362</sup> The following five categories of individuals may be granted residence permits: (i) victims of labour and other accidents for the duration of the therapy; (ii) victims of crimes, which have been attested by court judgments and for the duration of the therapy; (iii) persons who are hosted in charitable establishments and institutions; (iv) underage children whose guardians are Greek families or families of third-country nationals with permanent residence in Greece; and (v) persons suffering from serious health problems, as determined by a state hospital.

<sup>363</sup> A visa shall not be issued if it is not required under the relevant international treaties, by European Community law or by national law. Those third-country nationals who do not require a visa are allowed to enter and remain in Greece for a maximum uninterrupted period of three months or three months in total within a six-month period from the day that the alien entered Greece for the first time.

- Not have been entered in the list of undesirable persons maintained by the Greek Ministry of Public Order; and
- Not be regarded as posing a potential threat to public health, order or security, as well as to Greece's international relations.

Additional requirements exist for the issuance of visas in relation to specific immigration statuses. For a reunification visa to be issued, the interested third-country national residing in Greece must first submit an application accompanied by the following documents: a certificate of family status; official documents indicating that he has the required minimum annual income; an insurance certificate showing the cover of himself as well as the relevant family members; and a document proving that the applicant has adequate accommodation to cover his and his family members' needs.

For an employment visa to be issued, the applicant is required to supply a contract of employment. This must, at a minimum, include the name of the employer, the precise nature of the work to be performed and the details of remuneration. Whilst the issuance of a visa for study purposes requires the submission of: the certificate of enrolment/registration or a declaration of acceptance to study from the relevant University or Technical Educational Institution, as well as a receipt proving that any enrolment fees that are due have been paid; for those who were accepted by educational institutions other than Universities and Technical Educational Institutions, a certificate that they have adequate knowledge of the language of instruction; evidence of the existence of adequate financial resources to cover expenses for living, study and return to the country of origin; and proof of full medical insurance cover.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

In general, the decision of the consular office in rejecting an application for the issuance of any type of entry visa does not require reasons to be given.<sup>364</sup> Despite this, appeals against such decisions can be made to a competent first instance administrative court. This judgment is then subject to a further appeal before the Council of State, the highest ranking administrative court in Greece.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### **2.3.1.1 Competent Authorities**

Generally, applications for both initial residence permits and the renewal of existing residence permits are lodged with the municipality or the commune of the migrant's place

<sup>364</sup> By exception, the rejection of an application regarding the following categories of third-country nationals must be fully reasoned: - family members of a Greek citizen or of an EU citizen; - those whose entry, stay, establishment or employment in Greece has been requested by application of Community law; and - persons employed by companies, which have been established in another Member State of the EU, who wish to move to Greece in order to perform specific paid employment in relation to their contractual obligations towards the companies in question.



of residence. Applications are examined by the Directorate of Aliens and Migration of the Region to which the prefecture of the immigrant's place of residence belongs. Finally, permits are issued on the basis of a decision by the Secretary General of the Region in question (Act 3386/2005, Art. 11(1); Art. 12(4), as amended by Act 3536/2007, Art. 4(1)). However, there are instances where residence permits are issued by the Minister of the Interiors; these cases notably include third-country nationals pursuing investment activities (Act 3386/2005, Art. 27).

### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

Having lawfully entered Greek territory, third-country nationals are entitled to reside therein if they fulfil the conditions exhaustively laid down in Act 3386/2005, as amended and completed by Act 3536/2007 (see section 2.3.3). Notably, under Article 10 of Act 3386/2005, the immigrant must: have in his possession a valid passport or any other internationally accepted travel document; pose no threat to public order, security or health; possess proof of full medical insurance cover; and have evidence of adequate financial means, including the expense of returning to his country of origin.

When the third-country national has lodged the application for the issuance or renewal of a residence permit and has submitted all the required documentation on time, the applicant is given a certificate recognising that he is lawfully residing in Greece for as long as the State examines his request.

As set forth in Ministerial Decision 24103/2005, applications for residence permits issued for the first time must be accompanied by: three colour photographs; a certified copy of a valid passport bearing, when required, the visa issued; and a certificate of good health issued by a Greek public hospital. The latter certificate must show that the third-country national does not suffer from an illness which, pursuant to international standards and to the World Health Organization, could pose a risk to public health.<sup>365</sup> Applications must also be accompanied by the relevant fee, which is detailed in Article 92 of Act 3386/2005: for permits of up to one years duration, the fee is 150 EUR; for permits of up to two years, 300 EUR; for permits of up to three years, 450 EUR; and for permits of indefinite duration or for permits that are granted to those migrants who have acquired the status of long-term residents, the fee has been set at 900 EUR.<sup>366</sup>

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

As a general principle, specific and adequate reasons that derive from the surrounding documentation and facts must accompany all decisions issued and all acts made by public authorities.

<sup>365</sup> This certificate is not required when the applicant is a third-country national belonging to the family of a Greek citizen or to the family of a citizen of another EU Member State, or when he is the parent of a minor holding Greek citizenship.

<sup>366</sup> However, if a migrant has already been issued with a residence permit of indefinite duration and thereafter requests to be given the status of long-term resident, he shall not pay the 900 EUR fee (Act 3386/2005, Art. 92(1); Art. 92(2)).

The relevant legislation stipulates that any requests for the annulment of a decision shall be adjudicated by a three-member administrative court. The judgments rendered by that court are subject to further appeal before the Council of State, the highest ranking administrative court in Greece.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

There are no general provisions on temporary stay permits; only specific requirements depending on the purpose of the stay (see section 2.3.3). The maximum period of temporary residence is also dependent upon the purpose of the stay: residence permits for the purpose of family reunification as well as those for the purpose of studies are issued for a period of one year; stay permits for employment purposes are granted for a maximum period of two years; self-employment permits for a period of two or three years; and seasonal work permits for a maximum period of six months.

### ***2.3.2.2 Permanent Residence***

Any third-country national who has resided in Greece legally and without interruption for at least five years immediately before filing the relevant application shall, subject to a number of cumulative conditions, be granted the status of long-term resident (Act 3386/2005, Art. 67(1); PD 150/2006, Art. 4). Firstly, they must have an annual income that is adequate to cover their own needs and, if relevant, the needs of their family members as well. Furthermore, their income cannot be lower than the annual emoluments of an unskilled labourer (currently 8500 EUR), this figure being increased by 15 per cent for any family member they support. Secondly, they must have full medical and sickness insurance coverage with a state entity that extends to family members as well. Thirdly, they must have adequate knowledge of the Greek language and knowledge of elements of Greek history and Greek civilization.<sup>367</sup> Finally, they must have accommodation that meets specific standards of hygiene.

The competent state entity (in this case, the authority that issued the last residence permit to the applicant) is under an obligation to issue the residence permit within six months of the lodging of the application. This period may be extended for an additional three months by the relevant authority where special conditions are present and the reasons for so doing given (PD 150/2006, Art. 5(4)). Although Article 5(5) of PD 150/2006 stipulates that the status of long-term resident is permanent, Article 6 provides that the relevant residence permit shall be issued for a period of five years, to be renewed for further five-year terms. Long-term residents are granted access to paid employment and self-employment activities.

In the case of family members of citizens of Greece or citizens of other EU Member States who have legally resided in Greece together with the Greek citizen or the citizen

<sup>367</sup> According to Act 3386/2005, the procedure for the certification of this knowledge should be provided in a joint ministerial decision, which has not yet been issued. The five-member Advisory (Consultative) Committee on Migration, which is detailed in Art. 13 of Act 3386/2005, has been endowed with ascertaining the existence of this knowledge.

of the other Member State for a continuous period of five years, the family member shall not be issued with a permanent residence permit, but with the so-called “Document of Permanent Residence” (Act 3386/2005, Art. 63).

Pursuant to Article 91(2) of Act 3386/2005, a third-country national who, at the time that the Act came into force, had completed ten years of continuous and legal residence in Greece may be granted a residence permit of indefinite duration, in accordance with the conditions envisaged in Act 2910/2001 (the previously applicable regime).

### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 *Family Reunification*

According to Article 53 of Act 3386/2005, as supplemented by the provisions of PD 131/2006, third-country nationals who have lawfully resided in Greece for a period of two years or longer are permitted to exercise their right to request the entry and residence of their family members in Greece. The term “family members” comprises spouses who are over 18 years old, their common children (including adopted children) who are unmarried and are younger than 18 years old, as well as any other children of the person applying for family reunification or of his spouse who are unmarried and are younger than 18 years old. It should be noted that Greek legislation does not envisage family reunification with ascending line relatives (parents and grandparents) and that common law partners are not recognized under Greek Family Law. In addition, regarding cases of polygamy, if applicants already have a spouse residing with them in Greece, family reunification with another spouse is prohibited (Act 3386/2005, Art. 54).

In order to benefit from the right to family reunification, the applicant must show: the existence of a family relationship; that the members of his family will reside with him; that he possesses a stable and regular yearly income adequate to cover his family’s needs;<sup>368</sup> that he has full medical insurance cover, which also extends to members of his family; and that he has adequate accommodation.

When the Secretary General of the competent Region has received the complete file on a reunification request (see section 2.2.2), he asks for the opinion of the police regarding issues pertaining to Greek public order and public security, as well as the opinion of the consular office regarding the existence of the family relationship claimed by the immigrant.<sup>369</sup> When an application for family reunification has been approved, the competent consular office shall issue visas to the family members for this specific purpose. Once the family members have entered Greece and before the expiration of their visa, they must apply for the issuance of a residence permit. The competent State authorities must issue the relevant permit within nine months of the submission of the

<sup>368</sup> This income, which must not derive from Greece’s social security system (for example, unemployment benefits), should not be less than the annual salary of an unskilled worker, this figure being increased by 20 per cent when the migrant supports a spouse and by another 15 per cent for each child he supports.

<sup>369</sup> The latter procedure involves a considerable number of checks and interviews, aimed particularly at establishing that there is no fraud or sham marriage or adoption and that the interests of any children have been properly taken into account (Act 3386/2005, Art. 55; JMD, Art. 29).

application, accompanied by the following supporting documentation: a certified copy of the migrant's residence permit, which is currently valid, or a certificate showing that the application for issuing such a permit has been lodged; a certificate showing that an application has been lodged with a state insurance entity in order to cover the hospital treatment as well as the medical and pharmaceutical care of his family members; and any birth certificates, in case the children have been born in Greece (Act 3386/2005, Art. 56).

Family members are issued personal residence permits, which may initially be granted for a maximum of one year, but can then be renewed in periods of two years (Act 3386/2005, Art. 57). These permits allow family members access to paid employment and to independent economic activities.

### **2.3.3.2 Work**

#### Employment

In accordance with Article 14(2) of Act 3386/2005, a Committee has been established in each of the Regions comprising the Secretary General of the Region and representatives of the Greek Manpower Employment Organization, the Board of Labour Inspectors, the Local Chambers of Commerce and Industry and other related labour organizations. The Committee's terms of reference include the drawing up of a report during the last quarter of each year that records the existing needs in labour force of the Region as well as the vacant places of employment, which could potentially be filled by third-country nationals. On the basis of this report, a joint ministerial decision is then issued laying down the maximum number of residence permits to be issued to third-country nationals for the purposes of paid employment and seasonal work in the following year. The Joint Ministerial Decision (JMD) that is valid for 2007 (JMD 30183/2007) envisages a total number of 40 771 residence permits.

Act 3386/2005 unified residence and work permits, thus making it unnecessary to apply for the two permits separately. third-country nationals who have been granted an entry visa for the purpose of employment shall be issued a residence permit for this purpose, provided that they have entered into a written labour contract stipulating that their monthly salary shall be at least equal to the monthly emoluments of an unskilled worker and that they have submitted the full array of documents stipulated in Article 11(2) of Act 3386/2005 and its subsequent implementing legislation. This includes a certified copy of the employment contract and a certificate proving that the applicant has applied to a competent public insurance entity to be covered for hospital treatment, medical expenses and against labour accidents.

During the validity of the residence permit, third-country nationals may enter into a labour contract with another employer if this does not result in any change in their specialty or their insurance cover. If one year has lapsed since the initial residence permit was granted, subject to certain conditions, third-country nationals may be employed in a different prefecture of either the same or a different Region.

Special conditions apply for the issuance and renewal of residence permits to third-country nationals who: are members of the board of directors, or executives or personnel

of subsidiaries and branches of foreign companies that lawfully pursue business in Greece (Act 3386/2005, Art. 17); are lawfully employed in an undertaking established in another Member State of the EU or of the EEA and move to Greece for the purpose of providing specific services in the context of a contractual obligation towards the undertaking in question (Act 3386/2005, Art. 18); are employed as specialized technical personnel in an undertaking established in a third-country and move to Greece for the purpose of providing services in the context of a supply contract between the undertaking established in the third-country and an undertaking which is active in the Greek territory (Act 3386/2005, Art. 19); are athletes and trainers entering Greece to be employed in a recognized athletic foundation or an athletic société anonyme (for example a football club) (Act 3386/2005, Art. 20); are members and employees of artistic groups (Act 3386/2005, Art. 21); are writers, directors, painters, sculptors, actors, musicians, singers, etc. (Act 3386/2005, Art. 22); or are members of foreign archaeological schools (Act 3386/2005, Art. 23).

### Self-employment

Act 3386/2005 distinguishes between two separate situations: independent economic activities and investment activities.

third-country nationals who have been granted an entry visa for the purpose of pursuing independent economic activities must furnish the following documentation in order to be issued a residence permit: a copy of a bank account, which is maintained in a credit institution operating in Greece in the name of the third-country national applying for the permit, showing that the minimum required amount (currently 60 000 EUR) has been deposited; and a certificate that the applicant has applied to a competent state insurance entity to be covered for hospitalization and medical treatment (Act 3386/2005, Art. 25(1) in conjunction with MD 24103/2005). The initial residence permit, which must also be notified to the Ministry for Development (General Secretariat for Commerce), is valid for two years. It may be renewed for further periods of two years provided that the competent Committee under Article 14(2) of Act 3386/2005 has submitted its recommendation and that the economic activity is pursued within the territory of the same prefecture.

Third-country nationals may be issued with a visa to enter Greece for the purpose of making an investment worth 300 000 EUR or greater and that will have positive effects for the Greek economy. JMD 24530/2005 requires the submission of a business plan that, for instance, provides details on the numbers of jobs that will be created, the projected cash flow and the time table for the completion of the investment. The residence permit is valid for three years and is issued by the Minister of the Interiors through a fast-track procedure. Provided that the authorized investment activity continues to be pursued and all tax and social security obligations have been fulfilled, the permit may be renewed for three-year periods.

It is interesting to note that the provisions on family reunification, which have been analysed *supra*, do not apply to this category of residence permits. Pursuant to Article 27(5) of Act 3386/2005, in this instance a third-country national need not wait in order to be reunited with the members of his family. On the contrary, the latter may accompany him when entering Greece. Indeed, the members of his family are entitled to

personal residence permits, which expire at the same time as the investor's permit. This considerably favourable treatment compared to the other categories of migrants should be attributed to the Greek government's eagerness to attract foreign investments in an economy characterized by extremely low Foreign Direct Investments (FDIs) and lack of competitiveness.

### *Seasonal work*

Seasonal work is defined within Act 3386/2005 as the employment of a third-country national for a maximum period of six months in any calendar year and in an employment sector which is characterized by its seasonal nature. Seasonal workers must have concluded a contract with a specific employer, who in turn must have secured the permission of the Secretary General of the competent Region. In order to obtain this permission, two main conditions must be met: first, that the JMD determining the maximum number of residence permits to be issued to migrant workers envisages the type of employment requested by the employer; and second, that the maximum number of permits laid down in the JMD has not have already been exhausted. The employer's application, which is examined by the competent Region's Directorate of Aliens and Migration, must be accompanied by a surety, which takes the form of a bank guarantee and is equal to an unskilled labourer's monthly salary.

According to Article 16(3) of Act 3386/2005, it is not possible to renew a residence permit for seasonal work.

Details regarding the employment of seasonal migrant workers are also regulated by bilateral agreements that have been concluded with third countries.<sup>370</sup>

#### **2.3.3.3 Studies and Training**

Any third-country national who has already been granted a special visa for pursuing tertiary or university-level education (including postgraduate studies) may request to be issued with a residence permit for this purpose if the following conditions apply: enrolment/registration in an educational institution; adequate financial means for covering the maintenance costs and the cost of studies for the duration of the validity of the residence permit;<sup>371</sup> payment of the enrolment fees to the educational institution; and application for insurance covering such things as hospitalization and medical treatment.

Article 29 of Act 3386/2005 provides that such residence permits are valid for one year. They can be renewed for the same period of time if the student continues to fulfil the

<sup>370</sup> For example: the Agreement between the Hellenic Republic and the Arab Republic of Egypt for the promotion of bilateral cooperation concerning labour matters (signed in Cairo on 18 April 1981); the Agreement of Seasonal Employment of Labour Force between the Government of the Hellenic Republic and the Government of the Republic of Bulgaria, which had not been integrated into the EU at the time of signature (Athens, 15 December 1995); and the Agreement of Seasonal Employment of Labour Force between the Government of the Hellenic Republic and the Government of the Republic of Albania (Athens, 17 May 1996).

<sup>371</sup> According to JMD 4415/2006, adequate means has been set at 500 EUR per month and is proven by bank deposits, bank drafts, scholarships and studentships or salary slips, if the student is in part-time employment.

conditions of issuance of the first permit. Additionally, as laid down in Article 29(2) and in MD 24103/2005, the educational institution must have certified that they participated in the relevant semester examinations and that their examination grades show that they are making good progress. The entire length of the residence permits cannot exceed the duration of the study programme. Similar conditions apply for the issuance and the renewal of residence permits for vocational training (Act 3386/2005, Art. 30).

During their period of studies, third-country nationals are allowed to work only on a part-time basis, for which the competent Region shall issue a work permit. In comparison, third-country nationals who already reside lawfully in Greece as employees or who pursue an independent economic activity do not require an additional residence permit for the purpose of studies.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Act 3386/2005 attempts to bring Greek legislation into line with the Common Immigration Policy and, to that effect, incorporates into the domestic legal order or takes the necessary steps to implement the following EC instruments: Council Directive 2003/86/EC on the right to family reunification; Council Directive 2003/109/EC concerning long-term residents; and Council Directive 2004/38/EC on freedom of movement of third-country nationals being family members of an EU citizen.

Generally speaking, the Greek immigration legislation respects the spirit and the meaning of the relevant EC instruments. There would appear to be no major discrepancies with EC law. However, one would have to wait for the issuance of the relevant reports regarding the implementation of Directive 2003/86 and Directive 2003/109 by the European Commission in order to confirm this evaluation.

### **4. Real Impact of Immigration Legislation on Immigration in Practice**

A Report published by the OECD a month before the adoption of Act 3386/2005 concluded: “Greece has not yet found a way to bring immigration legislation into line with the facts on the ground” (OECD 2005). The Report cited a large number of problems in the Greek migration sector, most of which related to what was described as cumbersome and non-functioning legislation that was additionally only rarely enforced.

Even though the current legislative regime does represent a marked improvement compared to the previous regime, one still feels that 15 years after Greece became a (proportionally speaking) major host country, it continues to experiment with a workable regulatory framework.

The immigration department personnel in local administration authorities admit that there is a lack of the necessary human resources for the provision of services envisaged in the current legislative framework on migration.

Moreover, the problems associated with the fact that most migrants do not possess even a working knowledge of oral and written Greek should not be underestimated. The Ministry



of the Interiors advertised recently (summer of 2007) the employment of translators to assist officials that invariably have to deal with languages they do not even understand, but it is doubtful even if such translators exist.

It can also be stated that the practice of issuing “explanatory circulars” regarding a specific law (which provide public administration employees with practical guidelines on how to implement the various provisions of the law and which are frequently superseded by amendments) is often a source of confusion.

Greece has and still experiences large numbers of illegally-residing third-country nationals. This may be influenced by factors such as the existence of a huge informal employment sector,<sup>372</sup> an ethos among the population to avoid paying taxes as well as social security contributions and a widely held belief that offenders will never be punished, especially if they have connections to the government of the day.

With these considerations in mind, one cannot expect the migration sector in Greece to operate smoothly and orderly for many years to come. The question is how Greece will manage to cope, taking stock of the advantages offered by immigration while maintaining a regulatory regime that is compatible with the international rules on the protection and promotion of migrants’ rights.

## 5. Cooperation with Third Countries

It is worthwhile to cite the provision of Article 65(3) of Act 3386/2005: “In the context of activities for the social integration [of migrants], beneficial measures could be included which are capable of assisting the development of the country of origin, in case third-country nationals return to it.” The Explanatory Report to the Act says that it was inconceivable not to refer to measures assisting the countries of origin, but fails to give a reason why. Arguably, Article 65(3) could be seen as a contradiction in terms, in the sense that the whole issue of integration concerns those migrants who have decided to reside for long periods of time and are granted the status of long-term residents. Consequently, the question could be asked how the issue of assisting the development of the countries of origin is associated with the integration of long-term migrants in Greece. Perhaps the objective of this provision is to acknowledge – at least in an indirect fashion – that Greece regards that it must compensate the countries of origin for the loss of their nationals who have emigrated to Greece and/or that these third-country nationals have contributed so significantly to the national economy that Greece now feels obliged to share some of this wealth with their country of origin. To be realistic, with the current economic climate prevailing in Greece there is little prospect that any Greek government will on its own account implement the provisions of Article 65(3).

However, considering that most migrants coming to Greece fall into the category of “economic migrants” and the principal countries of origin are in the Balkans and South

<sup>372</sup> It is estimated that the GDP of the black economy exceeds 50 per cent of the legitimate economy. The black economy covers sectors of both legal and illegal economic activities (especially in the construction, agriculture, tourism and restaurant sectors).



East Europe, it should be noted that the private Greek sector and, to a lesser extent, state-owned companies, have a most significant economic presence in these countries and in that way contribute considerably in their development.

Moreover, it should be emphasized that, as already mentioned, Greece has traditionally been a country “exporting” migrants. In effect, its interests lay in reaching favourable agreements with the countries of destination (United States of America, Australia, and Canada, to mention the non-European ones), so as to protect the rights of Greek migrants in the areas of social security, transfer of pensions, etc. On the other hand, the protection of third-country nationals in Greece has not been the subject of bilateral agreements between Greece and the respective third countries; instead it has mostly been based on agreements reached between the European Community and such States.

As concerns circular migration, there is only one pilot programme implemented between Greece and Albania, under the European Commission programme AENEAS.

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# Hungary

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## 1. General Immigration Policy and Trends

Following the 1989 transition, Hungary experienced increasing rates of transit migration; this “corridor” role may explain why it maintains a passive policy of migrant integration (Hárs Sik and Tóth 2001). Accession to the European Union has not brought dramatic changes in the migration trends of the country; the number of immigrants in Hungary has remained low, approximately 1.5 to 2 per cent of the population.

According to the Office of Immigration and Nationality (OIN), 80 to 90 per cent of immigrants residing in Hungary are European, primarily ethnic Hungarians from Ukraine, Romania and Serbia; 10 to 15 per cent of immigrants are from Asia. Immigration to Hungary is primarily a demand-driven, sub-regional labour migration, often based on seasonal or temporary employment. Immigrants in Hungary tend to have higher education levels than the native population and a larger proportion of them are in the active age range for employment, although there is also an increasing trend of family reunification with elderly parents who arrive in Hungary for retirement.

The status of ethnic Hungarians living in countries adjacent to Hungary has been a subject of debate. Hungary’s governments between 1990 and 2002 maintained that they aimed to encourage ethnic Hungarians to remain in the lands of their birth. There is not an active repatriation programme of co-ethnics akin to that of Germany. The Hungarian immigration and naturalization system has often been criticized for being indifferent toward ethnic Hungarians, despite certain benefits for ethnic Hungarians and persons of Hungarian ancestry in the immigration and naturalization process (Tóth 2000).

The most topical issue has been the demographic deficit and its implications for increased immigration. Hungary is an aging society, with negative natural population growth. Recommendations from a group of scholars suggested that some immigration should be encouraged and facilitated in order to meet labour market needs.

Hungarian immigration policy has been largely shaped by the harmonization process and transposition of EU Directives, the Schengen acquis, The Hague Programme and other EU law. Two new pieces of legislation entered into force on 1 July 2007: Act No. I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence (FreeA) and Act No. II of 2007 on the Entry and Stay of Third-country Nationals (ThirdA). These two pieces of legislation replaced Act No. XXXIX of 2001 on Entry and Stay of Foreigners that was originally passed as part of the harmonization process. Ministerial Decree No. 25 of 2007 of the Ministry of Justice and Law Enforcement (ImpMinDec) details the implementation of these two recent pieces of legislation. Furthermore, the executive rules to the ThirdA also contain relevant provisions regarding its implementation (Government Decree 114 of 2007, 24 May) (GovDec).

Since a restructuring of governmental competencies in 2006, the OIN of the Ministry of Interior is responsible for alien policing, asylum and naturalization affairs, subordinated by the Ministry of Justice and Law Enforcement (MoJLE). In addition, the Hungarian Border Guard Services, as of 1 January 2008, have become an integral part of the Police service.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

ThirdA lays out a three-tiered system of Schengen visas for stays of less than three months, visas and residence permits for longer than three months and settlement permits.

As a general rule, immigration to Hungary involves two steps: a long-term visa is issued for a specific purpose and, before it expires, the foreigner applies in-country for a residence permit based on the same grounds.

Entry and stay in the territory of Hungary may be allowed for the purpose of visits (especially where the immigrant is in possession of an authorized letter of invitation), family unification, employment, seasonal work, study, research, medical treatment, official visitors, volunteers and for kin-minority (for the purpose of maintaining ethnic and cultural ties). There is no active highly skilled workers programme in Hungary.

Foreigners who are ethnic Hungarians receive preferential treatment under the law (Tóth and Sik 2003). ThirdA provides a special visa and residence permit for third-country nationals on the basis of bilateral treaties if the individual is coming to Hungary for the purpose of: Hungarian language practice, maintaining national cultural traditions, non-scholarly curricula or self-education or maintaining family and friendly contacts in Hungary (ThirdA, Art. 27). This renewable “ethnic” permit is valid for five years, and it is intended to compensate those adversely affected by the termination of the visa-free regime due to accession and conformity with the Schengen acquis, which shall be fully implemented this year (Tóth 2003). ThirdA introduced a settlement permit category for ex-nationals or descendants of an (ex-) national of Hungary as a continuation of the former permit labelled “national settlement permit” (ThirdA, Art. 35; Art. 36; Art. 37). The other settlement permit category is aimed at family reunification and the other reasons for long term resident status.

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

Short-term visas (up to three months) and labour visas for seasonal workers are issued by the Consular office in the place of residence of the applicant.<sup>373</sup> Prolongation of short-term visas falls within the competency of the regional unit of the OIN in the place of residence of the applicant in Hungary.

The issuance of long-term visas and “national visas”, as well as the withdrawal, invalidation, alteration, or prolongation of these documents, falls within the competency of the OIN and its regional units.

Applications from high risk groups require consultation with the Security Service and, in the case of an SIS alert, a consultation with the SIRENE office (or other designated authority) through the OIN.

<sup>373</sup> In exceptional cases, another Consular office or the Border Guard at crossing points may issue short-term visas.

### 2.2.2 Procedural Steps – Conditions to be fulfilled

Hungarian legislation distinguishes between visas for stays of up to three months and visas for stays exceeding a three-month period.

The first category of visas includes airport transit visas, transit visas (for a maximum of five days) and short-stay visas (for single or multiple entry and stays not exceeding three months in a six month time period) (ThirdA, Art. 8). These visas are governed by the provisions of the Schengen Borders Code (ThirdA, Art. 9(1)). An application shall be rejected if the requirements of Article 5(1)a), Article 5(1)c) and Article 5(1)e) of the Schengen Borders Code are not met;<sup>374</sup> or if the applicant has disclosed false information or attempted to mislead the authorities as to the purpose of the stay (ThirdA, Art. 9(3)).

Visas for stays of longer than three months include long-term visas (granted for a maximum period of one year), seasonal employment visas (granted for periods of three to six months) and national visas (issued under international agreements).<sup>375</sup> Long-term visas may be considered as immigration visas because obtaining a long-term visa is one of the initial steps of the immigration procedure. These are granted for a specific purpose, including family reunification, gainful employment, study or research.

Applicants for long-term visas must meet the following conditions: possession of a valid travel document; justification of the purpose of entry and stay; adequate accommodation in Hungary; sufficient means of subsistence; and health insurance coverage or sufficient financial resources for healthcare services. In addition, applicants may not be subject to expulsion or a ban on entry, and no alert may have been issued under the SIS system (ThirdA, Art. 15(1)). Rejection of an application shall occur when these conditions are not met or when the applicant has disclosed false information in order to obtain a visa (ThirdA, Art. 15(2)).

According to the Ministerial Decree of Justice and Law Enforcement on fees of visa and residence authorization (MinDec), the fee for a transit or short-term visa is 35-45 EUR, whilst for a seasonal working visa it is 30 EUR and for a long-term visa, 50-72 EUR.

### 2.2.3 Appeal and Administrative or Judicial Control of the Decisions

Neither decisions regarding visas for stays of up to three months, nor those regarding visas for stays of longer duration may be appealed (ThirdA, Art. 10(3); Art. 15(3)). However, appeal against refusal of authorization of the letter of invitation is provided on the basis of the provisions of the Code on Public Administration Procedure.

<sup>374</sup> The conditions are the following: the applicant must be in possession of a valid travel document; he must justify the purpose and conditions of the intended stay; he must have sufficient means of subsistence; and he must not be considered as a threat to public policy, international security, public health or the international relations of any of the Member States.

<sup>375</sup> These visas apply to individuals entering Hungary for the purpose of: Hungarian language practice, maintaining national cultural traditions, non-scholarly curricula or self-education or maintaining family and friendly contacts in Hungary (see section 2.1).



## 2.3 Stay and Residence Rules

### 2.3.1 General Rules regardless of the Immigration Category

#### 2.3.1.1 Competent Authorities

The issuance of residence permits, as well as the withdrawal, invalidation, alteration, or prolongation of these documents, falls within the competency of the OIN and its regional units.<sup>376</sup> In the case of applications for settlement permits, consultation with the Security Service is necessary. Applications from high-risk groups require consultation with the Security Service and, in the case of an SIS alert, a consultation with the SIRENE office (or other designated authority).

The issuance and prolongation of labour permits falls within the competence of the regional unit of the Labour Office in the location of the applicant's employer.

#### 2.3.1.2 Procedural Steps – Conditions to be fulfilled

Foreigners requesting a residence permit must possess a valid long-term or national visa issued for a specific purpose, unless exempt from the visa requirement. An application for a residence permit is submitted from within Hungary upon the expiration of the visa or previously granted permit.

Most conditions are specific to the type of permit requested (in other words, whether it is a temporary residence permit or permanent residence permit). Nevertheless, the following conditions apply to all types of permit: the applicant must have secured accommodation;<sup>377</sup> he must possess sufficient financial means;<sup>378</sup> and he must hold medical insurance or sufficient financial resources to cover any healthcare expenses.

There is neither a formal requirement nor substantial criteria relating to the integration of migrants into Hungarian society and economy. Self-subsistence is the major principle, and although measures for assisted integration are currently being prepared, they were not envisaged by ThirdA.

ThirdA envisages a compulsory denial of a residence permit for applicants who: are under an entry or stay ban; are under an SIS alert; or jeopardize national security, public security or public health. Regarding settlement permits, compulsory denial conditions

<sup>376</sup> With the exception of permits for members of the Foreign Service, which are issued by the Ministry of Foreign Affairs.

<sup>377</sup> The required housing conditions are not clearly established. Certainly the accommodation arrangement must be stable and legal, with all the necessary documentation. Only applicants for settlement permits shall meet concrete conditions: their accommodation must contain at least six square meters of bedroom space for each person living under the same roof (AlienD, Section 30).

<sup>378</sup> ThirdA does not define the precise minimal amount of financial coverage required for entry and stay or settlement in Hungary. The legislation uses the term "proper" or "properly documented," and delegates this regulation to the Minister responsible for migration. It can be noted that the AlienMD establishes an ambiguous requirement of 4 EUR "per entry," but it is unclear exactly what this relates to (per day, in total etc.) and the sum is clearly so low that it is practically redundant. It may be understood that instead of transparent provisions on material coverage, a foreigner shall meet the following criteria in this context: his source of income must be lawful and stable, it shall be authentically documented and it shall cover the foreigner and any family members' maintenance throughout the stay. In practice, this means a monthly income over the lawful monthly wage per capita in the family of the applicant.

are narrower (assuming that the applicant has lived in Hungary for at least three years, although this period is eased in cases such as family reunification). Denial of the permit is only compulsory (in the public policy context) if settlement jeopardizes national security, the person is subject to an entry or residence ban, or the person has been expelled.

According to MinDec, the fee for a temporary resident permit is 28 EUR. A settlement permit (or its prolongation or alteration) costs 20 EUR, while a temporary settlement permit costs 28 EUR. A Non-EC settlement permit or its prolongation costs 40 EUR, as well as an EC settlement permit (or its prolongation). Fees also include the charge of a medical examination if required by the sanitation authority, which currently costs 90 EUR per person. The price for official translation of documents on marriage or parental status is determined by the Office of Authentic Translation (Ministry of Justice); on average, it costs 2 EUR per page.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

Negative decisions on applications for residence permits and withdrawal of residence permits or settlement permits by a regional office of OIN may be appealed to OIN. The Labour Office decides on appeals concerning decisions for the issuance or prolongation of labour permits. Judicial control of final administrative decisions is available through an appeal to the Capital Court (on the basis of the Code on Public Administration Procedure).

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

As already mentioned, a short-term visa holder is granted entry, transit or stay in the country for up to three months within a period of six months. A foreigner who is issued a visa for stay is allowed (multiple) entry and stay in the country for up to one year, unless an international treaty regulates otherwise (for example, the validity of the visa would be no more than five years in the case of the ‘neighbourhood visa’).<sup>379</sup> A visa for stay is issued for a determined purpose, including for seasonal work for up to six months, for labour permit holders, self-employment, family reunification and cultural exchange.

Upon its expiration, long-term visa holders and national visa holders may apply for a temporary residence permit on the same grounds for which their visa was issued. As a general rule, a temporary residence permit is granted for a maximum period of two years and may be extended for two further years (ThirdA, Art. 16).

Conditions for granting a temporary residence permit are the same as those required for a long-term visa: a valid travel document; justification for the purpose of entry and stay; secured accommodation in Hungary; sufficient means of subsistence; and health insurance or sufficient financial resources to cover healthcare services. In addition, there may not be a ban on entry placed on the individual, and no alert may have been issued on the individual under the SIS system.

<sup>379</sup> This visa, with validity of five years, can be introduced by ThirdA as a compensatory measure to ethnic Hungarians living in Serbia and Ukraine. It can be issued to frequent visitors for cultural identity preservation.

The permit shall be refused when these conditions are not met, when the applicant has disclosed false information in order to obtain the permit, when the applicant suffers from any disease that is considered to constitute a threat to public health and refuses to submit to the appropriate compulsory medical treatment, or fails to abide by the Hungarian health regulations while staying in the territory of the Republic of Hungary (ThirdA, Art. 18).

Although classified as a permanent permit by ThirdA, the temporary residence permit is granted for five years and is subsequently renewable. Temporary residence permits are issued to third-country nationals in possession of EC long-term residence permits issued by another country and who seek residence in Hungary for study, employment or another documented purpose. It is also granted to the family members of an EC long-term residence permit holder already residing in Hungary (ThirdA, Art. 34).

### **2.3.2.2 Permanent Residence**

ThirdA considers holders of national permanent residence permits, EC permanent residence permits and interim permanent residence permits to be permanent residents. Contrary to the first two permits, the status offered by the interim permanent residence permit is not permanent, but granted for five years with a possibility of renewal (see section 2.3.2.1).

In addition to the general requirements applicable to all types of residence permits, it can be noted that no permanent permit shall be delivered to an applicant who has a prior criminal record until relieved from the detrimental legal consequences related to his criminal record (ThirdA, Art. 33(2)).

A national permanent residence permit may be issued when the applicant has lawfully and continuously resided in Hungary for at least three years (ThirdA, Art. 35). It may also be issued to family members of the holder of such a permit, under specific conditions (see section 2.3.3.1).

An EC long-term permanent residence permit may be issued when an applicant has lawfully and continuously resided in Hungary for at least five years (ThirdA, Art. 38). Such a permit may not be issued to foreigners pursuing study, seasonal work or voluntary service activities. Nevertheless, half of the previous residence period as a student in Hungary may be included in the five years duration (ThirdA, Art. 38).

## **2.3.3 Conditions for Specific Immigration Types**

### **2.3.3.1 Family Reunification**

The FreeA privileges Hungarian nationals as sponsors, with the definition of “family member” in relation to a Hungarian national being wider than in relation to an EEA national. Both include the spouse (but not the partner) of the sponsor and any descendants under the age of 21 or who are dependent. In the case of an EEA national (or his spouse) an ascendant must be dependent to qualify as a family member; while in the case of the Hungarian national dependence is irrelevant (FreeA, Art. 2(b)). In the case of a minor child, if the minor is a Hungarian national the parent exercising custody over them also qualifies as a family member.

Regarding third-country nationals, ThirdA entitles sponsors who are holders of a long-term visa, temporary residence permit, national or interim permanent residence permit or an EC long-term permit to benefit from family reunification (ThirdA, Art. 19(1)).

Family members are understood as: the sponsor's spouse, minor children of the sponsor and his spouse; minor dependant children of the sponsor or his spouse where he or the spouse has parental custody and the child is dependent on him or her; dependent parents of the sponsor or the spouse; and the sponsor or the spouse's siblings if they are unable to provide for themselves due to health reasons.

A residence title for the purpose of family reunification may not exceed the period of validity of the sponsor's long-term visa or residence permit (ThirdA, Art. 19(10)). A residence permit is usually issued for three years with a right to renewal.

A national permanent residence permit may be granted to: minor children or dependent direct relatives in the ascending line of a sponsor holding a permanent residence status who have been living in the same household for at least one year preceding the submission of the application; and the spouse of a sponsor holding a permanent residence status provided that the marriage was contracted at least two years before the application was submitted.

The spouse of a sponsor holding a permanent residence permit obtains a labour permit without investigation of the local labour market supply if he or she has been living together with the sponsor in Hungary for at least one year prior to the submission of the application. The same provision applies to the spouse and descendants of a migrant worker who has been employed in Hungary for at least the preceding eight years, if they have been living together with the sponsor in Hungary for at least the preceding five years (EmployA, Art. 6(g); Art. 6(h)). A labour permit requiring a bureaucratic investigation of the labour market needs and supply (economic test) is necessary in all other cases (EmployA, Art. 1; Art. 2).

### **2.3.3.2 Work**

#### Employment

Legal immigration to Hungary is primarily for the purpose of employment. According to Article 7 of Act IV of 1991 (EmployA), the Minister of Employment Policy and Labour, in agreement with other Ministers concerned, may create a decree that specifies: the preconditions and procedure of labour permit authorization for third-country nationals; the highest number of foreigners to be employed in individual occupations in any county, the capital city and in Hungary as a whole at any one time;<sup>380</sup> and the occupations in which no foreigner may be employed due to the then current trends and structure of unemployment.

<sup>380</sup> For instance, in 2005 the number of foreigners employed in Hungary could not exceed 87 000 (Magyar Közlöny 2005/9. FMM közleménye).

The seven times modified ministerial decree (PermitD) states in Section 2(1) that the creation of all legal relationships aimed at employment, on the basis of which a foreigner performs work in Hungary for a domestic employer, are subject to permission, unless falling within the exceptions contained in the EmployA or PermitD.<sup>381</sup>

An individual work permit can be issued if the employer duly indicates its request for a worker and if, prior to filing the workforce request, no Hungarian worker was available for the position in question, nor any nationals of the European Economic Area or any relatives of such nationals who are registered as a job-seekers.<sup>382</sup> However, in certain cases the assessment of the labour market situation can be set aside.<sup>383</sup> Health requirements and qualifications for the given job shall be met by the foreign applicant, and the remuneration stated in the labour contract shall not be below 80 per cent of the national average in the given branch of economy or occupation (and must be over the lawful minimum wage). The employer may not be under a labour inspection procedure or have had a fine imposed on him within the past year, if it has been paid, or within three years otherwise. In addition, there cannot have been significant lay-offs at the employer's establishment within the preceding year, or an ongoing strike at the time the application is submitted.

After being granted a work permit, the foreigner has to apply for a long-term visa for the purpose of gainful employment. The further temporary residence permit granted for the same purpose shall not exceed three years but may be renewed (ThirdA, Art. 20(4)). In any case, the duration of the long-term visa and residence permit shall correspond to the duration of the work permit (ThirdA, Art. 20(5)).

### Self-employment

In order to be self-employed in Hungary a foreigner must obtain a long-term visa for the purpose of gainful employment (ThirdA, Art. 20(1)) (see section 2.2.2). A further temporary residence permit may be granted for the same purpose for a maximum duration of three years (see section 2.3.2.1).

<sup>381</sup> Section 7(1) of the PermitD lays down cases in which no work permit is required, for example: for the director of a branch office or representative office of a foreign-registered business association; for the staff of diplomatic or consular missions, or the branches or offices of such; for work performed by foreign nationals at international organizations or at joint organizations established under an international convention; and for work that involves commissioning, warranty repair, maintenance or guarantee service activities performed on the basis of a private contract with a foreign-registered company, if such work does not exceed 15 consecutive days at any given time. Some education related cases are also acknowledged: for a foreign national winning a tender for post-doctorate related employment, or a public-financed Research Scholarship for work performed as part of the tender or the scholarship programme; for the employment of a foreign national studying at a foreign institution of higher education as part of an apprentice training programme arranged by an international student organization; for foreign nationals pursuing full-time studies at vocational schools, secondary school, basic art schools or institutions of higher education; and for foreign nationals to be employed in basic, intermediate and higher education institutions for lecturing in a foreign language, if such employment is part of an international school programme signed by the relevant Ministers of the countries involved, as verified by the Ministry of Education and Culture.

<sup>382</sup> This requirement implements the principle of Community preference in Hungarian law.

<sup>383</sup> These are, for example, for: employment of a foreign national in a key position; employment in a business association under foreign majority ownership, if the number of foreign nationals employed does not exceed five per cent of the labour force registered on 31 December of the previous calendar year; professional athletes involved in sporting activities under an employment contract; and the employment of an internationally recognized foreign national in the field of education, science or art.

Seasonal work

Foreign seasonal workers have to meet the visa and labour authorization requirements in accordance with ThirdA, EmployA and PermitD in order to obtain a seasonal labourer visa. Accordingly, a seasonal worker can stay and work from three to six months per year in Hungary (ThirdA, Art. 14(1); Art. 20(2)).

**2.3.3.3 Studies and Training**

A long-term visa or temporary residence permit may be issued for the purpose of study to third-country nationals accepted by an establishment of secondary or higher education accredited in the Republic of Hungary (ThirdA, Art. 21(1)). Such a residence permit is issued for a maximum of two years and may be extended by one or two additional years at a time (ThirdA, Art. 21(2)).

**3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

The recently adopted legislation was an urgent alignment process, in response to an infringement procedure initiated against Hungary by the EC, incorporating the relevant EC Directives into national legislation. The implemented Directives are: Council Directive 2003/86/EC on the right to family reunification; Council Directive 2003/109/EC, concerning the status of third-country nationals who are long-term residents; Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; and Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purpose of scientific research.

**4. Real Impact of Immigration Legislation on Immigration in Practice**

PermitD describes a long, bureaucratic procedure of authorization that shall be launched by the employer while the potential foreign worker is still in his country of origin. In practice, the non-seasonal permit is issued for at most one year, but only once it is in the worker's possession can he submit an application for a labour visa (stay visa for employment), which also takes weeks or months to be granted. Thus the labour permit is applicable for no more than ten months in practice. Furthermore, the process for prolongation or a new authorization is almost identical. This high transaction cost may explain the increase in irregular and illegal employment among foreigners, in addition to other reasons contributing to the growth of a shadow economy.

There is not an institutionalized dialogue or exchange of views among stakeholders in labour migration, namely the employers, trade unions, social partners, political parties, local communities and NGOs representing migrants, social workers, integration programmes and human rights. Only academic surveys, conferences or international networks have inspired this exchange of views from time to time.

## **5. Cooperation with Third Countries**

The only instrument set up for the purpose of trans-border co-operation is in favour of ethnic Hungarian communities living in adjacent States; the Hungarian Parliament established the Homeland Fund in 2004, covering small investments, loans, infrastructure development, entrepreneurship and other economic training and co-operation in Ukraine and Serbia. This replaced the previous financial instruments that financed kin-state and kin-minority relations and community building. However, the economic impact of this Fund cannot yet be evaluated.

In late 2006, the Ministry of Foreign Affairs requested certain academic and research institutes to prepare a foreign relations strategy for the coming five to ten years. One component of this strategy would be employment and foreign labour policy.

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### Persons Interviewed

Department of Consular Affairs, Ministry of Foreign Affairs, 4 August 2007.



# Ireland

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## 1. General Immigration Policy and Trends

Historically, Ireland has not been a major centre of migration because of its general lack of domestic demand for labour and its lack of a colonial past. This has changed due to improvements in employment opportunities since the mid-1990s. Ireland maintains a liberal migration policy, which can be seen in its adoption of a new work authorization system in 2000 and the decision not to impose restrictions on labour market access for the States that joined the EU on 1 May 2004. Indeed, the Irish Government seems to acknowledge the importance of labour migration to the Irish economy. The evolving policy is in the direction of ‘managed migration’ – openness to skilled workers migration, coupled with control measures against irregular migration by others. Extensive migration to Ireland has been observed in recent years and it is expected to continue. However, it is believed that Ireland currently lacks an adequately comprehensive policy on migration to handle the increasing percentage of its population with foreign ancestry.

To get a sense of the current state of migration in Ireland, the following statistics are useful. Official estimates show positive net migration totalling 376 700 persons from 1996 until 2006 (Population and Migration Estimates 2006). According to the census in 2006, 14.7 per cent of the population was born outside the country, including 8.2 per cent born outside the UK. It was also recorded that 10.1 per cent of the population were not Irish nationals – an 87 per cent increase from the previous census in 2002. In 2006, the largest recorded groups without Irish nationality were from the UK, Poland, Lithuania, Nigeria, Latvia, the USA, China and Germany (Census 2006).

The Aliens Act 1935, along with the Aliens Order 1945, is the starting-point for the legal framework governing the entry and residence of third-country nationals other than British citizens. The Aliens Act conferred sweeping executive powers on the Minister for Justice, Equality and Law Reform (henceforth Minister) to make orders with regard to the control of third-country nationals. Over the past decade, the 1935/1946 framework has twice been the subject of successful attacks in the courts: firstly on the ground that part of the Aliens Act involved an unconstitutional delegation of power to the Minister, and then on the ground that parts of the Aliens Order providing for the imposition of conditions of stay were *ultra vires* the Aliens Act. The response of the legislature to this litigation was, in each case, to pass emergency legislation preserving the essence of the Aliens Act regime while addressing its apparent legal defects. As a result, the 1935/1946 approach remains, based on discretionary decision-making in individual cases, but now founded instead on the Immigration Acts of 1999 and 2004. Other changes in migration law have addressed specific subjects, such as The Employment Permits Act 2003 that introduced criminal liability for both employers and employees in the case of irregular working. Finally, the Employments Permit Act 2006 introduced a statutory scheme for the issuing of employment permits to non-nationals.

Recent reform processes have culminated with the publication of the Immigration, Residence and Protection Bill on 27 April 2007. If enacted, this Bill will consolidate and replace all the existing immigration legislation, with the exception of the Employment Permits Act. Key proposals in the Immigration Bill include the creation of the status of

long-term resident, power to require non-EEA nationals to carry biometric identity cards, accelerated procedures for removal and restrictions on non-nationals' right to marry.

## **2. Laws and Conditions of Immigration**

### **2.1 Overview of Immigration Types**

There is currently no legislation setting out the categories of persons permitted to enter and remain in Ireland, or the conditions applicable to them. In practice, visa and residency<sup>384</sup> applications are processed by immigration officers in accordance with administrative practices developed by the Irish Naturalization and Immigration Service (INIS), an executive office of the Department of Justice, Equality and Law Reform.

Notwithstanding the lack of published policies, the main admission categories are: visitors, students, employment, family members and other cases. In addition to these categories, there are exceptional cases that the authorities consider. Entry may also be granted through visa processes for the purpose of business meetings, access to services (including private medical treatment) or for retirement.

### **2.2 Admission Rules – Visa Policy**

#### **2.2.1 Competent Authorities**

Nationals requiring a visa must apply for one from outside the country; applications are made through Irish embassies or consulates serving the country where the potential migrant is either a national or is ordinarily resident. With the exception of particular embassies where immigration officers have been posted, the majority of visa applications are transferred to the Visa Office of the INIS.<sup>385</sup>

#### **2.2.2 Procedural Steps – Conditions to be fulfilled**

There are three categories of visas granted in Ireland: transit visas that permit the third-country national to arrive at a port for the purposes of travelling on to another State, C-visas issued for stays of three months or less and D-visas, which are issued for stays of more than three months.

The visa application procedure is not outlined in the national legislation.<sup>386</sup> Possible reasons for which a visa may be refused include:

- No evidence of the applicant's finances is shown, or the evidence provided is deemed insufficient or incomplete;
- The granting of the visa may result in a cost to public funds or public resources;

<sup>384</sup> Note that the term 'residency' is used in this report to refer to a legal permission to reside in Ireland.

<sup>385</sup> Currently, the Irish embassies in Moscow and Beijing are the only ones with immigration officials with decision-making power.

<sup>386</sup> There is a specific procedure for applications by the visa-required family members of recognized refugees. They must lodge an application directly with the Visa Office of the INIS who then investigates. These applications take up to two years to process.

- No reference (sponsor) in Ireland, or a clear link to one, has been shown, or no valid letter of invitation has been submitted with the visa application;
- No confirmation of a hotel booking for duration of stay has been presented;
- A work permit is required and has not been obtained;
- The applicant has had previous visa applications refused;
- The applicant's student profile is inadequate, for example: an insufficient level of the English language is shown; the student's previous educational or employment background is at odds with the course applied for; or there are gaps in his education or employment that are not accounted for;
- The course profile is inadequate, for example: the need to undertake the course in Ireland is not demonstrated or warranted; or the course does not meet the student visa requirements;
- The potential cost of the trip is high in comparison to the applicant's means, and given that no compelling reasons for the trip have been displayed, the visa officer is not satisfied of the applicant's intention to leave the State following the visit.

There is normally a 60 EUR visa fee with respect to each visa application made. Some applicants, such as visa-required spouses and the family members of EEA citizens, are not required to pay this fee. Visa applications are usually processed within a two to eight-week period.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

There is a statutory obligation to give written reasons for a refusal only in the case of a refusal by an immigration officer to grant permission to enter. There is no equivalent statutory obligation in other cases, such as a refusal to grant a visa.

In the event of a negative decision on a visa or residency application, it is possible to request an internal review by a more senior official within the INIS. In relation to visa decisions, the review must be requested within two months of the decision being taken.

Negative decisions cannot be appealed to an independent tribunal, but can instead be the subject of judicial review proceedings in the High Court. The role of the High Court is, however, different to an appeal: while it can set aside a decision based on the grounds of illegality, procedural unfairness or irrationality, it cannot re-examine the merits of the decision and cannot substitute its own view for that of the initial decision-making authority. The decision of the High Court on these immigration applications is, moreover, final; there is no appeal to the Supreme Court, unless the High Court itself certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be available.

## 2.3 Stay and Residence Rules

### 2.3.1 General Rules regardless of the Immigration Category

#### 2.3.1.1 Competent Authorities

Ireland lacks legislative provisions governing immigration applications. Instead, the Immigration Act provides immigration officers with the power, in general terms, to grant or refuse third-country nationals leave to land on arrival at a port of entry, as well as providing the Minister with the power to give permission to remain in the State. The legislation does not currently outline the procedure or limit the Minister's discretionary power to consider applications for residency. Usually he decides on applications on a case-by-case basis.

In practice, a number of Government agencies play a role in the processing of immigration-related applications in Ireland. The Department of Justice, Equality and Law Reform is responsible for asylum, immigration and citizenship policies, including visa policy and processing. In practice, these matters are administered within the Department by the INIS.

The Department of Enterprise, Trade and Employment is responsible for economic migration policies and currently processes all applications for employment permits. The Garda National Immigration Bureau (GNIB) is responsible for all police operations pertaining to immigration, including border controls, registration of non-nationals, the investigation of immigration offences and the enforcement of deportation orders.

#### 2.3.1.2 Procedural Steps – Conditions to be fulfilled

The Irish system of immigration control draws a distinction between third-country nationals that require a visa and those who do not. This distinction applies for all purposes, not just for those seeking to enter for short-term visits. In practice, non-visa-required nationals cannot apply for residency from overseas and must make residency applications within the State following arrival. Visa-required nationals may also apply for residency after arrival by way of an extension of their original permission or by switching to another status.

Most residency applications are made by way of written letter to the INIS. There is no specific timeframe within which residency applications will be processed and in some cases it can take more than 12 months. For example, residency applications by visa-required family members of adult Irish citizens typically take 18-20 months to be processed. In addition, where all of the evidence to support an application is available it may be possible to obtain residency by registering with the GNIB.

In either case (an application to the INIS or to the GNIB), the evidence of residency takes the form of a stamp issued by the GNIB. The main stamps issued are: permission to reside and work with an employment permit; a special status for trainee accountants; students with permission to work during their course of studies; students without permission to work; dependent or long-stay visitors; permission to reside and free access to the labour market for refugees, spouses of Irish citizens, parents of Irish citizens and long-term

residents after five years; dual nationality naturalized Irish citizens (in their non-Irish passport); and indefinite leave to remain (granted after eight years' residence).

A third-country national may apply to the INIS for permission to reside in Ireland in particular circumstances outside of the specific categories listed here, at the discretion of the Minister on an *ad hoc* basis. These applications are typically made in writing to the INIS, accompanied by submissions as to why residence conditions should be renewed or varied depending on the individual circumstances of the case.

An immigration officer can refuse to grant a visa for any of the following reasons: inability to support oneself (or accompanying dependents) financially; intention to take employment without authorization; suffering from a medical condition listed on the International Health Regulations or specified in the Immigration Act; conviction of an offence punishable by imprisonment in excess of one year; not holding a valid visa or passport; existence of a deportation order or other reasons relating to the public good, national security or public policy; intention to travel to other areas of the common travel area within the UK, but where he would not qualify for admission there if he arrived from anywhere in the world (Immigration Act, Section 4). Furthermore, even where permission to enter is granted, an immigration officer may attach conditions to the immigrants stay.

Applications for residency may also be made in response to a notice of intention to deport. In deciding whether to proceed with a deportation order, the Minister should take into consideration the age of the person, the duration of his residence in Ireland, his family and domestic circumstances, the nature of his connection with the State, his employment record, his character and conduct, etc. If the Minister decides not to issue a deportation order, the applicant is usually granted residency for a one-year period, renewable on application. There is no fee payable for this form of leave to remain.

It should be noted that special provision is made in immigration law for entry by land from Northern Ireland. Immigration control does not generally apply to arrivals across the Irish border, with legislation merely providing immigration officers with a power to examine persons. Such immigrants are not required to seek permission, but merely to register their presence within seven days if they are arriving for employment or business, or within one month in other cases.

Changing status is generally tolerated in the Irish system. That is, residency applications can be made "in-country" by third-country nationals (whether requiring a visa or not) who have entered under another category. However, there is an exception for visa-required nationals originally admitted as a short-term visitor; in this case, further permission to change status is not generally granted.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

The procedure is the same as that for appealing the denial of a visa.

## 2.3.2 Conditions according to Length of Stay

### 2.3.2.1 *Temporary Residence*

The Irish system of immigration control draw a principal distinction is between third-country nationals that require a visa and those who do not, rather than between lengths of stay. Non-visa third-country nationals are not required to obtain permission prior to arrival for any purpose. However, if they wish to stay for more than three months, then they are required to obtain permission to that effect after arrival. Third-country nationals who intend to remain in the State for a period exceeding three months must register with a local registration office before the expiry of that period (or any period granted on entry), as well as reporting any changes of address. The annual fee for issuing the Certificate of Registration is 100 EUR.

Applicants granted long-term residence permits (valid for five years) are required to register and be issued with a Certificate of Registration, for which there is an administrative fee of 100 EUR. There is currently a 12-14 month waiting time for the processing of long-term residence permit applications. The Immigration Bill would provide for a long-term residence permit to be issued to applicants who meet the ‘standard eligibility requirements’ (Immigration Bill, draft clause 34). These requirements include five years’ residence in Ireland in the previous six years and being of good character. Other requirements are to be provided for in immigration policy statements and may include being able to demonstrate a ‘reasonable proficiency in the Irish or the English language,’ having made ‘reasonable efforts to integrate’ (both undefined) and not having had recourse to public funds during the previous five years. The Minister would retain a discretion in relation to the granting of permits. The permit would be valid for five years only and it could be withdrawn on four grounds: the provision of false or misleading information in order to obtain it, one years absence from the territory of the state, expulsion on public order grounds and ‘conviction of a particularly serious crime’ making them a ‘danger to the community’. There is no fee for the processing of long-term residence permit applications.

### 2.3.2.2 *Permanent Residence*

Regarding permanent stay or “indefinite leave to remain”, the principal requirement is that the third-country national has lawfully resided in Ireland for eight years.

There is currently no provision for language or integration tests in Irish immigration policy.

There is no fee for the processing of indefinite leave to remain applications.

### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 Family Reunification

##### Family members of Irish citizens

There is no legislation governing the entry and residence of family members of Irish citizens. Case law clarifies that a family relationship with an Irish citizen does not, in itself, create an automatic constitutional right to enter or reside in Ireland (*AO and DL v. Minister for Justice 2003*). Instead, the law requires the immigration officer to have regard to, *inter alia*, any family relationships with persons in the State (Immigration Act, Section 4).

In practice, a distinction is drawn between the third-country national family members of adult and minor Irish citizens. Children of Irish citizens who are themselves Irish citizens, are entitled to reside in Ireland and do not require sponsoring by their parent. In other cases, however (particularly the third and subsequent generations born outside Ireland)<sup>387</sup>, while admission will probably be granted, no written policy is publicly available.

With regard to spouses, there is a difference between visa exempt spouses and others. Visa exempt spouses, having entered the State, must then register with the immigration officer in the district where they are residing. They are then issued with a Certificate of Registration that allows them to reside and work in Ireland. The same process applies to non-visa spouses who were living in Ireland irregularly prior to the marriage. Spouses who are subject to a visa requirement and who have been married and living overseas for a period of time, having obtained a visa and entered Ireland, must also register with an immigration officer on arrival and be issued with a Certificate of Registration in the usual way. The more complex case is that of visa nationals who seek to stay on the basis of marriage after having entered the State. Such persons must make an application for residency to the INIS. Currently, these applications take 18-20 months to process. During this time, the spouse may remain in the State and must register with an immigration officer, but is treated as a dependant and is not permitted to work unless and until a favourable decision has been reached on the residency application. Spouses are, however, permitted to seek employment permits on the same terms as other persons.

By contrast, an unmarried partner of an Irish citizen must apply to the INIS for a residence permit in all cases, whether required to obtain a visa or not. Generally, unmarried heterosexual partners are granted residency as a dependent, but are not permitted to work. Same-sex partners – for whom there is no marital or equivalent status in Ireland – may be granted permission to reside and may be given permission to work, depending on the circumstances. While no published criteria are available in this latter case, factors like the length of the relationship and previous immigration history are taken into account. In any event, unmarried partners are free to apply for employment permits on the same basis as other persons.

<sup>387</sup> Note that Irish nationality law permits the third and subsequent generations born outside the island of Ireland to acquire Irish citizenship, but only if the Irish citizen parent had exercised their own entitlement to do so prior to the birth.



Other family members, such as parents or a third-country national spouse's other minor children, may also be admitted in certain cases. There are, however, no published criteria for these other cases, nor is there data as to the number of persons admitted in these circumstances. It is likely that the cases where these other relatives are admitted are limited in number.

The Irish Nationality and Citizenship Act 2004, enacted on 1 January 2005, changed the position regarding the acquisition of Irish citizenship, making it more restrictive. Since that date, children born in Ireland acquire Irish citizenship only if at least one of their parents is an Irish or a British citizen, or has permission to remain indefinitely in either Ireland or Northern Ireland, or has resided for three of the previous four years on the territory of Ireland other than as a student or asylum applicant. Following the introduction of these changes to citizenship law, the Government announced that it would allow the parents of Irish children born prior to 1 January 2005 to apply for residency under what is called the IBC/05 scheme. A specific application form had to be completed and lodged prior to 31 March 2005. Despite the above developments, the status of the parents of Irish-citizen children remains a significant issue. The family members of Irish-citizen children can apply for an exercise of the Minister's discretion to grant them permission to reside. Such applications continue to be granted on an *ad hoc* basis, even if there is no public information regarding either the application process or the criteria to be fulfilled.

There are no definite rules in the case of family members of Irish citizens. Spouses and partners of Irish citizens are usually granted 12 months of residence. The parents of Irish children granted residency under the IBC/05 scheme are generally granted residence for two years, renewable for a period of three years.

#### *Family members of non-EEA nationals*

The admission of the family members of non-EEA nationals in Ireland is not addressed systematically by published public policy. Express provision is made for only two categories – family members of workers and those of refugees. Other sponsors must rely on the exercise of ministerial discretion on a case-by-case basis.

The Irish Government has twice published Information Notes on Family Reunification for Workers – first in 2005, and more recently in January 2007 (INIS 2007). This publication only offers guidelines and does not limit the discretion of the visa officer in determining applications.

Under the Information Note, a qualifying sponsor must have a valid work permit and have been in full-time employment for at least 12 months. However, there is no time period required if the qualifying sponsor holds a Green Card. In either case, the sponsor's income must exceed the amount that would qualify him for Family Income Supplement payments under social welfare law. This minimum income requirement does not, however, apply if the qualifying sponsor is in full-time employment at the time of the application and has been so for at least 36 months.

Spouses and dependent unmarried children under the age of 18 are deemed as family members eligible for family reunification with the qualifying sponsor. However, the latter may only sponsor one spouse.

The evidence required from applicants includes: evidence of the family relationship; in the case of minor children, if both parents will not be resident in the State, the consent of the overseas parent is required; a copy of the qualifying sponsor's contract of employment running for at least one year after the date of application and indicating the annual salary; a tax statement belonging to the qualifying sponsor; a passport valid for at least one further year and any other previous passports held; and a copy of the qualifying sponsor's passport and certificate of registration in Ireland. Lawfully resident spouses and dependants of employment permit holders are entitled to obtain a work permit in their own right, which is not subject to the labour market test (Dept. of Enterprise 2007).

The above applies to visa nationals only. While non-visa national family members can apply for residency after arrival, there is no published information as to the policy applicable to them.

Family members of third county nationals are usually granted a residence permit that accords with the duration of the residence permit granted to the sponsor.

### **2.3.3.2 Work**

#### Green Cards

In order to obtain a Green Card, the applicant must have a job offer that has an annual salary of above 60 000 EUR, or that has an annual salary of 30 000 to 59 999 EUR and is in a strategically important occupation (for example, information technology, healthcare, science and engineering, construction and financial services). The job offer must be of at least two years' duration and it must be made by an employer that is registered with the Irish company's office and tax authorities and trades in Ireland. There is no specified minimum skill level, other than that the applicant possesses the "qualifications, skills or experience that is required for the employment". The application cannot have the effect that more than 50 per cent of the employer's workforce will be from outside the EEA.

Green Card permits can be applied for by either the employer or the third-country national employee, and are issued to the latter. They are normally issued for a period of two years. A worker is normally expected to stay in employment with the employer for the first twelve months, after which a permit may be sought with regard to a different employer. After two years, a Green Card permit can be renewed for an indefinite period. At the end of the initial two-year period, green card permit holders are stated to be eligible for "permanent residence". Green card permits are subject to an initial application fee of 1000 EUR, whilst renewal applications are subject to a fee of 1500 EUR.

#### Employment

Some non-nationals who are lawfully resident in Ireland are exempt from the obligation to obtain an employment permit. "Recognized refugees and their family members, and

also any person who the Minister allows to stay [...] and who is in employment in the State pursuant to a condition of that permission that the person may be in employment” are exempted (Employment Permits Act, Section 2). This last category mainly covers the following: spouses of Irish citizens, the parents of Irish citizen children born in Ireland, long-term residents, the spouses of Green-Card or work-permit third-country national employees and persons granted subsidiary protection or humanitarian leave to remain.

An employment permit is a work authorization only. It will also be necessary that the third-country national comply with immigration laws, through the acquisition of a visa or residency status, in accordance with the procedures outlined previously.

The job must offer an annual salary of above 30 000 EUR and it must not be an excluded category, such as: clerical and administrative positions, general operatives and labourers, operator and production staff, hotel tourism and catering staff (except chefs), craft workers, apprentices and childcare workers. The job offer must be made by an employer that is registered with the Irish company’s office and tax authorities and that is trading in Ireland. It is necessary to satisfy a labour market test and the application cannot have the effect that more than 50 per cent of the employer’s workforce will be from outside the EEA.

As with Green Cards, work permits can be applied for by either the employer or the third-country national employee, and are issued to the latter. Here too, a worker is normally expected to stay in employment with the initial employer for twelve months, after which a work permit may be sought with respect to a different employer. There is, however, no express provision for the acquisition of permanent residence by a work permit holder. The fees for a work permit vary from 500 EUR for a permit of up to six months in duration, to 1000 EUR for a permit of up to 2 years in duration. A work permit can be renewed for a period of three years, with a renewal fee of 1500 EUR. Thereafter, a work permit can be renewed for an indefinite period and there is no applicable fee.

### *Intra-company transfers*

These permits are strictly limited to senior management, key personnel or those undergoing a training programme. The position must attract a minimum salary level of 40 000 EUR. The third-country national transferee must have been working for a minimum period of 12 months with the overseas company prior to transfer.

There is a processing fee of 500 EUR for a period of up to 6 months, 1000 EUR for any period from 6 to 24 months or 1500 EUR for any further period of up to 36 months.

### *Graduate Scheme*

The main qualification is that the individual has obtained a degree (first degree, masters or doctorate) from an Irish third-level educational institution after 1 January 2007. According to the Department of Enterprise, Trade and Employment, the purpose of the scheme is to seek employment and gain a Green Card or Work Permit. Those who qualify are entitled to a single non-renewable extension to their student permission for a six-

month period starting from the date of receipt of their examination results. During the six-month period, the individual is entitled to be in employment for up to 40 hours a week, but is not entitled to engage in self-employment or to run a business. There is no specific fee for this scheme.

### Self-employment

The categories of resident exempt from a requirement to have an employment permit (above) are also exempt from the requirement to obtain Business Permission, if they wish to be self-employed in the State.

Otherwise, applicants must prove that the proposed business will result in the transfer of 300 000 EUR to the State. If a new project, the proposed business must create employment for at least two EEA nationals; alternatively, it must at least maintain the level of employment in an existing business. The proposed business “must add to the commercial activity and competitiveness of the State.” The proposed business must also be a viable trading concern and provide the applicant with sufficient income to maintain and accommodate himself and any dependents without resorting to social assistance or paid employment.

### Seasonal work

There is no specific seasonal workers scheme in Ireland. An application for this type of work must fall within the general work permit scheme.

### **2.3.3.3 Studies and Training**

Third-country nationals wishing to study in Ireland must show evidence of: enrolment on a privately funded course, involving at least 15 hours of organized daytime tuition each week; payment of the requisite fees to the educational institution; academic ability to follow the particular course; sufficient proficiency in English language to undertake the course (except for English-language courses); sufficient funds; private medical insurance; adequate explanation for any gaps in educational history; and the intention to return to the country of permanent residence following completion of the studies in Ireland.

A student permit is granted for the duration of the annual study period and renewed each year for the duration of the studies, provided the student can demonstrate entitlement to remain each year (i.e. sufficient attendance record or passed examinations in previous years and sufficient finances).

Students are entitled to engage in what is termed ‘casual employment’ provided they are attending a full-time course of at least one years duration, leading to qualifications recognized by the Minister for Education and Science, and provided that the workload does not exceed 20 hours a week, or full-time work during normal college vacation periods.

### 3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level

Ireland is not bound by EU standards concerning legal migration by third-country nationals because of the option given to it under the Treaty of Amsterdam to choose whether or not to participate in measures adopted under Articles 62 and 63 of the EC Treaty. Ireland has generally presented its opt-out as linked to the United Kingdom's, because of the 'common travel area' between the two States. As with the United Kingdom, however, non-participation in EU *acquis* also reflects the desire not to have admission decisions regulated at the EU level.

Ireland does not, at present, have systematic policies on the Family Reunification Directive and the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification and the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. Therefore, it is difficult to say in general terms whether its policies do or do not comply with these standards. One clear advantage of Irish participation in these Directives would be to require the elaboration of such policies, at least for the categories of third-country national protected by these Directives.

Ireland is a party to the European Convention on Human Rights. Given the limitations of Irish family admission policy discussed previously, it is not surprising that applicants frequently rely on provisions of the Convention in immigration cases, in particular Article 8. Irish courts follow the restrictive view taken by the English Court of Appeal (*Cirpaci v Minister for Justice* (2005)). The hallmarks of this approach are an emphasis on the right of the State to rely on immigration control as a public policy argument, the lack of respect for a couple's choice of their place of residence and the emphasis placed on the couple's awareness of one spouse's lack of immigration entitlements at the time they were married. In neglecting the objective difficulties for the Irish spouse in settling in the other spouse's country, this jurisprudence may be thought inconsistent with the approach to Article 8 taken by the European Court of Human Rights in cases, such as *Yildiz v Austria* (2003).

### 4. Real Impact of Immigration Legislation on Immigration in Practice

The lack of immigration legislation and published policy guidelines, and the related focus of the system on ministerial discretion, makes it difficult to know what the applicable rules are. At the same time, even where information is available concerning immigration requirements, there is, as yet, no practice of formally examining their effects upon immigration processes and communities.

### 5. Cooperation with Third Countries

Ireland has not undertaken any agreements or other forms of cooperation with third countries with regard to immigration and its related consequences, such as brain drain.

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## 1. General Immigration Policy and Trends

The first real sign that immigrants were increasingly in demand to carry out low skilled jobs in the Italian labour market can be found in the “Martelli Law” of 1990 (L 39/1990). At that point, there were less than half a million foreigners in Italy with a valid residence permit. The deputy Prime Minister Claudio Martelli decided to push for new legislation that would be tolerant in its approach. The law, approved on 28 February 1990, attempted to strike a balance between the reforms put forward by the social movements and the restrictions proposed by the Republican Party (Immigration Statistical Dossier 2003, pp. 145-46).

In October 2001, the centre-right administration approved a new immigration bill, the “Bossi-Fini Law”, containing more restrictive measures (L 189/2002). These concerned, in particular, the conditions for obtaining permits for employment and for family reunion and the appeals procedure against refusal of entry and deportation, with an increase of the maximum period of detention. It also introduced a “contract of residence”, which ties entry and residence to work. L 189/2002 is based on the principle that entry for employment can only occur after a job offer has been made; abolishing the possibility of giving permits for the purpose of seeking employment.

In late April 2007, Parliament approved an “authority to draw up the law” (DDL), which draws up the major lines that will be the basis for a change of current legislation L 189/2002 and Presidential Decree 394 of 31 August 1999, as amended by Decree 394/1999.<sup>388</sup> This research uses as a basis the current valid legislation, the L 189/2002, but has also incorporated the entire DDL and new decrees, mentioning wherever this will or has changed the yet valid law.

Temporary workers represent a major component of the immigrants present in Italy, especially in agriculture in the Southern parts of Italy (Immigration Statistical Dossier 2005, p. 304). In 2004, a total of 983 499 visas were granted; of these, most were family reunification visas, followed by visas to employees. In 2005, that number had risen to 1 076 080, of which 35.3 per cent were visas to employees and 40.1 per cent family reunification visas. Another relatively large group was visas for study (11 per cent) (Immigration Statistical Dossier 2006, p. 80). The migrants coming to Italy are mainly people with a primary education (32.9 per cent), followed closely by those with secondary education (27.8 per cent) (Immigration Statistical Dossier 2005, p. 103). In 2005, there were more than 3 million foreigners residing in Italy, compared to 2.6 million in 2003 (Immigration Statistical Dossier 2006, p. 13). There is a noteworthy presence of minors in Italy: 19.3 per cent in 2005 (compared to 15.6 per cent in 2003). Most migrants have a residence permit based on the fact that they work in Italy (62.6 per cent in 2005 and 66.1 per cent in 2003), while about one third have a permit based on family reunification (Immigration Statistical Dossier 2006, p. 13). The total number of visas with a view to stay in Italy for a longer period of time was 224 080 (Immigration Statistical Dossier 2006, p. 80).

<sup>388</sup> It is to be noted that on 24 January 2008 the leftwing government fell and thus all legislative activity is suspended. At the time of writing new elections seem possible in spring 2008.

These figures can be put into perspective by considering the immigration flux in the 1990s. In the period 1990-99, 217 718 permits were granted for the purpose of work and 220 080 for family reunification. The immigration population increased by around 80 000 a year in the 1990s and now it increases by around four times as much per year (Immigration Statistical Dossier 2006, p. 85). The four main nationalities present in the immigrant population are Romanians, Albanians, Americans (USA) and Moroccans (Immigration Statistical Dossier 2006, p. 84).

## **2. Laws and Conditions of Immigration**

### **2.1 Overview of Immigration Types**

The main immigration categories covered by Italian legislation are: family members, employment, self-employment, seasonal work and studies.

### **2.2 Admission Rules – Visa Policy**

#### **2.2.1 Competent Authorities**

Visas are issued by the diplomatic representations in the country of origin or of residence of the third-country national. The authority responsible for the issuance of national (long stay) visas is the diplomatic mission of Italy. For short-term Schengen visas (valid for up to three months) other diplomatic representations may issue them, after a specific agreement with Italy.

#### **2.2.2 Procedural Steps – Conditions to be fulfilled**

Three main types of visa are granted: Uniform Schengen Visas (USV), valid for all the Contracting Parties' territories;<sup>389</sup> Limited Territorial Validity Visas (LTV), only valid for the Schengen State whose representative issued the visa (or in particular cases for other Schengen States where specifically named) without any possibility of access to or transit through the territory of any other Schengen States;<sup>390</sup> long stay or "National" Visas (NV) (type D), valid for visits that are longer than 90 days, with one or more entries and for transit through the territory of other Schengen States for a period of not more than five days. Uniform Schengen Visas are granted with a fee of 60 EUR and national visas for long-term stays with a fee of 75 EUR.

Twenty-one different types of entry visa were introduced in 2000, as well as the requirements and the conditions for granting them, including: adoption, business, medical

<sup>389</sup> These include; airport transit visas (type A); transit visas (type B); and short-stay or travel visas (type C), valid for single or multiple entry for up to 90 days. The Schengen regulation enables important or well-known persons who frequently require a visa and who can provide the necessary guarantees to be issued with C-type visas that permit a visit of up to 90 days in any half-year and are valid for one, two, three or five years.

<sup>390</sup> They are issued solely for humanitarian reasons, in the national interest or under international obligations as an exception to the common USV system. A third-country national may not directly apply for these visas, which are issued in a few specific cases by the diplomatic or consular representative when it deems it appropriate to issue the visa for the reasons as stated, even though not all the conditions are met for the issuance of a Uniform Schengen Visa, or when the applicant does not hold a validly recognized travel document, in particular emergencies or in case of need.

treatment, diplomatic, accompanying dependent, sports competitions, invitation, self-employment, made employment, mission, religious grounds, re-entry, choice of residence, family reunion, study, airport transit, transit, transport, tourism, working holidays and job-seeking (since abolished by the L 189/2002, but it's re-insertion is proposed by the DDL).

Visa applications must be in writing, giving all the details required on the special visa application form that must be signed by the applicant and accompanied by one passport-sized photograph. As a rule, foreigners applying for visas must visit the diplomatic or consular offices in person to be interviewed concerning the reasons and circumstances of the visit. Applications must be accompanied by a valid travel document on which it is materially possible to attach the visa, together with any supporting documents that may be required. This documentation, depending on the type of visa requested or which the Mission deems it can issue, must necessarily state: the purpose of the visit; means of transport, including for the return journey; means of support during the journey and stay; and housing arrangements (Decree 394/1999, Art. 5(5)).

A denial of a visa must be communicated in a language understandable to the foreigner and accompanied with the reasons for the negative decision (L 189/2002, Art. 4(2)), unless the denial is for reasons of national security. This last exception would be modified by the DDL.

Article 1(3)b of the DDL determines that the procedures for obtaining visas should be simplified, including a revision of the documents a foreigner must provide in order to obtain the visa and of the obligation to provide reasons for all denials. At present, an applicant must show return tickets, proof of financial resources and proof of adequate accommodation. In addition, a visa can be refused if the applicant is: the subject of an alert issued for the purpose of refusing entry; a threat to public order; condemned for certain crimes;<sup>391</sup> or subject to a prohibition of entry following expulsion. It is not clear from the DDL if these rules will change significantly.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

Any foreign national who has been denied a visa may contest this at the Regional Administrative Tribunal within 60 days of the refusal.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### **2.3.1.1 Competent Authorities**

Residence permits are issued by the police authority under the Ministry of Interior. For all administrative and procedural matters the Migration Office is the relevant authority. The Office is under the administration of the Ministry of Interior.

<sup>391</sup> Immigrants who have been sentenced according to Art. 380 (cases with arrest on the spot) or Art. 444 (substitution of original punishment with reduced punishment or fine) of the criminal procedures code, for drug-related or sexual crimes, for smuggling of human beings or for recruiting persons for prostitution or minors for illegal activity will not be admitted.

### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

Residence permits must be applied for within eight days of arrival. In addition, a passport or other travel document must be presented, as well as proof of financial capacity to pay for the return journey if the motives for the application are not family reunification or employment. The immigration office may, at any time during the process, require proof of financial self-sufficiency, the need for the permit and the presence of shelter or other financial resources (Decree 394/1999, Art. 9(3); Art. 9(4)).

The residence permit is issued for the period of time and the purpose indicated in the visa (Decree 394/1999, Art. 11). Legislative Decree 5/2007 grants an entrance permit for the purpose of employment to an applicant who has an employment contract for not less than one year, or for self-employment which is not occasional, for study, religious motives and family reunification with proof of financial independence. The foreigner must provide proof of valid health insurance, adequate shelter and a minimum legal income.

The renewal of the residence permit has to be applied for by the foreigner at the police authority where the foreigner lives, at least 90 days before the expiry of the latest permit when that permit is for unlimited employment, 60 days for limited employment and 30 days in all other cases. In general, a renewal will not be for longer than the first permit (L 189/2002, Art. 5(4)). This too will be changed according to the DDL.

The permit is to be issued or renewed within 20 days of the application being submitted (L 189/2002, Art. 5(9)). In practice, this has caused huge problems since the Italian administration has created immense bottlenecks. With a Directive of 5 August 2006, the Ministry of Interior extended the rights of foreigners to benefit from the rights the permit will grant during this waiting period. The experience of huge bottlenecks may be one of the motives behind the DDL underlining that while awaiting the extension of the permit the immigrant will benefit from the rights the permit will grant.

Permits will be denied when: the formal requirements for an employment contract are not fulfilled; proof of accommodation and financial resources (including to return home) are not provided; there is reason to believe that the foreigner is a threat to public order or the security of the State, or to countries with which Italy has bi- or multilateral agreements on the suppression of border-control (effectively Schengen area); or the foreigner has been sentenced for crimes relating to drugs, sexual crimes, favouring irregular migration or crimes against the personal liberty of someone within the scope of prostitution or involving minors in illegal activity.

There is a relatively small fee of about 15 EUR for all of these permits.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

Any third-country national who has been denied a residence permit may contest the decision at the Administrative Regional Court (L 189/2002, Art. 9(3)). This decision may then be further appealed to the State Council.

## 2.3.2 Conditions according to Length of Stay

### 2.3.2.1 Temporary Residence

Since no general provisions on short stay appear to exist, the specific provisions for the different immigration categories are provided in section 2.3.3 below.

### 2.3.2.2 Permanent Residence

A foreigner regularly present in Italy for at least six years and who has a residence permit allowing for an unlimited number of renewals (thus not study or seasonal work), can apply for a Residence Card if he can prove an adequate income (L 189/2002, Art. 8(1)). The Card can also be applied for by foreign spouses, minor children and parents of Italians or EU citizens living in Italy. A foreigner must present the following information when applying for a Residence Card: completed application forms; photocopies of his passport and of a tax declaration or the declaration of income given to every employee by the employer (“CUD”); a criminal record; and in the case of a permit granted simultaneously to minor children, the application should be accompanied by an identification certificate translated and certified and a certificate of adequate dwelling (Decree 394/1999, Art. 16). Where the applicant does not support a family, his income must be equal to that of the monthly social security; the same is valid if the family is composed of two members. However, if the family has three or four members, the income must be double that of the monthly social security, and if it has five or more members, triple that of the monthly social security. Family members must fill in their own respective forms. The resident status granted by the card is not time-limited, but the document must be renewed every five years.

A third-country national may apply for an Unlimited Residence Permit if he: has resided in Italy for the past five years under a valid residence permit with the possibility of an unlimited number of renewals; possesses a sufficient economic guarantee; and possesses adequate accommodation. Before Unlimited Residence Permits were governed by the rules relating to the Residence Card, but they have slightly different requirements. The permits that grant a right to unlimited residence include permits for employment and self-employment, family-reunification and Art 27 cases.<sup>392</sup> Excluded are permits for study,

<sup>392</sup> Art. 27 of the L 189/2002 establishes that implementation regulations govern special procedures and terms for the release of work permits, entry visas and residence permits for salaried employment for each of the following categories of foreign workers: a) executives or highly specialized personnel employed by companies with headquarters of branch offices in Italy, or by the representation offices of foreign companies whose main site of activity falls within the territory of one of the member nations of the World Trade Organization, or executives of a major Italian office of an Italian company or a company from another EU Member State; b) university lecturers in exchange or mother-tongue programmes; c) university professors or researchers meant to hold an academic position or carry out research activity for compensation at a university or an educational or research institute operating in Italy; d) translators and interpreters; e) domestic employees who have worked full-time abroad for the last one year for Italian citizens, or for foreigners from one of the EU Member States, in cases where the employers decide to move to Italy exclusively for the purpose of continuing the relationship of domestic employment; f) individuals who, having been authorized to reside in the country for the purpose of professional training, perform temporary periods of instruction at the facilities of Italian employers, eventually carrying out activities that fall under the category of salaried work; g) workers who are employed by organizations or enterprises operating in Italian territory and who have temporarily been admitted, at the request of the employer, to perform specific

temporary permits or humanitarian permits, asylum permits, other short-term permits and diplomatic permits. A foreigner who poses a danger to public order or the security of the State cannot obtain an unlimited permit. A spouse, minor children (of the foreigner or his spouse), dependent adult children and dependent parents may also apply. The permits must be issued within three months and are for an unlimited period of time, whereas the residence card is most often now long-term. The permit can be revoked in cases of fraud, expulsion, when the motives for granting it cease to exist, absence from the territory of the EC for more than 12 months or if another Member State grants a long-term residence permit.

### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 *Family Reunification*

A foreigner with a residence card or a permit for more than one year (for employment, self-employment, asylum, study or religious motives) may apply for family reunification with spouses and minor children including children born out of wedlock if the other parent has consented. Minors are defined as any persons less than 18 years of age at the moment the application is filed. Furthermore, children over 18 years of age who depend on their parents due to health reasons and parents dependent upon the applicant who do not have adequate support in the country of origin may benefit from family reunification. The applicant must still prove an adequate income, but the cohabiting family members' income is taken into account. In deciding the application, the immigration office must take into consideration the actual family ties, the length of stay in Italy and the links with the country of origin. If more than 90 days pass without a communication from the Immigration Office, the dependent family member may present the application at the diplomatic representation in the country of origin.

When a residence permit is granted for family reunification, the maximum period of validity is two years (L 182/2002, Art. 5).

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functions or tasks for limited or set periods of time, with the obligation of leaving Italy when these tasks or functions have been completed; h) maritime workers employed to the degree, and under the procedures, stipulated in the regulations of implementation; i) salaried employees who are regularly paid by employers (being either individuals or organizations) that reside or have headquarters abroad and from whom they receive their remuneration directly, in cases where the employee is temporarily transferred from a foreign country to work with individuals or organizations, be they Italian or foreign, residing in Italy for the purpose of performing in Italian territory specific services stipulated under a contract drawn up between the aforementioned individuals or organizations residing or having headquarters in Italy and other individuals and organizations residing abroad, in accordance with the provisions of relevant articles of national law, as well as International norms and those of the European Community; j) workers employed with circuses or shows that travel abroad; k) artistic or technical personnel for opera, theatrical, concert or ballet performing groups; l) dancers, artists and musicians employed at entertainment establishments; m) artists employed by theatrical or cinematographic enterprises, by radio or television broadcasters, be they public or private, or by public organizations, as part of cultural or folklore initiatives; n) foreigners meant to perform any type of professional sports activity with Italian sports enterprises; o) news correspondents officially accredited in Italy and regularly compensated by organs of the daily or periodic press, or by foreign radio or television broadcasters; p) individuals who, based on the norms of international accords in force in Italy, perform in Italy research activities or occasional work under programmes of young people's exchange or young people's mobility, or as individuals employed on an "au pair" basis; and s) nurses employed both in the private and public health sector.

### 2.3.3.2 *Work*

A “flow decree” determining the permitted number of foreigners to be admitted is issued annually in conformity with Article 3(4) of Legislative Decree 286/1998.<sup>393</sup>

Article 21 of L 189/2002 establishes that entry into the territory of the State for the purpose of salaried employment, including seasonal and self-employed work, takes place in accordance with these entry quotas. In establishing the quotas, restrictions should be applied to States who do not participate in the fight against irregular migration and preference given to workers with Italian origin. These decrees also set aside, on a preferential basis, quotas reserved for States not belonging to the European Union and those with which the Ministry of Foreign Affairs, acting in concert with the Ministry of Internal Affairs and the Ministry of Labour and Social Security, has signed accords designed to regulate entry flows and procedures for re-entry of migrants.

Residence permits for employment or family reunification also give permission to carry out other activities without being converted. For example, employment allows for subsequent self-employment when the relevant labour-related permits have been obtained; self-employment also allows for subsequent employment with communication from the employer to the Provincial Labour Direction; and family reunification or humanitarian permits additionally allow for employment (Decree 394/1999, Art. 14).

#### Employment

According to Article 22 of L 189/2002 the employer (an Italian or a foreigner regularly residing in Italy) must present at the immigration office: the request for a work permit; documentation relating to the employee’s housing; and the proposed “residence contract” with specification of conditions including salary, the financial cover of the return journey and a declaration of the obligation to declare every possible variation regarding the employment. The immigration office must communicate their decision within 40 days and transmit the necessary documentation to the relevant consulate abroad. The representation in the country of origin then issues the visa to the foreigner concerned. Within eight days of entry into Italy the foreigner must then apply for a residence contract (L 189/2002, Art. 22(6)).

A permission based on work will be issued according to the “contract of work-related residence” and will last for a corresponding period of time. Time-limited contracts of employment are limited to one year and if the applicant has an unlimited contract the permit is issued for two years. It can be noted that the DDL proposes to abandon this type of contract-related permit and to alter the time limits. A foreign worker who possesses a residence permit for salaried employment but loses his job or resigns may be entered on the employment placement lists for the residual period of validity of his residence permit or, in any event, for a period of not less than six months.

<sup>393</sup> This article determines that the annual decrees must take into consideration the indications given by the Ministry of Labour on occupation and the number of non-EU citizens enlisted. Furthermore, the decrees must be created on the basis of data on the actual labour demand in the various regions. The Regions must transmit the relevant data by 30 November each year.



The L 189/2002 seeks to ensure that the third-country national's stay in Italy is linked to actual work, abolishing the right to enter Italy to search for a job. However, the latter right is reintroduced by Article 1a(11) of the DDL, which states that within the quotas there should be a certain number of permits designated for certain immigrants who enter the territory from specified countries of origin to look for work and who are capable of sustaining themselves during the period of stay on Italian territory, or who are "sponsored" by an Italian or EU citizen capable of sustaining them. The DDL does not specify for how long this type of permit could be valid; it only specifies that its validity will depend on proof of "financial autonomy" for the duration of the permit.

The new Aliens Act based on the DDL would have as its objectives: to favour the "regular" meeting of work demand and supply, making the link between stay and work more realistic and corresponding to the needs of companies and families (e.g. Italians who are in need of domestic work); to create a preferential procedure of admission for qualified workers; to adjust the duration of the permit to stay to the needs of the labour market and make them less complicated to administer, both to the benefit of the administration and to the migrant during the process of prolongation.

Importantly, a paragraph is added to Article 27 of the L 189/2002 that provides for a simplification of the admission procedures of non-EU citizens working for EU companies. The permit is substituted by a simple declaration from the employer.

### Self-employment

Self-employment is regulated by Article 26 of the L 189/2002. The entry into Italy of foreign workers from countries that do not belong to the EU, when these workers plan to perform a non-occasional, self-employed activity in the territory of the State, may be permitted on the condition that the performance of such activities is not reserved under the law for Italian citizens or for the citizens of one of the member nations of the European Union. In any event, foreigners intending to perform industrial, professional, craft or commercial activities in Italy, or who wish to establish share companies or individual companies or hold corporate positions in Italy, must also demonstrate that they have adequate resources for the performance of the activities they plan to undertake at their disposal in Italy. In addition, they must meet the prerequisites established under Italian law for the performance of the activity in question, including, when required, the prerequisites for entry into professional registers. They must also demonstrate that they possess certification from the relevant authorities, dated no more than three months earlier, declaring that there are no motives obstructing the issuance of the authorizations or licenses contemplated for performance of the activity that the third-country national intends to carry out. All self-employers (Italian or not) must be registered in the Commercial Chamber. On the other hand, a regular business plan is not required. Workers not belonging to the EU must always demonstrate that they possess proper accommodation and an annual income generated by legitimate sources and at a level higher than the amount contemplated under the law for exemption from participation in health-care spending. Once it has been confirmed that they possess the prerequisites indicated and once authorizations have been acquired from the Ministry of Foreign Affairs, the Ministry of Internal Affairs and the

Ministry responsible for the activity that the third-country national intends to carry out in Italy, Diplomatic or consular posts issue an entry visa for self-employed work, if within the limits of the quota, expressly indicating the activity to which the visa refers. The residence permit is issued as a permit based on self-employment and must be applied for separately within eight days of entry into Italy, as for other permits. The maximum period for such a permit is two years (L 289/2002, Art. 5(3)4)).

### *Seasonal Work*

Seasonal workers have facilitated procedures with regard to entry and residence in Italy. The permit has a validity period of 20 days to a maximum of 9 months and is granted for a period corresponding to the period of work (Decree 394/1999, Art. 38). A multiple-entry permit (with a maximum of three years) may be issued to a foreigner who can prove: to have come to Italy for the purpose of performing seasonal work during at least two previous years; that the seasonal employment was repeated; and that he returned to his country of origin upon the termination of the seasonal work. The visa, however, is issued annually and the permit can be immediately revoked if the foreigner violates immigration laws. The multiple-entry permits must be granted within the established quotas (L 189/2002 Art 5(3)3)).

An Italian employer, a foreign employer who resides on a legal basis in Italy, or professional associations acting on behalf of their members, which intend to establish a salaried employment relationship in Italy on a seasonal basis with a third-country national must present a request to the local immigration office with jurisdiction over the territory. The immigration office issues the authorization, in accordance with the right of precedence accrued. Seasonal workers who have previously performed seasonal work in Italy and who have respected the conditions indicated in their residence permits, including returning to their countries of origin upon expiration of the permit, are entitled to precedence over citizens of the same country who have never legally entered Italy for the purpose of employment. In addition, the residence permit for seasonal employment may be converted into a residence permit for salaried employment for a set or indeterminate period, assuming that the underlying conditions for such an act are present (L 189/2002, Art. 24(4)). The regional employment commissions may draw up (with the input of those union organizations that represent the largest number of workers or employers on the regional level, the regional governments or local government bodies) special agreements designed to favour access by foreign workers to the positions of seasonal employment identified.

Within the context of bilateral agreements designed to regulate entry flows and procedures for re-entry, special accords can be stipulated governing flows for seasonal labour with the corresponding national authorities responsible for labour market policy in the countries of origin.

### 2.3.3.3 Studies and Training

According to Articles 39 and 46 of the L 189/2002, it is permitted to reside in Italy for the purpose of study.<sup>394</sup> The applicant student must be over 18 years of age and have the intention to follow courses in an institute of education or professional training on a full-time basis and for a determined period of time. The courses must be coherent with the education that is already being obtained in the country of origin (Decree 394/1999, Art. 44 *bis*). Study permits are granted for one year. A study permit gives the right to work 20 hours per week, with a limit of 1040 working hours within 52 weeks (Decree 394/1999, Art. 14(4)). Study permits may be converted into employment permits within the established quotas (Decree 394/1999, Art. 14(6)).

## 3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level

Until now EU measures have had difficulty penetrating into Italian law and most directives have been adopted with significant delay. Most recently, in February 2007, Directive 2003/109/EC on long-term residence and Directive 2003/86/EC on family reunification were transposed into Italian law. As can be seen above, the definition of who may benefit from family reunification has recently been expanded in Italian law and is actually broader than that stipulated in Directive 2003/86/EC.

## 4. Real Impact of Immigration Legislation on Immigration in Practice

It is obviously impossible to evaluate the impact the eventual new law on migration will have. However, it should be noted that the old law seems to have failed with regard to controlling and managing migration flows. This is clearly evidenced by the numbers of immigrants “regularized” during the great “regularizations”, which have occurred almost precisely every four years. The last one completed was in 2003, where more than 600 000 migrants were regularized.

The major innovations of the DDL have been considered as the (re-)introduction of the sponsor, the self-sponsoring possibility, the simplification of procedures, the closure of the Centres of Temporary Stay and the possibility of return and remittances. The probability of approving a law along the lines of the DDL remains to be determined. There are strong aversions among the opposition parties.

## 5. Cooperation with Third Countries

Article 1 of the DDL states that the sending of remittances should be made simpler. This should be done by creating measures that encourage the use of legal instruments for the transfer, as well as promoting agreements with associations and thus reducing the costs of the transfer. Further measures should be adopted regarding development cooperation aimed at giving value to and channelling the competences of migrants and their products

<sup>394</sup> As regard students (who are not included in the employment quotas), each University must autonomously, according to its financial means, fix the number of foreign students that can be enrolled (L 189/2002 Art. 39(2)).

towards the development of their countries of origin, but respecting the private character of such resources (DDL, Art. 1(2)). Lastly, the DDL provides that measures should be instituted favouring the use of competences acquired during the stay in Italy in the country of origin through activities of development cooperation and the encouragement of the migrant's return (temporary or permanent) to the country of origin (DDL, Art. 1(3)).

One successful project is MIDA – Migration for Development in Africa – a project carried out by the International Organization for Migration (IOM) and the Italian NGO CeSPI (Centro Studi Politiche Internazionali) and funded by the Italian Ministry of Foreign Affairs and the Cooperazione Italiana. The project aims at giving added value to the contributions of the diaspora of Sub-Saharan Africa to the socio-economical development of the countries of origin. This is done by the individualization of auto-sustainable methods of development and the active collaboration between the communities in countries of destination with those in the countries of origin. The project is running in Ghana and Senegal. The approach adopted by IOM and CeSPI within the framework of the Ghana/Senegal-MIDA project, in relation to the co-development component presented herein, expressly hinges on the involvement of Ghanaian and Senegalese immigrants for the formulation and implementation of project activities, a sign of their ability to create partnerships of a certain degree of importance with various stakeholders in their areas of residence and originally suited to making an active contribution to the sustainable management of this problem.

Another project run by IOM and CeSPI is “Development & Migration Circuits: research, networking and public initiatives to enhance synergies between migration management and development cooperation.” This project aims at producing strategic guidelines for the Italian Cooperation but also, in general, for all the subjects involved in that sector, indicating ground-breaking and promising ways and practices for integrating migration issues within cooperation policies. The project foresees three main strands. The first is the traditional partnership for co-development, which focuses on the role of the Italian Cooperation, including decentralized cooperation, especially in the Mediterranean context, for co-development promotion through migrant remittances. The second strand, migration and trans-national welfare, has as an objective to start an in-depth debate on innovative forms of cooperation aimed at dealing with the impact of the growing female emigration from a large number of transition and developing countries. Finally, the third strand of sustainable migration management in Africa will investigate transit migrations in Africa through the Sahara with the aim of devising effective intervention models, with a view to integrating rights and development promotion goals within European policy, which up until now has been too narrowly focused on the security dimension.

In general, in the event that third-country national workers return to their country of origin, they retain the pension and Social Security rights accrued, which they may benefit from regardless of whether an accord of reciprocity is in effect (L 189/2002, Art. 22(13)).

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## 1. General Immigration Policy and Trends

Immigration to Latvia is a relatively new issue on the country's political agenda. Recent foreign immigrants represent only 1.6 per cent of the total population in Latvia, partially as a result of restrictive migration policies that were adopted in the 1990s. However, according to official data, the number of foreign nationals residing in Latvia is increasing. In 2005, 2748 foreign nationals obtained residence permits, most from the Russian Federation, Ukraine, Belarus, and the United States of America. Citizens of CIS countries are arriving in Latvia due to the fact that Russian is a commonly spoken language in Latvia.

Since joining the EU, approximately 80 000 people have left Latvia for employment in other Western European States. The Bank of Latvia estimates that 200 000 economically active residents might leave the country gradually over the next ten years. In this case, the production output would fall by 15 per cent. Moreover, Latvia is experiencing a decline in population growth due to natural births.

It is believed that a long-term approach is needed with respect to immigration in Latvia, as well as more flexible policies. In this regard, a positive action is the policy paper "Strategy on migration policy in the context of employment", which was prepared by a special governmental working group. Although the document does not address all the problems, it envisages to decrease the cost of employing a foreign workforce by 60 per cent and to simplify bureaucratic procedures.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

The Immigration Law establishes a primary distinction between two types of permits: temporary residence permits, which are granted for different periods of time (from a maximum of six months to five years), and permanent residence permits. In addition to these two types of residence permits, the legislation recognizes the status of long term EC residents. This threefold permit system encompasses various types of immigration status: family reunification, study, training, research and work. Regarding immigration for work purposes, individuals may seek employment or self-employment. Guest workers are accepted into the Latvian labour force each year, however, there is no specific legislation regarding seasonal labour.

Non-citizens make up a special category of residents in Latvia, which are defined as persons who were USSR nationals, but who after 1991 did not qualify for Latvian nationality and did not acquire Russian or any other nationality (Former USSR Citizens Act, Art. 1). Non-citizens are given a passport that grants them the special status of belonging to the State, allowing them to benefit from the constitutional right to return.



## 2.2 Admission Rules – Visa Policy

### 2.2.1 Competent Authorities

Visas are issued by the Office of Citizenship and Migration Affairs (OCMA), the State Border Guard or the Consular Department.<sup>395</sup>

### 2.2.2 Procedural Steps – Conditions to be fulfilled

According to the Immigration Law, visas may be issued for the purposes of entry, transit or airport transit.

The time period of residence specified in a visa shall not exceed 90 days within a period of half a year from the date of first entry. Visas may be granted for a longer period of time if this complies with the norms of international law, is in the interests of the State, or if it is related to force majeure or reasons of a humanitarian nature (Immigration Law, Art. 11(2)).

An alien, in accordance with the procedures prescribed by law, may be granted a visa if he has: a valid travel document; the financial resources necessary to reside in the Republic of Latvia and return to his country of origin or exit to a third-country; and an invitation. The requirement of an invitation may be waived in cases where the individual, in accordance with procedures specified by the Cabinet, submits other documents substantiating the purpose of entry and residence.

The issue of a visa shall be refused if: the applicant has not submitted all the documents necessary for the request for a visa specified by the government or refuses to provide the required explanations related to the request for a visa and planned residence in the Republic of Latvia; the applicant has provided false information; the actual purpose of entry of the applicant does not conform to the purpose specified in the documents; the information provided by the applicant does not show evidence of an enduring connection with his country of domicile and there is reason to believe that the applicant presents a risk of illegal immigration; the applicant is unable to prove that he possesses the necessary financial resources to reside in the Republic of Latvia and after that to exit to another country in which he has the right to enter; the applicant is included in the list of those aliens for whom entry into the Republic of Latvia is prohibited; or the inviter cancels the invitation in writing.<sup>396</sup>

<sup>395</sup> Visas may be issued at the border control points specified by the government to foreign seafarers who – in conformity with the norms of international law – cross the State border of the Republic of Latvia and reside in the Republic of Latvia, or on a case-by-case basis with permission from the head of the OCMA, Chief of the State Border Guard or Director of Consular Department, or officials authorized by them. This may occur in cases when allowing entry complies with the norms of international law, is in the national interests of Latvia, or in cases related to force majeure or humanitarian concerns.

<sup>396</sup> In addition, a visa may be refused if the applicant has been found guilty by a court of committing a criminal offence (in the Republic of Latvia or outside it) for which a sentence of deprivation of liberty for a time period which is not less than one year is provided for by the laws of the Republic of Latvia. This condition shall not apply if the conviction has been extinguished or set aside in accordance with procedures prescribed by law, but with regard to criminal offences committed in foreign countries, no less than five years must have elapsed after the serving of the sentence of deprivation of liberty. A visa may also be

The decision with respect to the granting of a visa shall be made within seven working days from the submission of the application. If additional information is requested, the maximum duration for review of the application is 30 days (Immigration Law, Art. 15).

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

A decision regarding the refusal to issue a visa, or regarding the cancellation or revocation of a visa, shall not be subject to dispute or appeal. Moreover, the competent authorities are not subject to the obligation of stating the grounds of a decision to refuse a visa application (Immigration Law, Art. 17).

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

Temporary residence and permanent residence permits are issued, registered and cancelled by the OCMA (Immigration Law, Art. 3(22)).

#### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

A residence permit is required if a foreign national or a stateless person wishes to reside in the Republic of Latvia for more than 90 days within a six month period.

As a general rule, documents have to be submitted at a Consular department outside Latvia, although the Cabinet of Ministers allows certain groups of persons to submit documents to OCMA within Latvia (Immigration Law, Art. 32).<sup>397</sup>

To receive a residence permit in the Republic of Latvia, a foreign national has to present: a valid travel document recognized in the Republic of Latvia; an official application form for a residence permit; two photos; a radiologist's report on the results of an x-ray or fluoroscopic examination; a valid health insurance policy, which guarantees the covering of expenses related to health care in the Republic of Latvia, including the return of the alien to the country of origin in the case of serious illness or death; a certificate of his criminal record issued by an authority of the country of residence (if the applicant is 14

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refused if: the applicant is unable to prove that he is legally residing in the country in which he is present during the request for a visa; the applicant or other person, using threats or promises, has tried to influence an official's decision regarding the issuance of a visa; the applicant has specified a purpose of entry which is related to activities which may only be performed by a Latvian citizen or a non-citizen of Latvia, or for the performance of which in the Republic of Latvia a permit is necessary and the applicant has not received such a permit (although this condition shall not apply if, in accordance with regulatory enactments, it is possible to receive such a permit only by residing in the Republic of Latvia); the residence period has expired; it has been determined that the inviter is absent without information as to his whereabouts, has lost the capacity to act or has died; or competent authorities have supplied information which constitutes grounds for prohibiting an alien to enter and reside in the Republic of Latvia.

<sup>397</sup> These individuals include those who already possess residence permits and those who possess a valid visa or are not required to possess a visa and whose sponsor is: a teacher, scientist, project consultant for Latvia, coach of a Latvian team, sportsmen, student, parent of Latvian citizen and non-citizen, minor child, or an individual businessman, founder of an undertaking, self-employed person, expert in atomic energy or holds a specific position in a commercial entity (CM Reg. 813).

years of age or older); a document verifying that he has sufficient financial means;<sup>398</sup> a document verifying the anticipated place of residence in the Republic of Latvia; and a receipt confirming the application fee payment.<sup>399</sup> It can be noted that the three last conditions do not apply in the case of family reunification with an EU citizen.

Immigration Law provides 25 grounds on the basis of which a foreigner can be refused a residence permit. These notably include the following: when a foreigner has an illness which threatens public security and health, except in cases where the Ministry of Health confirms that he is applying in order to treat the respective illness in Latvia (Immigration Law, Art. 32(1)); a foreigner has been included in the Blacklist; he has been convicted in Latvia or in other State for a crime resulting in his imprisonment for three years; he has entered a foreign military service; he has no genuine link with the State of residence and he constitutes a risk of illegal immigration; or he is under the guardianship or custody of a person who is denied the right to enter Latvia.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

The individual in Latvia who invites a foreigner, or a foreigner who does not require an invitation to apply for the residence permit, has a right to appeal to the Head of the OCMA within 30 days from the day of the receipt of the refusal in cases where the residence permit has been rejected or cancelled (Immigration Law, Art. 40). An appeal of the decision of the Head of the OCMA for a refusal to issue or the cancellation of the residence permit may be made at the administrative court. An appeal does not grant the foreigner, whose permit of residence has been refused or cancelled, the right to stay in the Republic of Latvia.

<sup>398</sup> The required level of financial means varies according to the purpose for which temporary residence is requested. It is set at double the average monthly salary before taxes, as calculated annually by Statistical Bureau (average salary per month being net 177 LVL (253 EUR) for October 2006), if an alien applies for a residence permit not exceeding five years and is registered as a businessman, holds a specific position in a commercial entity or has been self-employed for a duration not exceeding one year (CSBa). The average monthly salary is required of a foreigner who is requesting a residence permit for any other reason related to employment that is not mentioned above, whilst the average subsistence minimum, as established by Statistical Bureau annually, is required in all other cases (120 LVL ( 171 EUR) for October 2006) (CSBb). In the case of minor children applying for a residence permit, the required monthly income is in amount of 60 per cent of the average subsistence minimum, as established by Statistical Bureau annually.

<sup>399</sup> There are different fees with respect to the application for a temporary residence permit for more than 90 days and the registration of such a permit (CM Reg. 84). If the duration of the review is less than thirty days, the fee for the residence permit is 70 LVL (100 EUR) and the fee for registration of the residence permit is 15 LVL (21 EUR). However, if the duration of review is within ten working days, the residence permit costs 120 LVL (171 EUR) and the registration fee is 20 LVL (29 EUR). Whilst for a decision within five working days, the residence permit costs 170 LVL (243 EUR) and the registration fee is 25 LVL (36 EUR). Special fees are set in cases where the applicant applies for the renewal of residence permit or if residence permit is lost. There are also a number of exemptions from fees provided in the Regulations, for instance, when it is in accordance with international agreements, parity or the principle of equality with a third-country, or as a matter of national interest.

## 2.3.2 Conditions according to Length of Stay

### 2.3.2.1 Temporary Residence

For a stay in Latvia of less than 90 days within six months, a visa is sufficient for entry by those for whom a visa is required. For a stay of longer duration a residence permit is required.

Several temporary residence permits are granted for a maximum of six months or one year, including most initial permits for the purpose of family reunification and studies. Knowledge of the Latvian language is not required for temporary residence, unless the purpose of residence is work in a profession for which language proficiency is a requirement for the issuance of a work permit. The decision regarding the granting of a temporary residence permit shall be made within 30 days from the day the application is submitted (Immigration Law, Art. 33(1)).

Other temporary permits are granted for a maximum period of four to five years. These permits include most renewed permits for the purpose of family reunification, employment and self employment, as well as scientific cooperation.

### 2.3.2.2 Permanent Residence

An EC long-term residence permit, renewable every five years, may be granted to a foreigner who has legally resided in Latvia for at least five years if he has: sufficient financial means; sufficient knowledge of the Latvian language; and a place of residence in Latvia (Law on EC Long-term Resident Status, Art. 3(2); Art. 4(1)).<sup>400</sup> The decision on the granting of an EC long-term residence permit shall be made within three months from the date the application is submitted.

A permanent national residence permit may be, and is mainly, granted in the two following cases: foreigners who have continuously resided in Latvia on the basis of a temporary residence permit for at least five years; and minor children of a Latvian citizen, Latvian non-citizen or foreigner holding a permanent residence permit. Regarding the former situation, foreigners applying for permanent residence in Latvia are required to obtain the necessary level of knowledge of the official language (CM Reg. 252)<sup>401</sup> and the five years period of residence does not take into account temporary residence permits granted for the purpose of studies (Immigration Law, Art. 24). There are, however, some exceptions to the five year requirement. For example, the Minister of the Interior may grant permanent residence if it corresponds with the interests of the State. Usually this is the case with regard to scientists, experts and doctors. The decision on the granting of a national permanent residence permit shall be made within 90 days from the submission of the application (Immigration Law, Art. 33(1)).

<sup>400</sup> The required five year period shall include period of studies, but not more than a half thereof (Law on EC Long-term Resident Status, Art. 3(2)).

<sup>401</sup> If this condition is not met, the foreigner has the right to continue to reside in Latvia with a temporary residence permit (Immigration Law, Art. 24(6)). Moreover, this requirement is waived if a person has certain mental disabilities.

## 2.3.3 Conditions for Specific Immigration Types

### 2.3.3.1 *Family Reunification*

Regarding family reunification, Latvian legislation establishes a twofold distinction between: firstly, family members of Latvian citizens, non-citizens of Latvia and foreigners holding a permanent residence permit; and secondly, family members of EU citizens. It is noticeable that third-country nationals holding a temporary residence permit are not granted the right to benefit from family reunification. Also, neither law nor practice provides for the right of unmarried partners to benefit from family reunification.

The first type of family reunification is organized by the Immigration Law. In this case, family members are granted different residence permits depending on the existing family ties with the sponsor. As a general rule, a temporary residence permit may be granted for up to six months (once in a calendar year) to a relative up to the third degree in direct ascent or third degree in the collateral line, or also affinity to the third degree (Immigration Law, Art. 23(1)1). Minor children of the sponsor are granted a permanent residence permit. The spouse of the sponsor is granted firstly a temporary residence permit for one year; then upon submission of a second application he or she is granted a temporary residence permit for four years; and then (after five years) a permanent residence permit (Immigration Law, Art. 25; Art. 26). There are no requirements or limitations as to the age of the spouse.<sup>402</sup> The unmarried minor child of the sponsor's spouse, as well as parents of the sponsor or his spouse who have reached the age at which they may receive pensions, are granted similar permits as the ones granted to the sponsor's spouse.

There are a number of documents to be submitted in addition to those usually required. A foreigner must submit documents testifying his relationship to relatives if he intends to reside with them and a marriage certificate, if applicable.

Family members of EU citizens are defined by CM Reg. 586 as: the spouse of an EU citizen; a relative in direct descent of the EU citizen or his spouse who has not reached the age of 21 or is a dependant of the EU citizen or his spouse; a relative in the direct ascending line of the EU citizen or his spouse and who is dependant on him or his spouse; or a person who is a dependant of an EU citizen or his spouse and who has shared a household with the EU citizen or the spouse in their previous country of domicile (CM Reg. 586, Art. 3). Family members are issued a temporary residence permit of up to five years depending on the time of residence of the EU citizen (CM Reg. 586, Art. 31). After five years of continuous legal residence, they are granted a permanent residence permit (CM Reg. 586, Art. 29).

<sup>402</sup> The only requirement is to provide information that the marriage has been duly registered. According to OCMA, there have been no applications from married couples where the spouse has been under 18 years of age. However, if this were to occur, they would refer to Latvian Civil Law, which establishes a minimum age to enter into marriage (Briede 2006).

### 2.3.3.2 Work

#### Employment

Foreign nationals require a work permit if they intend to enter the labour market by signing an employment contract (Immigration Law, Art. 9). Immigration policy for employment of foreign nationals is regulated by the Immigration Law and the subsequent Cabinet of Ministers regulations. Current legislation allows for approval of an offer of employment (or work-invitation) to a foreign national if a vacancy has been registered with the State Employment Agency and has not been filled within at least a month from the time of registration. An application for residence for the purpose of employment requires, in addition to the general criteria, an offer of employment certified by the State Employment Agency. The State Employment Agency can authorize or decline the offer of employment based on the current labour market conditions.

Employers must indicate in the application the reason for employing a foreigner, as well as stating that they have not received tax liabilities administered by the State Revenue Service (CM Reg. 44). If relevant, documents showing the professional qualifications of the invited employee shall be submitted. In addition, a copy of the contract, relevant documents for the identification of the employer and other documents shall be presented.

The system of work-invitations and work permits for foreigners has been simplified. The amendments in Regulation No. 44 on Work Permits for Foreigners allowed for a reduction of the number of documents required to be submitted when applying for a work permit, as well as extending the group of persons who are granted a work permit by OCMA without having a registered work invitation. Thus a one-stop agency principle was introduced with respect to legal residence and employment of foreign nationals in Latvia (Fridriksone 2006). Although the Ministry of Welfare acknowledges that priority lies in the utilization of the local workforce, in spheres where foreign experts have to be invited, this should be done in the most efficient way by reducing administrative obstacles to employers and simplifying procedures.

OCMA will issue a work permit for the duration of the visa or temporary residence permit. Temporary residence permits for the purpose of employment are delivered for a maximum period of five years. A work permit is delivered for a specific position in a specific company (CM Reg. 44, Art. 7).

A work permit is not required if a foreign national: has received a permanent residence permit; has received a temporary residence permit for a time period not exceeding one year and has arrived in Latvia on a student exchange programme, as an intern or trainee at an educational establishment of the Republic of Latvia or at a commercial company/business registered in the Commercial Register, or with some other assignment, and does not receive remuneration for the job done; arrives in the Republic of Latvia on a tour as a performer (musician, singer, dancer, actor, circus artist, etc.), an author or creator (composer, choreographer, artistic director, stage designer, etc.), or a member of a stage crew, and the anticipated length of stay in the Republic of Latvia does not exceed 14 days; arrives in the Republic of Latvia having received an invitation from an educational

or research organization or from an individual scientist in connection with scientific research or implementation of an educational programme, and the anticipated length of stay in the Republic of Latvia does not exceed 14 days; or has received the EC long term residence permit in the Republic of Latvia.

No official labour quotas have been introduced in Latvia. An exception applies to the information technology professionals who receive work permits authorizing employment in certain positions. These permits are free of charge and without certification of the employer's offer of employment, in conformity with the terms of a valid visa for a time period that does not exceed 90 days within six months counting from the day of entry. The foreigner must hold the appropriate professional designation or degree in the field of IT and have had relevant managerial experience (for the past three years). Up to 100 work permits a year can be issued for this purpose.

There are some requirements for the level of proficiency in the Latvian language, depending on the field of employment (CM Reg. 296). Employees of private enterprises and organizations and the self-employed have to speak the Latvian language if and when the areas of their business affect legitimate social aspects (public security, health, and morality, and health care, protection of consumer and employee rights, workplace security and public administration). In addition, employees of private enterprises and organizations and the self-employed involved in certain public activities must be proficient in the Latvian language to the extent necessary to fulfill their professional responsibilities. Third-country professionals and members of boards of foreign businesses working in Latvia either have to be proficient in the Latvian language to the extent necessary to fulfill their professional responsibilities, or to provide translation into the official language.

### Self-employment

The regulations define the procedure for those seeking residence as a self-employed person in the Republic of Latvia, as well as the state duty for processing a work permit application (CM Reg. 44). The labour market test is not conducted with regard to self-employed persons. A residence permit for the purpose of self-employment is issued for a maximum period of five years, with a possibility of receiving a permanent residence permit at the end of this five year period. The application for such a residence permit and the necessary work permit shall be processed within 30 days of the application's submission.

### Seasonal work

Special entry and residence regulations for seasonal labour force are not defined under Latvian legislation.

### **2.3.3.3 Studies and Training**

Amendments to the Law on Higher Education Institutions were adopted on 2 March 2006; they provide that foreigners can be admitted to universities and other institutions of higher education without holding a permanent residence permit. There is no quota set regarding



the admission of foreign students. If international agreements concluded by Latvia do not provide otherwise, an applicant can be admitted if: his documents proving secondary education correspond to Latvian standards and have been verified in accordance with the procedure for academic recognition of diplomas; his knowledge corresponds to the entry requirements of the respective educational institution; he has sufficient knowledge of the language of instruction; and his study fee shall be paid according to an agreement with the respective institution and is not below the expenses for the studies (the study fee for children of EU citizens who acquire education in Latvia is set and covered under the same conditions as for Latvian citizens).

A work-permit may be issued to full time students. However, such a permit can be issued only in cases where the employment contract does not exceed 20 hours per week.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Latvia has transposed the relevant EC Directives into its national legislation. Nevertheless, there are specific provisions of Council Directive 2003/86/EC on the right to family reunification that are not transposed into the law and thus depend on the discretion of OCMA. The relevant provisions of Immigration Law in relation to the applicant's criminal record are formulated strictly (Immigration Law, Art. 35). This does not seem to be in conformity with to Article 6(2) of the Directive.<sup>403</sup> Article 17 of the Directive is not transposed into the Immigration Law. While it is correct that OCMA and the Administrative Courts, when dealing with cases of expulsion, refer to relevant principles elaborated mostly by the ECHR, this does not seem sufficient for the correct transposition of the Directive. In addition, transposition of Article 15(3) of the Directive, regarding the independent status of family members from the sponsor, is unclear. Generally, the requirements are strict even in cases where the sponsor has been granted permanent residence or where he is a Latvian citizen or non-citizen. In cases of divorce before a spouse has been granted permanent residence, his or her temporary residence permit is withdrawn (Immigration Law, Art. 26). Therefore, a divorced spouse cannot reside in Latvia. Similar consequences are envisaged in cases of the death of the sponsor who is a permanent residence holder (Immigration Law, Art. 28). In those cases, if the spouse is residing in Latvia on the basis of temporary residence permit, he or she will not qualify for a new residence permit and an existing permit will not be registered. Only if there are minor children who are Latvian citizens or Latvian non-citizens can spouses apply for a permanent residence permit. Finally, rights of unmarried partners are not provided in national law because Latvia does not recognize rights of unregistered partners to enter and reside in the country.

On 22 June 2006, Parliament adopted the Law on EC Long-term Resident Status. The Law aims at transposition of Directive 2003/109/EC. The law sets the conditions for acquisition and loss of the status (Law on EC Long-Term Resident Status, Art. 2). Other issues connected with obligations of the second Member State to admit long-term

<sup>403</sup> OCMA can rely on Administrative Procedure Law when taking decisions and pay due regard to individual circumstances. However, it would be preferable to state specific criteria in the law.



residents are dealt with by the Immigration Law, which has also been slightly amended. The only integration requirement for acquisition of this status that is included in the Law is knowledge of the Latvian language.

To implement the norms set by Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service into the national legislative acts, amendments to the Cabinet of Ministers Regulations No. 44 have been passed (12 December 2006) and draft laws “Amendments to the Immigration law” and “Amendments to the Law on General Education” have been prepared.

To implement the norms set by Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research, into the national legislative acts, amendments to the Law on Science Activity (28 December 2006) have been passed.

Although non-citizens are not nationals of any other State, they will be treated as long-term resident third-country nationals in the EU framework in accordance with the provisions of Directive 2003/109/EC.<sup>404</sup> The approach has been criticized by experts and raises the question of to what extent Latvia can adhere to its international human rights obligations, especially those under the International Covenant on Civil and Political Rights (2003 Report on Fundamental Rights).

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

Currently, Latvia does not have a large number of immigrants. However, in the near future Latvia will have to rely on immigrants to sustain economic growth. On the other hand, there are other factors determining critical attitudes towards immigration, primarily concerns of social integration and security issues. Underlying tensions exist between “traditional” Europeans and immigrants over cultural differences, leading the government to encourage “cultural integration” rather than multiculturalism. Latvia will have to address concerns such as these on the part of their native citizens if they are to encourage the immigration that will keep the country economically viable. This may be even more complicated due to the fact that the government is already experiencing problems with regard to the implementation of the social integration programme for the Russian speaking population.

Considering the low compensation, employers in Latvia are at a disadvantage, compared to employers in other EU Member States, when it comes to attracting highly-skilled workers.

<sup>404</sup> The EU accession negotiations avoided the questions related to the status and rights of non-citizens. The Commission of the European Union, when interpreting the scope of the application of Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents stated that “The expression ‘third-country national’ covers ‘all persons who are not EU citizens in the sense of Article 17 paragraph 1 of the EC Treaty, that is to say those who do not have the nationality of an EU Member State....’ This indicates that persons with undetermined citizenship come within the scope of the directive. Letter of the Directorate-General Justice and Home Affairs, European Commission to the Permanent Delegation of Latvia in the institutions of EU, 23 June 2003. This places non-citizens in a disadvantaged situation relative to the status they have enjoyed so far.

Employers in Latvia have to pay third-country workers a certain level of compensation, a medium level salary, which they agree is a major limitation. However, the requirement is reasonable since Latvia is focused on attracting a qualified labour force. The Ministry of Welfare admits that simplifying the administrative procedure and reducing administrative costs is the route to be taken. As a result, it has made recommendations to the Work Group to design and implement a one stop agency principle, whereby the documents would be submitted to one institution (instead of the current two: the State Employment Agency and the Office of Citizenship and Migration Affairs) and one combined work/residence permit would be issued to a foreign national.

Employers have an increasing interest in hiring workers from Belarus, Russia and Ukraine, especially in construction as well as in other sectors requiring low-skilled workforce, due to the fact that most Latvian residents exercising free movement rights are from these sectors.<sup>405</sup> Other reasons are that the number of students is increasing and employers are not paying adequate salaries, or opt for ‘envelope wages’ to avoid taxes. The official data on immigration from Third States remain low because employers avoid officially recruiting a foreign workforce.<sup>406</sup> Thus the number of hidden immigrants is rising, representing an estimated 14 to 20 percent of Latvia’s GDP, although the exact figures are not available.<sup>407</sup> There are two main reasons for this: a strict immigration policy and unattractive social assistance provision for third-country nationals.

On 18 January 2007, the policy paper “Strategy on migration policy in the context of employment” was presented in the meeting of the Secretaries of State. It envisages to decrease by 60 per cent the cost of employing a foreign workforce and to simplify bureaucratic procedures. This would ease the influx of thousands of workers primarily coming from Russia, Ukraine, Belarus and Moldova. However, the Latvian Employers Confederation has argued that the proposed Strategy will not make it easier to attract the workforce from third countries and will not facilitate sustainable economic development in the future.

According to OCMA, there are constant exceptions made to the Immigration Law in order to provide residence permits to family members. However, if there are threats to public security, refusal to grant a residence permit is automatic because the interests of society prevail. There are no formal instructions with regard to this procedure because the practice has developed over the years, but OCMA has no internal need for such instructions (Briede 2006).

There are a number of conditions that make studying in Latvia unattractive for foreign students. Firstly, they must comply with admission requirements, including command of the Latvian language in accordance with the requirements of the centralized language

<sup>405</sup> Estimates are that about 75 000 – 90 000 Latvian residents work in low-skilled sectors abroad.

<sup>406</sup> The process is expensive: the minimum monthly salary is 249 LVL (354 EUR), with an additional fee of 35 LVL (50 EUR) for every guest worker to be paid monthly.

<sup>407</sup> Latvia’s Central Statistics Bureau says that shadow economy represents 16 per cent of Latvia’s GDP, while the Ministry of Finance estimates the level of hidden employment is around 14 to 20 per cent and the State Labour Inspectorate states it is 18 to 20 percent.

test that is undertaken upon graduation from secondary school. Although certain subjects can be taught in other languages, there are very few courses offered in foreign languages.

### **5. Cooperation with Third Countries**

The University of Latvia has 49 bilateral cooperation agreements with universities in 22 other countries.

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### **Persons Interviewed**

Ilze Briede, Head of Migration Policy Division, OCMA, 1 December 2006 (Briede 2006).



# Lithuania

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## 1. General Immigration Policy and Trends

The main developments in Lithuania's recent history that have had an impact on its migration policy are its gaining of independence from the Soviet Union and its accession to the European Union. As an EU Member State with an external border, Lithuania's main effort is to secure its border whilst still allowing the Russian region of Kaliningrad to have access to the mainland of Russia via its Lithuanian territory.

Since the collapse of the USSR, immigration into Lithuania by citizens of the former USSR has gradually tapered off, from approximately 14 000 in 1990 to 2536 in 1997. In the past five years, the number of newcomers to Lithuania in total has averaged approximately 5500 each year. However, the number of people leaving Lithuania was high after the collapse of the USSR. It is estimated that 300 000 citizens left Lithuania between 1990 and 2005, which constitutes a high negative outflow of population (Demographic Yearbook 2005, p. 172).

The first major legislation regulating the legal status of foreigners in the independent Lithuania was the Law on the Legal Status of Aliens from 1991. This Law regulated the arrival, departure and residence of third-country nationals in the Republic of Lithuania. The Law was of significant importance for the newly independent State as it provided, for the first time, definitions for words such as "foreigner", "stateless person", "residence permit in Lithuania" and "visa". The Law also specified cases where foreigners could be detained in the Republic of Lithuania, basic rules on work undertaken by foreigners and grounds for deportation. The Law was in force until July 1999. The Immigration Law from 1993 provided that the Parliament, following a proposal from the Government, had to approve an immigration quota for each year, as well as the categories of foreigners that had a right to immigrate to Lithuania.

A completely new approach to migration issues was set up in the Law on the Legal Status of Foreigners, which was adopted in December 1998 and came into force in July 1999. This Law abolished the immigration quota and provided rules for the arrival and departure of foreigners that were common to all third-country nationals. Nevertheless, following the harmonization of Lithuanian legislation with the EU legal acts in the field of migration, a number of shortcomings and gaps were identified with respect to this Law. Consequently, a working group was established in the Ministry of Interior that, together with the assistance of EU and international organizations' experts, drafted the new Law on the Legal Status of Aliens (Law on Aliens). This Law was adopted in April 2004.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

The main immigration categories covered by Lithuanian legislation are: family reunification, students and trainees (including internship programmes, in-service training and vocational training), employment and other commercial activities.



## 2.2 Admission Rules – Visa Policy

### 2.2.1 Competent Authorities

For the issuance of a visa, a third-country national must submit the relevant documents to the Lithuanian diplomatic mission or consular post.<sup>408</sup>

The following institutions of the Republic of Lithuania are involved in the issuance or refusal of visas: the Ministry of Foreign Affairs of the Republic of Lithuania, regarding short-stay visas; diplomatic missions and consular posts of the Republic of Lithuania abroad, regarding all types of visas; the State Border Protection Service, regarding short-stay and transit visas, as well as general entry of foreigners (except in cases where a foreigner applies for asylum); and the Migration Department, regarding short-stay and long-stay visas (Law on Aliens, Art. 21). The Minister of the Interior, in conjunction with the Minister of Foreign Affairs, sets the procedures regulating: the filing of documents in support of a visa application; the issuance of a visa at the border control posts; the extension of the period of stay while in possession of a visa; and the cancellation of a visa.

### 2.2.2 Procedural Steps – Conditions to be fulfilled

According to Articles 17 and 18 of the Law on Aliens, a visa may be issued if the applicant: possesses a valid travel document; produces such documents as are necessary to make clear the purpose and conditions of the visit; provides proof of sufficient funds to live in Lithuania and available means of departure from Lithuania and a list of other States visited; has not already been identified as someone who should be refused entry; poses no threat to public security, public policy or public health; possesses valid health insurance; and has the right to return to his country of origin, residence or nationality, or has the right to proceed to another country.

Besides the failure to meet one of these criteria, a visa may be refused if: the applicant has misrepresented information; there are grounds to believe that the applicant will engage in unlawful activities or has already committed a crime against humanity, a war crime or genocide; or the applicant has humiliated a visa-issuing official (Law on Aliens, Art. 18).

Regarding the different types of visas, there are airport transit visas, transit visas, short-stay visas and long-stay visas. A short-stay visa entitles a third-country national to enter the Republic of Lithuania for a stay that does not exceed three months within a six-month period, calculated from the date of entry into Lithuania. This type of visa may be issued for the purpose of tourism, family or other personal visits, professional interests or any other short stay, and can be for single-entry or multiple-entry for a period of one year. Upon agreement with the Minister of Foreign Affairs of the Republic of Lithuania, a multiple-entry visa may be issued for a period exceeding one year, but not for longer than five years (Law on Aliens, Art. 15). A long-stay visa entitles a foreigner to enter

<sup>408</sup> By way of exception, in cases specified by the Minister of the Interior, in conjunction with the Minister of Foreign Affairs, visas can be issued at the border control posts if the foreigner could not apply for a visa while abroad and provides documents specifying the unforeseen but necessary reasons for entering Lithuania.

the Republic of Lithuania for a stay exceeding three months. Such visas may be single-entry (issued to a foreigner who has been granted a permit of temporary or permanent residence in the Republic of Lithuania) or multiple-entry (issued to a foreigner who enters the Republic of Lithuania for an intended stay in the Republic of Lithuania for a long period, for example, on a regular basis to work or to engage in any other lawful activity) (Law on Aliens, Art. 16).

A multiple long-term visa D may be issued to a foreigner who has applied for a temporary residence permit and has already been issued a work permit if his profession is included in the list of the most demanding professions in the Lithuanian market adopted by the Ministry of Social Security and Labour.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

Foreigners can judicially appeal the rejection of a visa application, as well as refusals of entry, within 14 days of the rejection or refusal, according to the procedure established by Law (Law on Aliens, Art. 8; Art. 138). Administrative review of the decisions is not foreseen.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

The Migration Department under the Ministry of Interior is responsible for the issuance of residence permits and is centrally organized. Nevertheless, territorial migration offices under the supervision of the Police Department under the Ministry of Interior fulfil the tasks related to migration issues. Other important institutions involved in migration management in the Republic of Lithuania are: (1) The Ministry of Interior, including the Migration Department, the State Border Guard Service (which participates in the implementation of state control over migration) and the Police Department (which exercises control over and coordinates activities of subordinate police institutions, providing guidance and instructions to them); (2) the Ministry of Social Security and Labour and its institutions (in particular the Lithuanian Labour Exchange), which is responsible for the issuance of work permits and regulating issues related to migration for the purpose of work as well as social issues related to the residence of foreigners in Lithuania; (3) the Ministry of Foreign Affairs (Consular Department and Embassies or consular representations abroad), which is responsible for the collection of documents for the issuance of residence permits in the Republic of Lithuania; and (4) the Ministry of Education, which is responsible for the regulation of issues related to foreigners studying in Lithuania.

#### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

For the issuance of a residence permit, the first step is to submit an application, together with all the necessary certifying documents, to a Lithuanian Embassies or consular office abroad, or at the migration services within the territory of Lithuania in the case of in-

country applications. After an initial check, these documents are sent to the Migration Department for assessment. The decision (required by law to be made within six months) is then sent back to the institution that received the application. If the foreigner is still abroad (in the case of initial applications for a residence permit) and the decision is in favour of the applicant, then that individual is issued a long-term visa D in order to enter Lithuania.

The fact of submission of the application does not entitle that individual to stay in Lithuania while the decision is pending (Law on Aliens, Art. 28), though exceptions may be made by the Minister of the Interior to allow an immigrant to stay until the decision is made (depending on the evidence they provide with regard to such issues as whether they are legally staying in Lithuania, whether they are obliged to have a Lithuanian visa, if they cannot leave due to health reasons, if they are minors or if they cannot be expelled from Lithuania) (Temporary Residence Permits Order, Art. 5).

After the individual's arrival or in the case of prolongation of a residence permit, the foreigner must visit the territorial migration service as indicated in the decision. The decision is valid for six months, during which time the foreigner must execute the right to be issued a residence permit.

If the foreigner was refused the issuance or replacement of a residence permit, he is nevertheless allowed to submit a new application after the lapse of at least one year and after the reasons for which the issue or replacement of the residence permit was refused have ceased to exist (Law on Aliens, Art. 35(2)).

Documents produced by a third-country national that were issued by foreign institutions must be legalized or approved with the Apostille stamp. If a foreigner does not submit the documents stipulated in the relevant legislation as required to prove the right to be granted a residence permit, the substance of the application is not examined (Temporary Residence Permits Order, Art. 12). The application must be submitted personally, with the exception of applicants under 18 years of age (where the application should be submitted by the applicant's parents or other legal representative). The application may also be submitted by representatives of the foreigner if such a representative provides documentation establishing the legal representation (Temporary Residence Permits Order, Art. 7).

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

If the Migration Department takes the decision not to grant a residence permit, the foreigner may appeal this decision to the Vilnius District Administrative Court within 14 days of the notification of the decision. According to the law, the court must examine the appeal within two months from the date the decision on the merits was made. An appeal to the Supreme Administrative Court against this first appellate decision is possible within 14 days from the day of notification of that decision. An appeal suspends the execution of the decision revoking the residence permit.

Administrative review of the decisions is not foreseen.

## 2.3.2 Conditions according to Length of Stay

### 2.3.2.1 Temporary Residence

A temporary residence permit may be issued for a period of six months to five years, according to the different immigration statuses (Law on Aliens, Art. 28). Since no general provisions on short stay appear to exist, the specific provisions for the different immigration categories are provided in section 2.3.3 below.

### 2.3.2.2 Permanent Residence

Holders of a temporary residence permit continuously residing in Lithuania for the past five years are issued a permanent residence permit upon application. The Law indicates that the Minister of the Interior establishes the procedure for the calculation of the said continuous period of five years.<sup>409</sup> In addition, such foreigners must pass a language examination and a basic examination on the Constitution of the Republic of Lithuania in accordance with the procedure established by law (Integration Resolution). A permanent residence permit grants third-country nationals the right to reside in Lithuania for a period of unlimited duration. The document certifying this right is valid for five years and must be renewed periodically every five years (with no additional decision being required) (Law on Aliens, Art. 2(15)).

## 2.3.3 Conditions for Specific Immigration Types

### 2.3.3.1 Family Reunification

A temporary residence permit may be issued to an applicant for the purpose of family reunification if: (1) the applicant's parents (or one of them) are Lithuanian citizens and are residing in the Republic of Lithuania; (2) the applicant is a minor and his parents (or one of them) or the spouse of one of them, who is responsible for the minor, are in possession of a residence permit and are residing in the Republic of Lithuania; (3) the applicant's child is a Lithuanian citizen and is residing in the Republic of Lithuania; (4) the applicant's child was granted refugee status in the Republic of Lithuania and has been issued a permanent residence permit; (5) the applicant's spouse or registered partner is a Lithuanian citizen or a third-country national in possession of a residence permit and is residing in the Republic of Lithuania; (6) the applicant is a first degree relative in the direct ascending line of a third-country national in possession of a residence permit in the Republic of Lithuania; or (7) the applicant's parents, who are incapable of working due to pensionable age or disability, are in possession of a permanent residence permit and are residing in the Republic of Lithuania. Aliens granted subsidiary or temporary protection in the Republic of Lithuania do not have a right to family reunification (Law on Aliens, Art. 43(8)).

Permanent residence status is granted to foreigners who are family members of a Lithuanian citizen and arrive in Lithuania together with the Lithuanian citizen in order to reside there. In addition, children under 18 years of age who were born in Lithuania,

<sup>409</sup> At the point of drafting this study, such legal acts had not yet been adopted.

or abroad if their parents or one of them are citizens of Lithuania or holding a permanent residence permit, may also be granted permanent residence status (Law on Aliens, Art. 53(1)).

The Law on Aliens draws a distinction between family members of EU citizens who are third-country nationals, on the one hand, and family members of Lithuanian citizens who are third countries nationals on the other. The former category may apply for an EC long-term residence permit, which places them in a more favourable position for two reasons: firstly, EC long-term residence permits must be issued within the shorter period of time (one month; in comparison, for other cases residence permit must be issued within six months); and secondly, third-country nationals who are family members of EU citizens can apply for the EC long-term residence permit within the Republic of Lithuania (other foreigners, including family members of Lithuanian nationals, can only apply at a Lithuanian embassy or consular office abroad). Family members of Lithuanian nationals can obtain an EC long-term residence permit only if they arrive together with the Lithuanian national or if they are reunited with the Lithuanian national from another EU Member State on the grounds of family reunification.

Foreigners applying for a residence permit on the grounds of family reunification must, along with the documents proving their family ties, also present an invitation issued by the family member who resides in Lithuania. The invitation must be approved by the migration service of the territory where the inviting person resides before it is sent to the applicant in order for him to present it to the consular section together with the other documents.

In some cases of family reunification,<sup>410</sup> the Law on Aliens requires the foreigners who invite family members to reside in Lithuania for a period of two or more years are in possession of a temporary residence permit valid for at least one year and have a well-founded prospect of being granted a permanent residence permit (such requirements are not applied in the case of family reunification with a foreigner who has been granted refugee status in Lithuania).

In the case of family reunification of spouses or registered partners, family reunification is only permitted where these persons are not younger than 21 years of age (Law on Aliens, Art. 43(7)).

The Law also provides some exemptions that may facilitate family reunification of: foreign children with parents who are residing in Lithuania; spouses or registered partners; foreigners with first degree relatives in the direct ascending line who are residing in Lithuania; and foreigners with parents who are incapable of working due to disability or being of a pensionable age. If the sponsor issues a statement to undertake payment of

<sup>410</sup> These requirements apply in the case of family reunification with: the parents of a minor foreigner, or one of them, or the spouse of one of them, who is responsible for the minor and is in possession of a residence permit whilst residing in the Republic of Lithuania; the foreigner's spouse or registered partner who is a Lithuanian citizen, or a foreigner in possession of a residence permit and who is residing in the Republic of Lithuania; a foreigner who is a first degree relative in the direct ascending line of a foreigner in possession of residence permit in the Republic of Lithuania.

expenditures in the case of the foreigner's sickness and to ensure other conditions, such applicants may be relieved from the obligations of: possessing valid health insurance; possessing means of subsistence for the stay in the Republic of Lithuania; and having accommodation in the Republic of Lithuania (Law on Aliens, Art. 43(3)).

### 2.3.3.2 Work

#### *Employment*

A temporary residence permit may be issued to a third-country national for the purpose of employment if he is in possession of a work permit or, according to the law, has been relieved from the obligation to obtain a work permit and intends to work in Lithuania.

Applications for work permits and residence permits may be examined at the same time. A residence permit on this ground is issued for a period of one year (Law on Aliens, Art. 44). Foreigners cannot undertake any work other than that indicated in their work permit (Work Permit Order, Art. 31).

In order to obtain a work permit, foreigners must provide an official letter from an employer (the procedure of providing such a letter is similar to the procedure established for the invitation of family members). The Law on Aliens provides that the work permit is issued to a third-country national only if there are no specialists already available in Lithuania whose qualifications would meet the requirements of the employer. The employer must submit the application for a work permit, along with any other relevant documents, to the territorial Labour Exchange, which in turn submits it to the Lithuanian Labour Exchange, together with its conclusion on the granting of a work permit in this case. The decision on whether to grant a work permit shall be taken within two months (Law on Aliens, Art. 60).

A third-country national is exempted from the obligation to obtain a work permit if he holds a permanent residence permit or if he holds a temporary residence permit issued on one of the following grounds: retainment of the right to citizenship of the Republic of Lithuania; being of a person of Lithuanian descent; for the purpose of family reunification; being under the guardianship or curatorship of a citizen of the Republic of Lithuania; being appointed as guardian or curator of a person who is a citizen of the Republic of Lithuania; or being granted subsidiary or temporary protection in the Republic of Lithuania (Law on Aliens, Art. 58). Moreover, Lithuanian legislation provides exemptions from work permits for several other categories of foreigners.<sup>411</sup>

<sup>411</sup> A foreigner does not have to obtain a work permit if he: (1) legally works in another EU Member State, is sent by this EU Member State to work in Lithuania temporarily and has an E 101 certificate issued by the competent authorities of this Member State; (2) works in the enterprise of, or provides services to, a state that has concluded a bilateral agreement with the EU or participates in multilateral agreements in the framework of the WTO regulating provision of services by natural persons, if these agreements apply to Lithuania and if the foreigner has concluded an agreement to provide services in Lithuania; (3) intends to work in order to implement a joint governmental programme with a foreign state; (4) is a professional athlete or trainer, provided that he has concluded an agreement of sport activities (contract) according to Art. 30 of the Law on physical culture and sport of the Republic of Lithuania; (5) arrives in Lithuania to implement scientific work or is a crew member of a ship navigating under the Lithuanian flag; (6) arrives to work as an intern or trainee not longer than three months within one year; (7) is a member of the traditional Lithuanian religious community or other religious communities recognized by Lithuania; (8) is a long-term

The Ministry of Social Security and Labour annually adopts a list of the professions most in demand. Taking into account the situation in the Lithuanian labour market, the decision was made to issue members of these professions multiple long-term visa D during the procedure of issuing residence permits, under the condition that a work permit has already been issued. In such case, a foreigner must apply for a residence permit according to the common procedure, but must also provide an official application from his future employer in order to be issued a visa D.

### Self employment

According to Article 45(1) of the Law on Aliens, a foreigner has a right to reside in Lithuania on the ground of engagement of lawful activities (including self-employment) if he: registers an enterprise, agency or organization in the Republic of Lithuania as the owner, or co-owner who owns at least ten per cent of the statutory capital or voting rights, and his stay in the Republic of Lithuania is necessary in seeking to achieve the aims of the enterprise, agency, organization and carrying out other activities; is the head or the authorized representative of the enterprise, agency or organization registered in the Republic of Lithuania, if the principal goal of his residence is to work in the enterprise, agency or organization; or intends to engage in lawful activities in the Republic of Lithuania, for which no work permit or permit to engage in certain activities is required.<sup>412</sup>

Such foreigners are not obliged to obtain work permits. Together with a residence permit application, they must provide documents certifying that they own an enterprise in Lithuania, that they are the head or authorized representative of an enterprise or that they intend to participate in lawful activities with respect to which a work permit is not required. A residence permit on this ground may be issued for a period of one year (Law on Aliens, Art. 45).

### Seasonal work

The Law on Aliens does not envisage a special status applicable to seasonal workers. Nevertheless, according to the Work Permit Order, a temporary work permit can be issued for six months per year under the general employment requirements.

#### **2.3.3.3 Studies and Training**

Resident status can be granted if a third-country national is already enrolled as a student at a Lithuanian educational institution or has been invited to take part in an internship programme. A residence permit on this basis may be issued for the duration of the studies or training, but for not longer than one year, with the possibility of renewal if the foreigner still meets the necessary conditions (Law on Aliens, Art. 46).

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resident in an EU Member State, has worked in Lithuania with a work permit for one year and intends to work in Lithuania again; or (9) is a representative of a charity organization of a foreign state, arriving in Lithuania for charity purposes, or participates in voluntary service programmes supported by the EU and EU Member States.

<sup>412</sup> Neither the Law nor its accompanying documents provide an interpretation for the term “lawful activity” under this provision.

A foreigner who intends to study in Lithuania or to participate in in-service or vocational training must provide all of the documents for a visa listed in section 2.2.2 above. In addition, the foreigner must provide documents testifying that he is enrolled to study at the school (or participate in in-service or vocational training) and an official letter from the organization to which he is admitted. The student must leave Lithuania when he completes or ceases his studies.

Such students can work under the circumstances stipulated in the Law, namely: they must obtain a work permit; they can only work after the first year of studies; they can only work at times when they do not have studies; and they can work not more than 20 hours per week.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

In general, Lithuanian laws in the field of migration are in line with EU norms and sometimes even give more favourable treatment to migrants than the minimum standards established by the EU. Nevertheless, the following are matters that could be improved upon.

Concerning migration for the purpose of work, Lithuania should consider the possibility of issuing residence permits for potential job seekers according to their qualification and Lithuanian labour exchange realities, thus bringing Lithuanian procedures in line with the International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families. In addition, one single administrative procedure for work permits and residence permits should be established. The Law on Aliens already allows for work permits and residence permits to be submitted at the same time, but they have their own review procedures by different institutions under different time requirements, all of which should be simplified. The granting of work permits for certain needed professions and for seasonal workers should also be streamlined.

In addition, the provisions on family reunification of Lithuanian citizens with family members – third-country nationals – should be in conformity with the respective provisions on family reunification of EU citizens, as the current state of the law is discriminatory against Lithuanian nationals and their family members. Finally, the requirement to have a well-founded prospect of being granted a permanent residence permit is not defined by the Law, and therefore lacks needed transparency.

### **4. Real Impact of Immigration Legislation on Immigration in Practice**

There is an imbalance between the involvement of national and regional administrative authorities: decisions regarding residence permit applications are made by the Migration Department and decisions concerning work permit applications are made by the Lithuanian Labour Exchange despite the fact that migration depends on regional conditions. The Lithuanian Labour Exchange reports that the bulk of the work permits it grants are issued in Lithuania's largest cities and in regions with a solid industrial base. Not surprisingly, the majority of foreigners are working in the industrial (55 per



cent), transport (14 per cent), service (14 per cent) and construction (14 per cent) fields. The most popular professions and qualifications of foreigners granted work permits were ship-hull assemblers, international transportation drivers, manual electric welders, cooks (China, Turkey, Armenia, and the Philippines), chemical engineers, oil refinery and aviation personnel and bricklayers – professions that are in high demand in the Lithuanian labour market.

Another interesting impact of Lithuania's laws is seen in the high number of temporary workers. In 2005, 768 foreigners worked under a working contract (55 per cent) and 621 foreigners (45 per cent) were temporarily sent to work. One of the main reasons for such a high number of temporarily sent workers is the fact that the procedure for the issuance of such work permits is shorter – one month from receiving the relevant documents in the territorial labour exchange.

## **5. Cooperation with Third Countries**

At present, Lithuania does not implement any return programme or similar cooperation programmes with third countries. Nonetheless, some agreements with third countries that partly cover social protection of migrants from respective third-country issues are in force, including: with Byelorussia and Ukraine, on social security; with the Russian Federation, on pensions and provision of social guarantees to former officers of military services; with Canada, on social protection; and with the United States of America, on the transfer of social pensions. There are two other agreements concluded with the Russian Federation (1999) and Ukraine (1995) concerning the temporary employment of citizens of the contracting States. According to these agreements, a quota of migrant workers is to be established every year. As a result of this cooperation, the biggest working migration in 2005 was from Ukraine (31 per cent), Byelorussia (29 per cent) and Russia (12 per cent), with Romania (11 per cent) and China (7 per cent) being the next largest suppliers of migrant workers. These numbers indicate Lithuania's extensive cooperation with third countries, especially in the industrial fields. In keeping with these figures, most agreements are concluded in the field of construction and ship construction (navigation) with Russia, Ukraine and Byelorussia.

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## 1. General Immigration Policy and Trends

Since the development of the iron and mining industries in the middle of the 19<sup>th</sup> Century, Luxembourg's economic growth has predominantly relied upon immigration. At the end of the 19<sup>th</sup> Century, workers from Germany and Italy were recruited on a temporary basis to meet the demand for labour in the iron industry. At the beginning of the 20<sup>th</sup> century, the implicit governmental policy was to primarily accept Catholic, European migrant workers from Italy and Portugal. Then, from 1960s onward, the government endorsed a policy of family-based immigration in response to a booming economy and a declining natural birth rate; however, the policy was not based on national legislation. Rather, the right to bring immediate family members was stated in bilateral agreements signed with primary countries of origin for immigrants entering Luxembourg, such as Portugal.

Luxembourg's present legislation has changed little since the adoption of the main immigration law in March 1972. This law was originally aimed at workers from outside of the European Economic Community (EEC), in other words, nationals from countries other than the six founding Member States (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) of what subsequently became the EU. This meant that the law primarily affected the country's numerous workers from Portugal, which only joined the EU in 1986. Today, now that Portugal is an EU Member State and most foreign workers (particularly highly skilled workers) come from neighbouring countries, the 1972 law only applies to a small number of foreign workers. Moreover, the 1972 law is particularly inconsistent as it does not provide a legal regime for family reunification and the pursuit of study by foreigners within Luxembourg.

This legal framework is currently under review and major changes are likely to be adopted in the coming months. On 27 June 2007, a first draft of a new immigration law was presented by the government. The main provisions of the draft immigration law will be discussed in the relevant sections of this report.

In 2006, approximately 181 962 foreigners lived in Luxembourg, representing 39.6 per cent of the country's total population, with approximately 13 per cent not coming from the European Union. The countries of origin of these third-country nationals include the former Yugoslavia, the United States of America and the former Portuguese colony Cape Verde.

Unlike other EU Member States, Luxembourg is characterized by low unemployment; therefore the economic integration of new immigrants has generally not been a political issue. However, the arrival of a significant number of asylum seekers in the late 1990s has changed this view. In the near future, Luxembourg will face multiple challenges in the fields of immigration and integration.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Current immigration legislation does not distinguish between different types of immigration status. It is governed by incomplete and basic provisions that leave substantial

discretionary power to the administrative authorities.

The draft immigration law draws a primary distinction between temporary residence and permanent residence. Regarding the former situation, a unique residence title would be created indicating the type of status granted (for example, work, self-employment, studies or family reunification).

## **2.2 Admission Rules – Visa Policy**

### **2.2.1 Competent Authorities**

Visas are issued by the diplomatic missions and consulates of Luxembourg in the country of residence of the applicant. Visas may also be issued by the diplomatic missions or consulates of Belgium and the Netherlands.

### **2.2.2 Procedural Steps – Conditions to be fulfilled**

A main distinction can be drawn between short-stay visas and long-stay visas. The former category can be referred to as Schengen visas, which are granted for stays of up to 90 days. Long-stay or resident visas are required for stays of longer than 90 days. In other words, immigration to Luxembourg is, in principle, dependent upon the granting of a long-stay visa.

In order to be granted a long-stay visa, the applicant shall present to the appropriate diplomatic mission or consulate the following documents: a valid passport; birth certificate; medical certificate; complete application form; passport photographs; criminal record; proof of health insurance; evidence of sufficient financial resources (when employment is not foreseen); and a work permit, evidence of admission to an educational institution or a legalized copy of a marriage certificate, if applicable.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

Under Luxembourg's current legislation, public authorities have substantial discretionary powers, which are generally not submitted to jurisdictional control. However, decisions with regard to family reunification matters may be appealed before the administrative tribunal.

The draft immigration law foresees the possibility of appeal before an administrative tribunal, following the ordinary contentious procedure. Decisions made by the administrative tribunal would then be subject to an appeal before the Administrative Court.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### **2.3.1.1 Competent Authorities**

Residence permits are granted by the Ministry of Foreign Affairs and Immigration and, more precisely, it's Direction of Immigration. Work permits are granted by the Ministry

of Foreign Affairs and Immigration following the issuance of an opinion by a Special Opinion Commission (which includes representatives from different ministries) and the issuance of an opinion by the Department of Employment (Work Regulations 1972, Art. 8).

### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

According to Article 2 of the Immigration Law of 1972, entry and stay of a foreigner in Luxembourg may be refused under three circumstances: if the applicant lacks identity documents and/or a visa (if one is required); if the applicant poses a threat to public order, tranquillity, security or health; or if the applicant does not have sufficient financial means to support his travel expenses and the cost of his stay. Moreover, residence in Luxembourg may be refused on the following grounds: intention to exercise a professional activity without being authorized to do so; existence of proceedings or a conviction for a severe criminal offence; provision of false information; refusal to submit to a medical test; or the existence of a removal order against the applicant.

This minimal legal framework serves as the basis for each ministerial decision regarding the stay and residence of foreigners in Luxembourg. When none of the exclusion criteria are met, residence may be granted. In other words, public authorities have significant liberty in their decisions, which makes the process considerably arbitrary.

The draft immigration law envisages the creation of a temporary “unique residence title” and a long-term resident permit. The requirements foreseen for both permits will be discussed under sections 2.3.2.1 and 2.3.2.2.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

Under current legislation in Luxembourg, public authorities have substantial discretionary powers that are generally not subject to jurisdictional control. However, decisions with regard to family reunification matters may be appealed before the administrative tribunal (Kollweler 2005, p. 6).

The draft immigration law foresees the possibility of an appeal before an administrative tribunal, following the ordinary contentious procedure. Decisions taken by the administrative tribunal would then be appealable before the Administrative Court.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

Under current legislation in Luxembourg, public authorities have substantial discretionary powers that are generally not subject to jurisdictional control. However, decisions with regard to family reunification matters may be appealed before the administrative tribunal (Kollweler 2005, p. 6).

The draft immigration law foresees the possibility of an appeal before an administrative tribunal, following the ordinary contentious procedure. Decisions taken by the administrative tribunal would then be appealable before the Administrative Court.

### **2.3.2.2 Permanent Residence**

The Immigration Law of 1972 does not explicitly provide the possibility of a permanent resident status for foreigners.

The draft immigration law foresees the transposition of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. The following conditions would be required in order to grant an EU long-term resident permit: continuous stay in Luxembourg for at least five years; legal, stable and sufficient financial means; appropriate accommodation; health insurance; and absence of posing a threat to public order and security. Moreover, knowledge of one of the three official languages might be required (ASTI Opinion 2007, p.6). Such a status would be permanent, while the permit would be valid for five years with a right to renewal.

### **2.3.3 Conditions for Specific Immigration Types**

#### **2.3.3.1 Family Reunification**

Luxembourg's current legislation does not include provisions regarding family reunification. Consequently, the legal basis for family reunification is to be found in Article 8 of the European Convention for Human Rights. This unusual situation may be explained by the fact that when the Immigration Law of 1972 was passed, bilateral agreements on family reunification had already been concluded with primary countries of origin for immigrants entering Luxembourg, such as Portugal and Yugoslavia (Kollweler 2005, p. 5).

The administrative authorities usually require that the sponsor hold a work permit B (see section 2.3.3.2.). Consequently, there is no legal security in this matter and foreigners may have to wait several years before being granted the right to family reunification (CLAE Statement 2007). It is notable that the grounds for refusal have been censored by a recent decision of the administrative tribunal (Decision 22616, 3 October 2007).

According to the draft immigration law, a third-country national who resides in Luxembourg for at least one year and holds a residence permit valid for at least one year may benefit from family reunification under the following conditions: possession of legal, stable and sufficient financial means; possession of appropriate accommodation for the family; and possession of health insurance for himself as well as for his family members. Family members would be defined as the spouse or registered partner (over 18 years of age) and unmarried and minor children of the sponsor or the spouse. Moreover, entry and stay of dependent ascendants and children of age could be authorized by the Minister of Foreign Affairs and Immigration. A residence permit valid for one year with a right to renewal would be delivered to eligible family members.

#### **2.3.3.2 Work**

##### Employment

In order to be employed in Luxembourg, a third-country national shall obtain both a work permit and a residence permit.

The 1972 Work Regulations foresee three types of work permits: type A is valid for a maximum period of one year and for a single profession and employer; type B is valid for a period of four years for a single profession, but is not limited to a single employer; and type C is for an unlimited period of time, valid for all types of professions and is not limited to a single employer (Work regulations 1972, Art. 2). Initial residency will be granted with a work permit A, while upon renewal the individual may be granted a type B permit. A work permit C may only be granted after five years of continuous residence in Luxembourg (Work regulations 1972, Art. 3).

Work permits are applied for by the employer, as well as applications for the renewal of work permits (Kollweler 2005, p. 4). The procedure includes a declaration of intention presented by the employer to the Department of Employment, which states that no citizen of Luxembourg or foreign resident might fill the position.

After being granted a work permit, the foreign worker must obtain a residence permit, which, as a general rule, shall not be granted for a longer period than that for which the work permit was issued.

The draft immigration law foresees a simplified procedure through the granting of a single title that will include both work and residence authorization. A first permit would be valid for up to one year and be limited to a single profession, but not to a single employer. It would then be renewable for a two-year period. Any further permits would be granted for three years without professional or employer restrictions. The draft immigration law also envisages measures relating to highly skilled workers (Draft Law Summary, p. 4).

### Self-employment

Current legislation does not include specific provisions regarding the self-employment of foreigners. The administrative practice is as follows: the applicant must fulfil the same professional requirements as Luxembourg citizens and must be granted an authorization of establishment by the Department of Middle Classes; at the same time, the applicant must apply for a residence permit, which is granted by the Ministry of Foreign Affairs and Immigration for a period of one year.

The draft immigration legislation envisages the creation of a residence permit for the purpose of self-employment, valid for up to three years upon meeting the following conditions: the applicant must meet applicable professional requirements; he must prove the existence of sufficient financial means; the planned activity should serve the economical, social and cultural interests of Luxembourg; and the planned activity should be viable.

### Seasonal work

Current legislation does not include any specific provisions regarding foreign seasonal workers. Employment of seasonal workers relies on administrative practices, notably on simplified procedures of employment that are without legal basis (Kollweler 2005, p. 5).



### **2.3.3.3 Studies and Training**

Current legislation does not envisage the status of foreign students. In practice, a residence permit for the purpose of studies may be granted by the Ministry of Foreign Affairs and Immigration when the following conditions are met: proof of admission into an educational establishment; proof of sufficient financial means; possession of health insurance; provision of a bank deposit of 1200 EUR; and proof of accommodation in Luxembourg.

The draft immigration envisages the transposition of Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of study, pupil exchange, unremunerated training or voluntary service. The planned residence title would be granted for a minimum of one year (or for the period of study, if less than one year). Students would have conditional access to the labour market.

## **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Luxembourg has not yet transposed into its national legislation the relevant EU directives. As already observed, Luxembourg's immigration legislation is very basic and incomplete; as a result, immigration policy relies heavily on administrative practices. To a certain extent, these practices take into account the relevant directives. Nevertheless, several practices are inconsistent with EU legislation. For example, the requirement of a work permit B in cases of family reunification (as stated by the Administrative Tribunal in its decision 22616, 3 October 2007).

From a human rights perspective, it is not only the arbitrary nature of such a situation that can be criticized, but also the content of the administrative practices. For instance, the general lack of judicial review mechanisms can be seen as a breach of the right to a fair trial, as embodied in Article 6 of the ECHR.

The forthcoming adoption of new immigration legislation should, however, remedy this situation.

## **4. Real Impact of Immigration Legislation on Immigration in Practice**

The weakness of the current immigration legislation necessarily causes detrimental consequences such as a lack of transparency, lack of legal security and a general lack of reliable information available to foreigners.

Paradoxically, it is perhaps within the most regulated branch of immigration that the lack of legal security and administrative arbitrariness is most noticeable – the granting of work permits. Firstly, the grant of such a permit is dependent on the will of the employer. Secondly, several administrative practices have been subject to criticism, such as the return of work permit B holders to the status of work permit A (ASTI Opinion 2007, p. 5) and the continuous renewal of type-A work permits in order to be sure that the applicant acquires stable and sufficient financial means (CLAE Statement 2007).

The forthcoming adoption of a consistent legislative system is therefore welcome.

### **5. Cooperation with Third Countries**

It is noticeable from the official political debates that the issues of cooperation with third countries, brain drain and return or circular migration are not considered (Kollweler 2005, p. 12).

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## 1. General Immigration Policy and Trends

Historically, Malta has primarily been a country of emigration. Since 1990, however, emigration has ceased to be a relevant feature of the country (Attard 1983).

Since the 1960s, Malta has tried to create an inflow of foreign exchange and to generate foreign income into the Maltese economy, including a policy of attracting third-country nationals of a certain level of financial standing to settle in Malta. There are attractive permanent residence schemes with their associated tax advantages to encourage foreigners to choose Malta as their golden retirement location or as their strategic international stepping stone to the rest of the world.

The in-flow of third-country nationals into the Maltese Islands is regulated by Chapter 217 of the Laws of Malta (Immigration Act). Residence Permits are granted in accordance with the Legal Notice No. 205 of 2004 (Immigration Regulations) and on the basis of national legislation or policy and, in certain cases, in accordance with the provisions of specific EU Directives. Legal Notice No. 278 of 2006 (Regulation on Long-Term Residents) transposes the provisions of Council Directive 2003/109/EC concerning long-term residents.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Residence permits are issued to third-country nationals who have been authorized to stay in Malta for more than three months for the purpose of employment, self-employment, retirement, study, long-term residence or other reasons (Immigration Regulations 2004). It should be noted that third-country nationals will only obtain a residence visa for the purpose of employment or self-employment in exceptional cases.

Third-country nationals who meet certain requirements may obtain a permanent residence permit. A permanent residence permit authorizes a foreigner to remain indefinitely, but precludes him from entering into employment or running a business of any kind in Malta.

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

Visas are processed by the Immigration Police, which is headed by the Principal Immigration Officer in Malta. The application shall be submitted from the country of origin or residence of the applicant; it may be submitted directly by the applicant or through a Maltese Embassy, High Commission or Consulate found in the migrant's country of origin or residence.

The Principal Immigration Officer is appointed by the Prime Minister and has the power to grant leave to enter and remain in Malta (i.e. the power to issue visas) to any person arriving in Malta for a period of up to three months (Immigration Act, Art. 6(b)). In addition, the Principal Immigration Officer can impose conditions of stay in Malta, grant

extensions with regard to periods of stay and impose further conditions as he deems proper and necessary.

### **2.2.2 Procedural Steps – Conditions to be fulfilled**

Third-country nationals who are not exempt from the visa requirement must meet the following conditions prior to entering Malta: possession of a valid passport, provision of documents showing the purpose and conditions of their visit and show that they have sufficient means to support themselves during their stay in Malta; not having been reported as a person to be refused entry; and not being considered a threat to public policy or national security (Immigration Regulations, Art. 11).

If a third-country national does not fulfil these conditions, the Principal Immigration Officer has the discretion to allow such a person to enter on humanitarian grounds or in honour of an international obligation of the Government of Malta (Immigration Regulations, Art. 12).

There are different types of visa requirements, in line with the Common Consular Instructions (Immigration Regulations, Art. 11(b)). A single-entry visa is normally granted for one month to applicants that require a visa for tourist visits or those attending particular events. A multiple-entry visa is normally issued for a period of three, six, or twelve months and is normally granted to those applicants who visit Malta frequently, such as those that are trying to set up a business. A transit visa is issued to nationals of States that require visas if the nationals have confirmed tickets to other destinations and if they remain in Malta no longer than 24 hours. A student visa is issued upon evidence that the applicant will be enrolling in a full-time education programme in Malta; the visa is issued for the length of the academic year.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

The Immigration Appeals Board consists of a lawyer, a person versed in immigration matters and another person appointed by the President acting on the advice of the Minister (Immigration Law, Art. 25a(1a)). It has jurisdiction to hear and determine appeals or applications relating to immigration issues.

Any appeal has to be filed in the Registry of the Board within three working days from the decision subject to appeal (Immigration Act, Art. 25a(7)). According to special provisions set out by the Immigration Act, any citizen of an EU Member State, or his dependent, who is aggrieved by a decision of the competent authority relating to entry, may enter an appeal against such a decision. The Immigration Appeals Board shall have jurisdiction to hear and determine such appeals (Immigration Act, Art. 25a(5)).

No further appeal may be made against a decision of the Immigration Appeals Board, except on a point of law to the Court of Appeal (Immigration Act, Art. 25a(8)).

## 2.3 Stay and Residence Rules

### 2.3.1 General Rules regardless of the Immigration Category

#### 2.3.1.1 Competent Authorities

The Minister responsible for immigration, currently the Minister for Justice and Home Affairs, may decide upon applications for residence permits made by any person that wishes to retire, settle or stay in Malta for an indefinite period (Immigration Act, Art. 7).

Special provisions laid out in Article 4a of the Immigration Act have entrusted the Department of Citizenship and Expatriates, within the Ministry for Justice and Home Affairs, with the responsibility of issuing uniform residence permits to third-country nationals (for the purposes of employment, self-employment, economic self-sufficiency, retirement, study, long-term residence and other reasons). The Director for Citizenship and Expatriate Affairs may also grant long-term status to third-country nationals who have legally and continuously resided in Malta for five years.

The Principal Immigration Officer is the competent authority regarding the issuance of long-term residence permits (valid for a period of five years and automatically renewable) to EU citizens and their dependents.

#### 2.3.1.2 Procedural Steps – Conditions to be fulfilled

A third-country national is entitled to reside in Malta if he has a uniform residence permit. Residence permits are issued to third-country nationals who have been authorized to stay in Malta for the purpose of employment, self-employment, retirement, study or long-term residence, or for other reasons. Generally, all uniform residence permit applicants must submit the following required documents: passport photos, a marriage certificate (if married), proof of financial resources and health insurance, a passport and a birth certificate.

For health reasons, a hospital medical certificate may be required. Specifically in the case of economically self-sufficient persons, pensioners or retired persons, evidence of a minimum annual income (excluding the cost of accommodation) of 6000 MTL (14 000 EUR) is required for single applicants, 7000 MTL (16 300 EUR) for married applicants, and 9000 MTL (20 900 EUR) for married applicants with two children. Specific criteria are discussed according to immigration type in the following sections.

#### 2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions

Generally, an appeal has to be filed in the Registry of the Immigration Appeals Board within three working days from the decision subject to appeal (Immigration Act, Art. 25a(7)).



## 2.3.2 Conditions according to Length of Stay

### 2.3.2.1 *Temporary Residence*

For a stay of longer than three months, a third-country national shall apply to the Director of Citizenship and Expatriate Affairs for a residence permit within the first three months of stay. Uniform residence permits are normally granted with a validity period of one year for employment, self-employment, retirement, study and long-term residence purposes, as well as for other reasons. After five years of legal and continuous stay, a third-country national may be eligible for long-term resident status or a permanent residence permit (see below).

A third-country national who has been granted a long-term resident status by another Member State may reside in Malta for a period exceeding three months as long as he is employed or self-employed, pursuing studies or vocational training, or is in Malta for some other purpose. In such cases, the applicant must possess health insurance and adequate accommodation, as well as produce evidence that he has adequate means to be self-sufficient and to support any dependants. The individual may be required to attend Maltese language courses, to produce the long-term resident permit issued by the other Member State and to produce documentary evidence regarding the purpose of his stay. The extension for stay and residence must be made by application to the Director of Citizenship and Expatriate Affairs not more than three months after entering Malta (Department of Citizenship and Expatriate Affairs).

### 2.3.2.2 *Permanent Residence*

Third-country nationals who have legally and continuously resided in Malta for five years can apply to the Director of Citizenship and Expatriate Affairs for a long-term residence permit.<sup>413</sup> Although the long-term residence permit is issued for a period of five years, the status of long-term resident is permanent, in that such permits are renewed upon request (Reg. on Long-Term Residents, Art. 8(1)).

Those wishing to obtain a long-term residence permit shall apply, in writing, to the Director for Citizenship and Expatriate Affairs. An applicant must prove to have legally and continuously resided in Malta for a period of five years (excluding any years residing for the purpose of study) and to have sufficient means to support himself and any dependents, which is defined by the Department of Citizenship and Expatriate Affairs as possessing an income equivalent to the national minimum wage with an addition of another 20 per cent income for each member of the family.

In addition, applicants must possess decent and adequate accommodation, a valid travel document and health insurance covering the applicant and any dependents. Furthermore, applicants must submit a letter supplying their history since they first arrived in Malta, including employment history, current and previous residences, family members if living with them in Malta and any other relevant information. The Director for Citizenship and

<sup>413</sup> EU citizens and their dependents seeking long-term resident status shall submit applications to the Principal Immigration Officer instead.

Expatriate Affairs may refuse to grant such a permit on grounds of public security and public policy.

Applications for long-term residence may be submitted by post or in person together with all the necessary documents and appropriate fees. The Director is to give a written notification of his decision as soon as possible and not later than four months from the date of the applications submission. However, this time period may be extended by another three months. The Director is to notify his decision to reject an application for long-term residence in writing and is to inform the applicant about the right to redress (i.e. an appeal to the Immigration Appeals Board).

Long-term residents are entitled to equal rights with Maltese nationals with regard to employment, self-employment, education, social security, social assistance, etc. (Reg. on Long-Term Residents, Art. 11(1)).

On the other hand, third-country nationals who obtain permanent residence permits are entitled to indefinite stay, but are precluded from entering into employment or running a business of any kind in Malta. Physical residence in Malta is not required of persons holding a permanent residence permit; permanent residents have the freedom to come and go as they please without the need to apply for visas or extensions of stay in Malta for prolonged periods.

A third-country national may apply to the Director for Citizenship and Expatriate Affairs for a permanent residence permit under the 1988 Permanent Residence Scheme, which is still in force. Applicants for a permanent residence permit are required to meet a number of conditions relating to the acquisition of property, annual income remitted to Malta, capital or income qualifications and employment or engagement in business.<sup>414</sup>

The tax rate for permanent residents is a flat rate of 15 per cent and tax is chargeable only on income remitted to Malta.<sup>415</sup> Permanent residents are, however, liable to a minimum tax payment of 4200 EUR, even if no or little income is remitted. There is no minimum or maximum value on property being rented or bought. The permanent resident shall open a bank account in Malta and make annual deposits at a minimum level of 15 000 EUR, plus 2500 EUR for a spouse and each dependant.

A permanent resident can freely use this money for any purpose whatsoever and, provided the funds have been remitted to Malta, they need not be kept in the account. Nor is it necessary to keep this sum as a minimum deposit in the Maltese bank account. All that is required is that over a period of 12 months, the sum of 15 000 EUR is brought into Malta.

Permanent residence permits are renewable annually. The renewal is a formality and in practice, once granted, a residence permit will not be revoked unless the resident breaks a condition of the permit.

<sup>414</sup> See <http://www.legal-malta.com/tax> (last accessed on 10.11.2007).

<sup>415</sup> This is applicable to all nationals irrespective of whether they are EU citizens or third-country nationals.

### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 *Family Reunification*

Family members of EU Citizens, even if they are third-country nationals, have the right to join such citizens working in Malta and shall also be entitled to work. They do not require a resident permit and have the same rights as EU citizens.

Regarding the right to family reunification of third-country nationals, the sponsor shall hold a residence permit valid for at least one year and have reasonable prospects of obtaining a right of permanent residence (Family Reunification Regulations, Art. 3). As a general principle, family reunification may be granted only after two years of stay within the country (Family Reunification Regulations, Art. 13). Family members are understood as: the sponsor's spouse (at least twenty one years of age); unmarried minor children of the sponsor and his spouse, including adopted children; and unmarried minor children of the sponsor or of the spouse if one of them has custody of the child (Family Reunification Regulations, Art. 4). Submission of the application by the sponsor shall include: documents attesting the family relationship; proof of sufficient accommodation; proof of medical insurance covering the sponsor and his family members; and proof of stable and regular financial means (Family Reunification Regulations, Art. 12). The sponsor and his family members may be required to attend and complete courses in the Maltese language (Family Reunification Regulations, Art. 14). In principle, family members are entitled to access employment and self-employment under the same conditions as the sponsor. Nevertheless, full access without a labour test market is generally granted after 12 months (Family Reunification Regulations, Art. 15). The residence permit granted to family members is valid for one year or for the same duration as that of the residence permit holder.

#### 2.3.3.2 *Work*

##### *Employment*

Malta has a restrictive policy on employment for third-country nationals. It is an implied condition of any leave to enter and remain in Malta that any such individual shall not exercise any profession or occupation, or hold any appointment or be employed by any other person during his stay in Malta without an appropriate employment license.

Employment licenses are granted in exceptional circumstances. It is, generally, difficult to obtain a permit to work in Malta unless the foreign national falls under one of the categories described below, which are being given favourable consideration a present.

A foreigner will be granted a work permit in cases where it is not possible to find suitable Maltese candidates for the particular post. For example, such a situation may arise if an employer is involved in a particular project that requires a greater number of workers than are currently available on the local market. Although there are no hard and fast rules, normally it can be said that such foreigners would either have to be highly qualified technical or professional persons or, alternatively, persons coming from the field of

tourism (e.g. representatives of companies which deal with tourists from countries whose languages are seldom spoken in Malta).

A foreign investor who has incorporated an international trading company (ITC) under the laws of Malta and is involved in the running of his own company may be granted one or two work permits for the administration of such a company.

Employment licenses are, generally, granted for one year and, upon payment of a renewal fee of 15 MTL (35 EUR), for further periods of one year at the absolute discretion of the Authorities concerned.

### Self-employment

As previously stated, employment licenses are granted in exceptional circumstances. There are nevertheless categories that are favoured.

With regard to self-employment of third-country nationals, a work permit is usually granted to any non-resident person who incorporates a limited liability company under the Laws of Malta that performs a manufacturing operation in Malta that is duly approved by the Malta Development Corporation. The company must have its centre of business in Malta and must export at least 95 per cent of its products. A non-resident shareholder holding at least 40 per cent of the equity of such a manufacturing company may request that another third-country national named by him be granted a permit to work in Malta. Moreover, such manufacturing companies may employ immigrants who have technical or managerial experience that will contribute towards the industrial development of Malta. The employer company would, however, be required to provide for an appropriate period of apprenticeship to enable Maltese individuals to eventually replace the expatriates. Such expatriates are liable to a maximum rate of income tax of 30 per cent on their income arising in Malta, subject to a minimum of 1000 MTL (2330 EUR) per annum.

A third-country national who wishes to engage in self-employment shall present a copy of the work permit or trading license.

### Seasonal work

There are no specific provisions regulating seasonal work by third-country nationals.

#### **2.3.3.3 Studies and Training**

With regard to non-EU citizens who require a visa, student applicants should submit their request not later than 15 July for entry in October.

At the time of first arrival, students should be in possession of a non-refundable return, air ticket to their country of origin, or its value in cash/bank draft, together with a bank statement indicating that they possess sufficient funds to cover at least one year's tuition fees plus 2800 MTL (6523 EUR), which is calculated to be sufficient for one academic year's accommodation and living expenses. Initially, a visa is issued valid for a period of one month. Following arrival and registration at the University, the student may apply for a visa extension.

A wide range of overseas qualifications are accepted as satisfying the course entry requirements. Each application is treated on its merits. Applicants should, in the first instance, be in possession of qualifications that give access to recognized, accredited universities in their home country. Consideration will also be taken of the grades obtained and the subject areas required by the undergraduate course that the applicant intends to pursue. The University may also impose other requirements, for example, the presentation of the results of university entrance examinations of the country concerned.

Applicants whose first language is not English must be in possession of English language proficiency certificates for admission to the course.

All applicants must ensure that they have the necessary funds to support themselves. They may be asked to make a declaration of resources or otherwise give an assurance to the Principal Immigration Officer that they possess sufficient resources for themselves and their dependents for the period of residence. Applicants may also be subject to the condition that they and their dependants are covered by health insurance in respect of all risks in Malta.

The College can help students to obtain long-term visas only after they have been accepted as full-time students and they have paid their fees, if applicable. Applicants should check with the nearest Maltese Embassy or Consulate whether they require a visa. Students who do not attend regularly or who do not show the necessary progress will be reported to the Immigration Authorities and will have their visa withdrawn. Students may be asked to undergo medical tests before starting a course.

Non-EU nationals attending courses shall pay annual fees. Full fees are payable yearly prior to the commencement of the academic year. The costs range from 1500 MTL (3494 EUR) to 1900 MTL (4426 EUR) per annum.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Malta is compliant with most EU directive provisions relating to immigration since its accession to the EU in 2002.

### **4. Real Impact of Immigration Legislation on Immigration in Practice**

In reality, there remains a discrepancy in establishing an economically sustainable and socially inclusive policy on immigration both for persons within the European Union and those outside it. Malta, like other EU Member States, has a declining population, thus the shifting demographic trend expected over the next fifty years needs to be addressed immediately. The decline in birth rates and existing and prospective skills gaps within the Maltese workforce remain issues for concern. Furthermore, there is no real policy relating to migration other than the encouragement of investment at higher levels. This is

constantly reiterated in the fact that Malta has the highest population density in Europe<sup>416</sup> and cannot afford to encourage migration except selectively.

In this context, irregular immigration is a constant issue on the country's agenda. In 2006, Malta had approximately 2000 persons arriving illegally by boat. Following a long stay in detention they are then released into the community and join the work force. It is an obvious reality that growing numbers of irregular immigrants are joining the black market economy and suffering abuse with regard to conditions of work.

## **5. Cooperation with Third Countries**

Malta has signed two bilateral agreements regarding reciprocity advantages on social security for Libyan and Australian citizens. No policies regarding remittances or brain circulation have been developed by the Maltese government.

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<sup>416</sup> In 2005, the rate was 1242 persons per square kilometre (NSO statistics). This is the 7th highest rate in the world. By comparison, Belgium has 341 persons per square kilometre and the UK 198 persons per square kilometre.

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## 1. General Immigration Policy and Trends

In 2003, there were 700 000 non-Dutch citizens and 900 000 citizens who had another nationality besides the Dutch nationality (CBS). Adding the non-Dutch and the dual-nationality citizens of non-EU origin gives a total of more than one million, most of whom were residents of the country's four largest cities: Amsterdam, Rotterdam, The Hague and Utrecht.

In 2005, the number of migrant students increased significantly, while all other categories reduced in number or remained the same. However, most migrants came for the purpose of family reunification or – to be precise – family formation. As a result, family reunification and family formation have been in the spotlight of the policy debate in the Netherlands (EMN 2006).

Of the total of 77,550 residence permits applied for in 2006 the main countries of origin of applicants were Turkey, Poland, the United States of America, Germany, Morocco, China, the United Kingdom, India, Japan and Suriname (IND Statistics 2006).

After two political murders at the beginning of the 21<sup>st</sup> Century, Dutch society is in a state of panic and widespread discontent with the country's inability to integrate former guest workers and the religious radicalization of some of their children, often Dutch nationals. As a result, three consecutive governments aimed at implementing various integration measures and restricting further migration (especially with respect to family members), whilst simultaneously attempting to attract highly skilled workers.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

The Netherlands has five primary types of immigration status, which are further subdivided into more specific categories. The five main categories are: family-related immigration, studies or training, seasonal work, employment and self-employment. Additionally, Dutch law recognizes other immigration statuses, such as: migrants for medical treatment, victims of human trafficking, au pairs, migrants who will be involved with a religious organization and former Dutch nationals.

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

The Netherlands does not have a piece of legislation concerned with the granting of visas, as a result, the legal basis for decisions regarding visas comes from a Royal Decree enacted in 1813.

Based on the Decree of 1813, it is the Visa Department of the Ministry of Foreign Affairs (Ministry) that decides on visa applications. An application is filed at a Dutch Embassy and the Ministry then gives advice on the merits of the application. The Visa Department is in fact the same organization as the Immigration and Naturalization Department, which falls under the Ministry of Justice.

## 2.2.2 Procedural Steps – Conditions to be fulfilled

Foreigners travelling to the Netherlands for a short-term (maximum of three months) may require a visa, depending on their nationality. A short-term visa must be applied for with respect to holidays, business visits, visits to friends or family and participation in conferences or sporting events.

The applicant must present to the Dutch Embassy or Consulate in his country of residence: a valid passport; evidence proving the purpose of the stay; evidence of sufficient financial means; proof of medical travel insurance; a return ticket or reservations; and documents that make return to his country of origin at the end of the stay plausible.

The general idea behind the Aliens Act 2000 is a restrictive admission policy for migrants: they will only be admitted if their presence benefits the Netherlands economically or culturally, if there is an international obligation to admit them (for example, refugees), or if there are humanitarian reasons to do so (such as family reunification or medical treatment). Depending on the country of origin, most migrants need an authorization for temporary stay (MVV - *Machtiging tot Voorlopig Verblijf*), which they apply for abroad before travelling to the Netherlands to apply for a residence permit. In the Aliens Circular it is mentioned that the reasonable term for deciding on a request for an MVV is three months (Aliens Circular, B1/1.1.1.). This term is not always met. In relation to the special fast track procedure for migrants under the “knowledge migrants scheme” (described in detail below), the application for an MVV should be decided on within two weeks.

## 2.2.3 Appeal and Administrative or Judicial Control of the Decisions

An administrative appeal can be filed within four weeks of the Ministry of Foreign Affairs denying a visa or MVV. If the administrative appeal is rejected, a judicial appeal in the District Court in The Hague can be filed. Furthermore, if the judicial appeal is rejected, a higher appeal can be filed with the Council of State within four weeks of the court’s judgment.

There are no fixed terms for the decision on an administrative appeal or appeal with the District Court. However, the Council of State should make a decision within 23 weeks of receiving an appeal. The amount of time that it takes to complete an appeal is very long and can last years, especially if there are no grounds for a preliminary decision by the Court.

While the appeal is pending, the actual decision is not suspended. In cases of emergency, one can ask the Court to issue a preliminary decision.

## 2.3 Stay and Residence Rules

### 2.3.1 General Rules regardless of the Immigration Category

#### 2.3.1.1 *Competent Authorities*

The Ministry of Justice is responsible for granting residence permits and designing the policy measures. The Immigration and Naturalization Department (IND) is responsible for decision-making in individual cases.

The Ministry of Social Affairs and Employment and the Centre for Work and Income (CWI) are responsible for policy and practice with regard to work permits. The Municipalities have been charged with the responsibility of giving the migrant his documents after entry. They are also in charge of administering integration and language courses and tests, and have leeway in developing their own policies regarding integration programmes.

### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

Once foreigners have applied for a visa to enter the Netherlands at the Dutch Embassy in the country of origin, those who require an MVV must do an integration examination in the country of origin. The documents may need to be legalized at the consulate to prove their legitimacy. The only health requirement is that all migrants take a tuberculosis test upon arrival; failure to cooperate can be grounds for refusal of the residence permit. Nationals of EU Member States and some other countries are exempted from this requirement, as are those migrants with a valid residence permit in other EU or EEA countries.

After arrival, the migrant must report to the local immigration police within three days and file an application for a residence permit. He must also register with the Municipal Database and sign up for the Municipal integration course.

The fee for issuing a stay permit is approximately 188 EUR. However, after other expenses, such as the request for the issue of the permit, the integration examination and the verification of documents, a total of approximately 1600 EUR will be paid in order to receive a family reunification residence permit (TK 30308, p. 72).

The fees charged for an MVV vary according to the immigration category the applicant is requesting. MVVs for family reunification range from 188 EUR up to 830 EUR depending on the type of family reunification. For employment, the fees range from 250 EUR for highly skilled migrants through the accelerated procedure up to 433 EUR for self-employed applicants. For students the fees generally fall into the same range as that for employment permits.

The fee for extension of residence permits is 188 EUR and 52 EUR for family members if the applications are filed together. The annual extension of a student's residence permit costs 52 EUR.

If an MVV is not required, or a change of the status is applied for, the fees fall into the same range as the scheme for an MVV. Migrants under the "Knowledge Migrants Scheme" pay a reduced tariff and a number of categories of foreign nationals are exempt from paying fees.

An applicant requesting an MVV must present several documents; those requested vary according to the migrant category applied for. All documents must be drawn up in Dutch, English, French or German, otherwise they must be translated by a translator who is sworn in by a Dutch court, and all official foreign documents must be legalized.

With some exceptions, every person between the ages of 16 and 65 who wishes to reside in the Netherlands for a prolonged period and needs to apply for an MVV must

take the civic integration examination. The test is an oral examination consisting of a language test and questions regarding Dutch society. Questions about the Dutch lifestyle, geography, transport, history, constitution, democracy, legislation, Dutch language and the importance of learning it, parenting, education, healthcare, work and income may be asked. The test must be taken at a Dutch embassy or Consulate abroad and the fee for taking it is 350 EUR. A family reunification visa will be refused until the migrant passes the exam.

All decisions regarding the issuing and renewal of a residence permit must be made within six months. This period can be extended for a further six months maximum.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

An administrative appeal against the rejection of residence permit application must be brought against the Ministry of Justice within four weeks of the negative decision. If the appeal is rejected the procedure that follows is the same as stated above for the denial of a visa. Appeals can also be made against the decisions of the Centre for Work and Income. The appeal can be filed by those who are an ‘interested party,’ this being the migrant in the case of a visa, MVV or residence permit decision, and the employer in the case of a work permit decision.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

Some residence permits are deemed temporary and cannot be extended (Aliens Decree, Art. 3(5)). Some of the notable categories subject to this limitation are: family reunification with someone who holds a temporary permit, family visit for a maximum of six months, studies and training, medical treatment, those awaiting a decision on Dutch nationality, third-country nationals and employees of an EU service provider. In general, however, migrants who hold these temporary residence permits can apply for a change of immigrant classification if they fulfil all requirements for the other status.

A family reunification permit is initially granted for one year, after which, if the person in the country and the migrant still have sufficient financial means, it could be extended for five years. Furthermore, after three years the family migrant may ask for an independent permit.

The permit for labour migrants is granted for the duration of the work permit, or for five years in the case of migrants on the “Knowledge Migrants Scheme”, saving them the inconvenience of annual extensions.

In order to extend a residence permit, an application must be filed before the date of expiration. This is also applicable to a change of the grounds for the status. In addition, if an alien holds a permit for family reunification and wishes to change it to employment, this must be done within a reasonable time after the family relationship has ended for it not to be considered an application for a new permit.

### 2.3.2.2 Permanent Residence

After five years of residence with a non-temporary residence permit<sup>417</sup> (in other words, those not listed as temporary in Aliens Decree, Art. 3(5)), the migrant can apply for a permanent residence permit and, if granted, this has no limitations with regard to the reasons for the stay. Migrants who apply for permanent status after five years of legal residence in the Netherlands only have to fulfil an integration exam if they did not do so on arrival. This is relevant for migrant workers as they are not obliged to take the integration test abroad or on arrival.

In order to obtain a settlement permit, the integration conditions referred to in the Aliens Act must be met (Long-term Residence Directive, Art. 5(2); Aliens Act, Art. 21(1)(g)). The integration requirements are relevant for obtaining a settlement permit. However, if a migrant chooses to stay in the Netherlands beyond five years with a residence permit and without applying for a settlement permit, the integration requirements do not have to be met.

## 2.3.3 Conditions for Specific Immigration Types

### 2.3.3.1 Family Reunification

In the Netherlands, two main types of family-related migration can be identified. These are: family reunification; and family formation of spouses or partners (including same-sex partners).

Several categories of person are entitled to family reunification. Some of the most notable ones are: holders of temporary or permanent residence permits for asylum reasons; holders of a permanent residence permit for reasons other than asylum, holders of a temporary residence permit for reasons other than asylum (if not within a category exempted from the right to family reunification, such as au pairs). However, the requirements for family formation (discussed below) are stricter.

#### General requirements

In all cases, the migrant family member must have: a valid passport; no criminal record; proof he does not suffer from tuberculosis; health insurance coverage in the Netherlands; and proof that his sponsor has sufficient financial means.

The Dutch policy grants equal rights to same-sex relations based on a living-together relationship or an official registered partnership. Marriage is only open for opposite sex partners, but the legal consequences in migration law of a marriage or a registered partnership are no different.

<sup>417</sup> Non-temporary means that the permit gives access to the permanent residence permit after five years of residence. A temporary permit cannot lead to a permanent residence permit, although a migrant can switch from a temporary one (a student permit) to a non-temporary one (family reunification) and from there to the permanent permit.

Additional requirements for family-related migration are that the family members should share a household in the Netherlands and that the marriage or formal living-together partnership should be officially registered with the municipal civil administration. Prior to this registration, the immigration police examines the intentions of the partners and, if they find that the only intention of the marriage is to obtain immigration benefits, the marriage or arrangement is deemed fraudulent and registration as well as application for a residence permit may be denied. In practice, few marriages or relations are excluded based on the Act of 1994 on preventing false marriages (TK 2004/05, No. 3).

### *Family reunification*

The rules on family reunification only apply if the family ties existed abroad. The main requirement is that the person with whom the migrant will reunite has sufficient financial means. This means that the person already resident in the Netherlands must have a net income that equals 100 per cent of the social welfare norm for the kind of family they will constitute (with or without children). Family reunification is possible if the sponsor and the partner (registered or non-registered) or spouse have reached the age of 18 (Aliens Decree, Art. 3(14); Art. 3(15)). Regarding the relationship between parents and minor children, the sufficient financial means obligation requires a single parent to have a net income that is at least equal to the social welfare norm (866 EUR on 1 January 2007). Adult children can be reunified only if they prove that they always have been and still are dependents, for instance in the case of disabled children over 18 years of age. There is no waiting period (a period of legal residence of the migrant in the country) before the family reunification application can be filed.

Spouses or registered partners must provide the following documentation: proof of the sponsor's income; an original extract from the Municipal Administration that shows the family address and family composition for the six months immediately preceding the application; a copy of the residence permit or passport containing the residence permit; a copy of the marriage license or registered partnership; and proof that the spouse or partner has passed the civic integration examination abroad. Unmarried partners must present the same documents as married partners; however, instead of proof of marriage or partnership arrangement, they must offer a copy of an unmarried status declaration issued in their country of origin or permanent residence.

For family reunification with minor children, the sponsor must provide the following documentation: proof of the sponsor's income; an original extract from the Municipal Administration showing the family address and family composition for the last six months; copies of identification documentation for the sponsor and his spouse or partner; and a copy of the child's birth certificate. In the case of a child born in a previous relationship, special documents must be presented to prove parental authority over the child. Also, if the child is 16 years or older, he must have passed the civic integration examination abroad.

For the sponsor's (or his spouse's) children of 18 years or older, similar documentation must be provided. However, in addition, they must provide a copy of the child's unmarried

status declaration issued in the country of origin and proof that leaving the child in the country of origin would cause disproportionate hardship to the child. The child must pass the civil integration examination abroad and must provide documentary evidence of the relationship with the sponsor, custody, and the sponsor's contribution to the living expenses upon the child's arrival in the Netherlands.

Regarding family reunification with parents, a single parent older than 65 years of age can be reunited with the sponsor in the Netherlands if all (or most) of his children live in the Netherlands and there are – at the discretion of the Dutch Ministry of Justice – no children in the country of origin to provide him with care. Also, based on Article 8 of the ECHR, a parent can obtain a residence permit (or an extension thereof) for staying in the Netherlands in order to maintain his 'family life' with a minor child (Aliens Circular, Chapter B2/10).

### Family formation

Family formation is only an option for sponsors who have reached the age of 21 years (Aliens Circular, Chapter B2/2.10). The rules on family formation only apply if the family tie did not yet exist abroad. Apart from the age requirement (both partners must be over 21 years of age) the main requirement is that the person with whom the migrant will form a family has sufficient financial means. This means that the person residing in the Netherlands must have a net income that at least equals 120 per cent of the minimum wage (including holiday allowance), which was set at 1484 EUR on 1 January 2007.

### Three-year waiting period

After the marriage or living-together relationship has lasted three years in the Netherlands, the migrant family member holding a residence permit is eligible for an independent residence permit. At this point, it is irrelevant whether the relationship still exists. An exception to this rule, however, is where the migrant in the country had a temporary residence permit, such as for medical treatment or study. In that case, the family members will all remain holders of temporary residence permits.

If the marriage or living-together relationship fails within the first three years of residence, the residence permit of the migrant family member is nullified. As a result, he must leave the country unless he can obtain a residence permit under another immigration category by satisfying all the requirements for that category. However, an exception on humanitarian grounds can be made provided that the family migrant proves: impossible living conditions as a single woman in the country of origin; the existence of care responsibilities over children in the Netherlands; or proof that he or she was subject to sexual abuse in the relationship.



### 2.3.3.2 *Work*

#### *Employment*

The Netherlands does not have a quota system for migrants in general or for labour migrants. And unlike many other European countries, they have not recently entered into bilateral migration agreements with other countries.<sup>418</sup>

A number of activities and migrants have been exempted from the work permit requirement, mainly because they are not expected to enter the Dutch labour market and are only temporarily in the country to deliver certain services, such as: persons installing and repairing machines or software delivered by a foreign employer, news reporters, household staff of tourists and business negotiators. If the migrant worker does not fall into any of these exceptions and is not a worker under the Knowledge Migrant Scheme, he can obtain a residence permit for employment purposes only if his employer has obtained a work permit for him.

A work permit is obligatory during the first three consecutive years of residence. After this period, the migrant worker can obtain free access to the Dutch labour market. A new permit must be applied for, and a new labour market test conducted, in order to change jobs before that period.

The labour market test implies that the work permit will only be granted if there are no Dutch or EU workers available for the position. Therefore, work permits are mostly granted for highly skilled work. However, there are circumstances where the labour market test is waived (for example, intra-company transferees). There are also special rules that apply to certain professions, such as athletes, artists, health care workers and clergymen.

If an employer or migrant worker does not qualify for the Knowledge Migrant Scheme (as described below) or chooses not to use that scheme, he must apply through the traditional work permit scheme. Essentially, a work permit can only be granted by the Minister of Social Affairs and Employment if there is no national (or EEA) employee available for the job. In order to decide on this matter, a labour market test is conducted (unless the employer is exempted from this requirement by another provision).

No labour market test is required for the extension of a work permit. A limited inquiry into the minimum wage, age requirement and housing and legal residence is conducted in the case of intra-company transferees, trainees and for migrant workers from the new EU Member States. This policy is not, however, extended to Bulgarians and Romanians, who must still meet the full labour market test.

In order to meet the full market labour test the employer must report the vacancy to the authorities at least five weeks prior to filing the application for a work permit, conduct extensive recruitment activities, offer to pay at least minimum wage and offer employment conditions in compliance with that particular industry's standard. If any of

<sup>418</sup> The old bilateral labour agreements, entered into in the 1960s, have not been in force since 1995.

these requirements are not met, the labour authorities must deny the application. However, they usually have discretion to deny a work permit for other reasons as well.

Many high-skilled jobs are exempted from the labour market test. Asylum seekers can also be employed for 12 weeks per year without a labour market test being conducted. In addition, some exceptions to the recruitment effort requirements exist if the employment falls under specified categories. No vacancy report, recruitment efforts or minimum wage requirements apply in education, training, international exchange programs or other cultural contact programs.

The Netherlands does not have special policy for admitting migrant workers in sectors affected by a labour shortage.

### *Knowledge migrant workers' scheme*

An important condition for being admitted as a knowledge migrant is that the employer has signed an agreement with the Immigration and Naturalization Department (IND). Employers hiring a knowledge migrant are no longer required to have a work permit. Thus only the IND is responsible for the implementation of the admission procedure to the Netherlands and the Dutch labour market (IND 2007).

The title of the scheme is somewhat misleading: officially, it is not the migrant's skills but his income that determines whether he will be granted a residence permit. As of January 2007 the annual gross income for applicants under 30 years of age should be at least 34 130 EUR and, for applicants of 30 years or above, at least 46 541 EUR. The salary should be administered through a Dutch payroll or, in the case of an intra-company transfer, through the payroll of the foreign company that is responsible for the assignment or secondment to the Netherlands (Everaert website 2007). Because of this 'local payroll' requirement, employees will not qualify for this scheme if they are on secondment in the Netherlands but receive their salary in the country of origin.

The residence permit is granted for a period of five years if the migrant has an employment contract for an indefinite period. Those who have an employment contract for a definite period are granted permits for the duration of their contract, with a maximum of five years. Only employers that have signed a standard statement may apply for the residence permit of a knowledge migrant. Companies and institutions must comply with certain obligations, such as submitting complete applications, reporting relevant changes and providing financially for the employee.

The employer qualifies as a knowledge migrant employer if he can prove that he has always paid the required social security benefits and taxes, and has sufficient turnover to pay the salary of a potential knowledge migrant. The employer will be given a company code and a secret login code which he uses to print out the online application (Kroes Interview). This is an application for advice on the chances of obtaining a permit, not an application for a residence permit or an MVV.

If the IND regards the application form as completed properly and both the company and the migrant qualify (under the policy, they should always qualify if the agreed salary is

at least equal to the amounts mentioned above), within two weeks a positive advice will be sent to the Dutch Embassy in the migrant's country of residence. The migrant must then file an application for an MVV at the Dutch Embassy in the country of residence and pay the applicable fee. When the MVV is in place in the applicant's passport he can travel to the Netherlands, but will have to apply for a residence permit upon arrival at the municipality where he will reside and, after having done so, can start working. This is a mere formality, as the IND has already given a positive advice and workers and knowledge workers are exempted from the integration examination requirement. As a result, the process should not take more than a couple of weeks.

This procedure is quite efficient if the IND accepts an application without any questions. However, if the IND finds that an application form has not been correctly completed, the application does not have to be dealt with within two weeks; in such a case, a decision must be given within six months. If the IND finds any simple errors in the application, it may call the applicant or send him a letter asking for clarification. In some instances, it may also ask the migrant to prove that he possesses the skills required for the job.

In the event the IND's advice is negative there are no direct legal remedies; the migrant will have to apply for the MVV at the Dutch Embassy first. He may then file an administrative appeal against any decision made regarding this application (or after about three weeks if a decision has not yet been made). The migrant can also apply for a preliminary measure with the District Court in The Hague.

The fast track decision of two weeks is not applicable if the migrant worker has been residing lawfully in the Netherlands before filing the application, for example as a student. However, the IND envisages a change in order to process applications to switch categories, for example, from a students' permit to a knowledge workers permit, within two weeks (IND 2007).

Although foreign students are granted a three-month 'grace period' to find work as a knowledge migrant, this grace period does not qualify as lawful residence. As a result, students that use this grace period will have a gap in their lawful residence and start anew with respect to obtaining a right to a permanent residence permit when they obtain a residence permit as a knowledge migrant. The IND does not inform students of this consequence (Kroes Interview). However, this problem may be resolved given the coming changes to the scheme, namely the extension of the 'grace period' to one year (IND 2007).

### Self-employment

Currently, the policy for the admission of self-employed migrants is evolving. As a result, the legal status of this 'policy' is vague. It is not clear which policy is in place to judge applications.

In essence, the admission policy for the self-employed requires that the activities the migrant undertakes are innovative and beneficial to the Dutch economy. A business plan must be provided showing that the migrant will at least be able to earn sufficient financial

means for his own support. The IND has the discretion to decide which activities are deemed innovative.

The intended future scheme is based on a point system, under which the applicant will be awarded points for: personal qualifications, his business plan and the benefit that his activities will bring to the Dutch economy. In addition to the general requirements imposed on all migrants, the applicant will also be required to: own at least five per cent of the company's assets; have enough financial means to be self-sufficient; possess valid health insurance; and have no criminal record.

Currently, the number of permits granted under this category is extremely low and shows that the Netherlands has not seriously opened their borders for this type of activity.

### Seasonal work

Migrant workers can be admitted for seasonal work for a maximum of 24 consecutive weeks. This is a temporary status that cannot be extended past the given period of time. A new work permit for seasonal work can be granted only if the migrant worker has not held a valid residence permit allowing him to work during the previous 28 weeks. A residence permit is only required if the seasonal worker stays in the Netherlands for longer than three months, which is seldom as this exceeds the duration of harvesting activities.

### **2.3.3.3 Studies and Training**

Three different immigration statuses that relate to studies and/or training exist: students, *praktikanten* and trainees. All are qualified as temporary and thus cannot be extended.

Students are not considered to be knowledge migrants. They are granted residence permits for the duration of one year, subject to annual renewal. After graduation, students are granted a three-month grace period (soon to be extended to a one-year period) in which to find employment as a knowledge migrant.

In order to obtain a residence permit for studies, the migrant student needs to provide: evidence confirming (provisional) registration at, or admission to, the relevant institution; proof of health insurance; a Declaration of Awareness in which he declares to know that his admission is temporary in nature; and proof of sufficient financial means. If a third party is financing the studies, special additional documents must be submitted.

For vocational (non-academic) studies, the applicant must provide a written explanation as to why the Netherlands is the most suitable country to undertake the studies and how their completion will make a positive contribution to the labour market in the country of origin. He is also required to present a statement by the Ministry of Education in the country of origin confirming that the study cannot be undertaken in the country of origin.

The migrant student is entitled to work a maximum of ten hours per week whilst studying and full time during the summer months. The employer must obtain a work permit, but a labour market test is not applied when processing the application. If training is a required part of the study programme, this work may not exceed 50 per cent of the students'

studies. If the training takes more than 50 per cent of the students' time, the student is required to apply for a change of his residence status from study to employment and must fulfil all the relevant requirements with regard to the latter status.

As mentioned above under the knowledge workers scheme, migrant students are granted a three-month grace period to find a job as a knowledge worker, making them eligible for a knowledge worker residence permit. If the jobs found do not qualify them as knowledge workers, the work permit scheme applies in full.

Migrant students who have had vocational training which aims to develop the country of origin do not receive a grace period at all. However, if they find a job and a work permit could be granted (after a full labour market test), they should receive a residence permit based on that employment.

A migrant can obtain a temporary residence permit as a *practicant* or trainee if his 'employer' obtains a work permit for the migrant to work as such. The work permit allows a *practicant* to come to the Netherlands to gain experience necessary for his job in his country of origin. A work permit and residence permit can be granted for a maximum of 24 weeks; no labour market test is required. The migrant must have had the relevant vocational training and his employer must have entered into an agreement with a Dutch company with regard to this training. Training plans must be submitted with the application, accompanied by a statement from the Dutch company asserting knowledge that they may not use the *practicant* for regular labour. The foreign employer must declare that the *practicant* will be offered work once the training is over. In addition, the number of trainees in a company must be reasonable compared to the total number of employees.

A residence permit and work permit can be granted to a trainee for a maximum of one year if the training is necessary to finish the migrant's education and he has had the relevant vocational training in his country of origin. The labour market test and income requirement are waived in this case.

Migrants with a residence permit for studies or who are awaiting a decision on an asylum application whilst they are studying can obtain this trainee work permit for a period longer than one year, provided the training does not take up more than 50 per cent of their studies. There are also some exceptions relating to certain nationalities that allow the work permit to be granted for more than one year. Generally speaking, the number of trainees per company is limited to ten per cent of the staff, but this quota does not apply to migrant students and asylum seekers.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Many gaps and loopholes in the Dutch immigration system are not a result of the law; they result instead from the way civil servants, mainly at the IND, interpret and apply the law. As long as the organization's attitude aims at keeping immigrants out, it will fail as an actor in managing migration for the benefit of both countries of origin and the Netherlands or the EU. The Dutch Council of State has often supported the IND in this

‘migrant unfriendly’ attitude by refusing to find the IND’s restrictive interpretation of the law and poor motivations for decisions below acceptable standards. It is possible that the Council of State – which, although not presented as a political factor, clearly is – will change its views in order to align with the new government’s more human attitude towards migrants and its wish to implement a new system of ‘managed migration.’

In addition, it should be noted that Dutch national law does not distinguish between the concepts of ‘integration conditions’ and ‘integration measures’ (compare Article 4(1) and Article 7(2)) of Council Directive 2004/86/EC). The Dutch language version of this Directive and the long-term residents’ Directive only uses the word ‘conditions’. The Dutch government uses this apparent mistranslation as a justification for the passing of the integration exam abroad being a requirement for family reunification (Groenendijk 2006).

### Studies

In the case of employment during studies, the Aliens Circular states that during summer the work should be considered seasonal, but this restriction is not included in the subordinate regulation of the Employment Act. A restriction to seasonal labour during the summer period would be in conflict with Article 17 of the Student Directive 2004/114/EC, given that the Directive does not include any such limitation. In addition, the requirement of Article 17(1) of the same Directive – that the migrant student should also be able to be self-employed – has not been implemented in Dutch legislation. Thus at present it is difficult for a student to work as a self-employed person: only if the migrant has a residence permit for a self-employed person will a client of the migrant’s services (if the self-employed activity is providing a service) not require a work permit.

### Family-related migration

There are different financial requirements with regard to family reunification and family formation. Despite being criticized as in conflict with Directive 2004/86/EC on family reunification, no changes have been made to this policy (Boeles 2005). The elevated fees for family-related immigration permits also make it impossible for some to reunite with their family and could be considered as an instrument in restricting migration to the Netherlands.

Regarding family reunification with parents, a single parent older than 65 can be reunited with the person in the country if all (or most) of his children live in the Netherlands and there are – at the discretion of the Dutch Ministry of Justice – no children in the country of origin to provide care for him. It has been argued that this policy conflicts with Article 4(2) of Directive 2003/86/EC, which does not require the parent to be older than 65, does not require the parent to be single or that most children reside in the Netherlands. In addition, the restriction regarding any children in the country of origin who could provide care may conflict with the Directive, as well as leaving total discretion in deciding this with the Ministry (Boeles 2006).

Finally, the Immigration Policy guidelines (Aliens Circular, Chapter B2/1) state that Directive 2003/86/EC will be applied equally to Dutch nationals. However, the Council of State nevertheless judged that due to Article 3(3) of Directive 2003/86/EC the Directive does not apply to Dutch nationals (JV 2006/172).

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

The Integration monitor 2006 shows a decrease of MVVs granted, which is most likely the result of the mandatory integration test abroad (TK 2006/07, nr. 39). The integration and language courses that must be taken after arrival are organized at a local level. Thus cities can make their own policies with regard to the costs of these programs. For instance, Amsterdam gives the migrant a reward when he passes the exam that equals the total cost of the course paid by the migrant.

#### **5. Cooperation with Third Countries**

The Export Restrictions on Benefits Act provides that social security benefits (child support and support based on the General Act on Old Age) can be paid only to persons residing on Dutch territory or in countries which have concluded an agreement with the Netherlands under which entitlement to benefits can be monitored. The Act does not apply to persons resident in EU or EEA Member States.

Specific mechanisms to facilitate the transfer of remittances to countries of origin are not implemented. The Netherlands has not taken measures enabling ‘brain circulation’ by extending the principle of ‘Community preference’ to those who have already worked for some years in the EU before returning to their own country.

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### **Persons Interviewed**

Jelle Kroes, Partner at Everaert Advocaten Immigration Lawyers, 10 February 2007 (Kroes Interview).



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## 1. General Immigration Policy and Trends

Despite a constant increase in the number of immigrants residing in Poland since 1989, immigration generally remains low. For many years Poland has been perceived as a country of transit for many foreigners, rather than one of destination. Between 2000 and 2002 there was a period of decline in the number of foreigners arriving in Poland; however, since that time the numbers have been increasing steadily, from 6587 arrivals in 2002 to 9364 in 2005. The overall number of residence permits granted in 2005 increased by five per cent from that in 2004 (Système d'Observation Permanente sur les Migration (SOPEMI) 2006). In 2006, 22 378 residence permits for specified periods of time and 3255 settlement permits were issued. In the same year, 995 foreigners received an EC long-term residence permit.

More than half of the permanent immigrants resident in Poland between 2001 and 2005 originated from Germany, the United States of America and Ukraine. In 2005, almost two-thirds of all permits were granted to nationals of the six following countries (in decreasing order): Ukraine, Germany, Belarus, Vietnam, the Russian Federation and Armenia. More than half of all applicants for residence permits for a specified period of time originated from Ukraine, Vietnam, Belarus, the Russian Federation and Armenia (Office for Repatriation and Aliens). Joining the EU and the implementation of the EU *acquis* resulted in an increase in the number of EU citizens arriving in Poland and a decrease in arrivals from third countries (Office for Repatriation and Aliens), as can be seen by the 35 per cent increase in the number of residence permits issued to individuals from EU Member States between 2004 and 2005 (SOPEMI 2006).

Since 2003, the primary legal act regulating the conditions of entrance, stay and expulsion of foreigners has been the Aliens Act. In 2005, the Aliens Act was amended to implement Council Directive 2003/86/EC on the right to family reunification. New amendments were also made by the Act of 24 May 2007, implementing inter alia the EC Directives on studies and scientific research. In addition, the latter Act has, among other things, changed the structure of the Polish migration authorities, establishing the Head of the Office for Aliens as the authority responsible for issues related to aliens entering and residing in Poland.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Generally speaking, foreigners may apply for permits to enter and/or to stay in Poland for the purposes of family reunification, work, seasonal work, self-employment, studies and training. Specific regulations refer to persons of Polish origin who are citizens of the former Asian republics of the Soviet Union.

## 2.2 Admission Rules – Visa Policy

### 2.2.1 Competent Authorities

Visa applications, in most cases, should be submitted to the consular office of Poland in the country of origin.<sup>419</sup> Consular offices are supervised by the Minister of Foreign Affairs (Aliens Act, Art. 33).

### 2.2.2 Procedural Steps – Conditions to be fulfilled

A residence visa may be issued for short-term stay (defined as a stay of no more than three months within a six-month time period) or for long-term stay (defined as a stay of no more than one year within a time period of five years) (Aliens Act, Art. 31).<sup>420</sup>

There are no positive requirements regarding the granting of visas, except conditions related to financial means.<sup>421</sup> Requirements are defined in the negative, indicating the reasons for refusing to grant a visa. An applicant shall be refused the issuance of a visa if:

- The conditions to issue a certain type of visa have not been met;
- His data is recorded in the register of aliens whose residence in the territory of the Republic of Poland is undesirable;
- He does not possess the financial means necessary to cover the cost of residence in Poland;
- He does not possess health insurance;
- The issuance of a visa may constitute a threat to state security and defence, as well as to public security and policy, or it would be contrary to the interests of Poland;
- The period of validity of a travel document of the applicant does not exceed three months from the date at which he must depart from the territory of Poland on the basis of that visa;
- The time limit of one year has not expired since the date of a previous refusal to be

<sup>419</sup> A visa may be also issued by the Commanding Officer of the Border Guard at a check point if a foreigner demonstrates that, due to exceptional and urgent circumstances, entry into or residence in the territory of Poland is necessary.

<sup>420</sup> Stay visas may be issued for the purpose of: tourism, personal visits, participation in sporting events, participation in economic activity, cultural activity or participation in international conferences, execution of official tasks by representatives of authorities of foreign countries and international organizations, participation in the asylum procedure, performance of work or stay for scientific, training or teaching purposes (with the exception of employment), temporary protection, or arrival with the purpose of appearing in person before an agency of a Polish public authority (Aliens Act, Art. 26(4)).

<sup>421</sup> An alien entering Poland is obliged to possess and present, at the request of the competent authority, the financial means necessary to cover the costs of his entry into, transit through, residence on and departure from the territory of Poland (Aliens Act, Art. 15). Possession of such financial means may be confirmed by the presentation of an invitation, which can be issued by a Polish citizen or an EEA national domiciled in Poland (Aliens Act, Art. 16). The amount of financial means required should be sufficient for the third-country national to cover the cost of his accommodation, food, medical treatment, transit and deportation (Reg. of MSWiA).

granted a visa, and the applicant has not presented any new circumstances concerning his case;

- During the visa proceedings the applicant has: submitted an application or documents which contain untruthful personal data or false information; or testified untruthfully, concealed the truth or has falsified or counterfeited a document for the purpose of using it as authentic, or used such a document as authentic.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

The decision of a consular office to refuse a visa is final and cannot be appealed, with the exception of visas issued to a family member of a citizen of an EU or EEA Member State. In such cases, an appeal may be made to the Minister of Foreign Affairs. The Minister's decision may then be further appealed to the Regional Administrative Court (Act on Amendment, Art. 9; Art. 17(6)).

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### **2.3.1.1 Competent Authorities**

The responsible authority of first instance is the *Voivode* competent with respect to the place of the applicant's intended residence. The *Voivode* is a territorial authority of government administration in a *Voivodship* (country region). The higher instance authority in matters examined by *Voivodes* is the Head of the Office for Aliens, which is, in turn, supervised by the Minister of Interior and Administration.

#### **2.3.1.2 Procedural Steps – Conditions to be fulfilled**

Generally speaking, all applications require a valid travel document, current photographs of the persons concerned in the application, documents necessary to confirm the data included in the application and circumstances justifying the application (for example, the promise to issue a work permit, marriage certificate, etc.) (Aliens Act, Art. 60(5)). Additionally, foreigners applying for a permit on the basis of employment, self-employment or family reunification, as well as those possessing an EC long-term residence permit in another Member State who apply for a residence permit in Poland and their family members, are also obliged to enclose a legal title authorising them to occupy a place of accommodation in which they reside or intend to reside, as well as documents confirming the cost of the accommodation.<sup>422</sup>

An applicant must either be covered by health insurance within the meaning of provisions on common health insurance or produce documents confirming that the costs of medical treatment on the territory of Poland shall be covered by an insurer (Aliens Act, Art. 53(7);

<sup>422</sup> A contract of loan for use shall not be regarded as a legal title to a dwelling in which a foreigner resides or intends to reside unless the individual making the loan is the foreigner's descendant, ascendant, sibling, spouse or spouse's parent (Aliens Act, Art. 60(5)).

Art. 65(1)). Possessing a particular income is also required in most cases.<sup>423</sup>

In addition, the relevant fee for applications must be paid. A residence permit for a specified period of time carries a fee of 340 PLN (92 EUR), whilst a settlement permit and an EC long-term residence permit both carry fees of 640 PLN (174 EUR). The fee for issuing a residence card is 50 PLN (14 EUR); however, there is a reduced fee of 25 PLN (7 EUR) for those who are in a difficult financial situation or if the purpose of the foreigner's residence is to study in an upper secondary school or at a university, to participate in trainings and professional traineeships realized within the programs of the European Union, or in the case of applicants who, on the day of submitting the application to change a residence card or document, were less than 16 years of age (Ordinance on Charges for Residence Card).

Pursuant to the regulations of the administrative procedure, the proceedings should take not longer than one month, or in particularly complicated cases, two months (Code of Admin. Procedure, Art. 35(3)). In practice, the proceedings for granting a residence permit for a specified period of time take approximately two months.

### **2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions**

An applicant with respect to whom a *Voivode* has issued a negative decision is entitled to appeal against such a decision to the authority of second instance within 14 days of the delivery of the decision (Code of Admin. Procedure, Art. 129); the appeal has a suspending effect. An applicant is then entitled to appeal against this decision to the Regional Administrative Court in Warsaw. He also has the right to file a further appeal against the ruling of this Court to the Supreme Administrative Court. The appeal must be filed with the *Voivodship* or the Supreme Administrative Court within 30 days (Admin. Court Proceedings Act, Art. 53(1); Art. 177(1)). A judicial appeal does not suspend execution of the administrative decision, unless the Court decides so. Independently from the administrative stages of appeal, every applicant is entitled to file an appeal with a supervising authority under the administrative complaint procedure (Code of Admin. Procedure, Art. 221).

## **2.3.2 Conditions according to Length of Stay**

### **2.3.2.1 Temporary Residence**

If the circumstances justify a third-country national's stay in Poland for a period of longer than three months, the individual may apply for either a long-stay visa or a residence permit for a specified period of time. A long-stay visa entitles the foreigner to enter and stay within the territory of Poland for a continuous period of one year, or for a number

<sup>423</sup> To fulfil this requirement, a foreigner is obliged to possess a stable and regular source of income at a level that can support his own maintenance and that of any family members being supported by him. This condition can also be fulfilled if the costs of the foreigner's maintenance are covered by a member of his family who is obliged to maintain him and who is in a position to fulfil this obligation (Aliens Act, Art. 53(7); Art. 53(8)). The foreigner's income, taking into account any family members he supports and after excluding the costs of accommodation, must be higher than the amount of income on the basis of which social assistance is granted (Act on Social Assistance).

of consecutive stays not exceeding a year in total within the period of visa validity. A residence permit for a specified period of time is issued for the period necessary to realize the purpose of the third-country national's stay in Poland, but in any case not longer than two years.

According to Article 57 of the Aliens Act, a third-country national shall be refused a residence permit for a specified period of time if: his data is recorded in the register of aliens whose residence on the territory of the Republic of Poland is undesirable; the purpose of his entry or residence is or will be other than the one declared; he has applied for the permit on the basis of a marriage of convenience; the refusal is justified by state security and defence as well as by public security and policy, or it would be in breach of the interests of the Republic of Poland; he has submitted an application or documents which contain untruthful personal data or false information, or has testified untruthfully, has concealed the truth, has falsified or counterfeited a document for the purpose of using it as authentic, or has used such a document as authentic; or he has been diagnosed with an illness or infection that is the subject of obligatory medical treatment according to the Act of 6 September 2001 on diseases and infections (J.L. No. 126, item 1348 and of 2003 No. 45, item 391), or there is a suspicion of such disease or infection and the applicant refuses to undergo medical treatment.

### ***2.3.2.2 Permanent Residence***

The following permits entitling third-country nationals to settle within the territory of Poland are granted: an EC long-term residence permit and a settlement permit. In both cases the status is granted for an unlimited period of time, but the validity of the residence card (an identity document confirming the legal status) is limited and has to be renewed by the holder. In the case of third-country nationals possessing a settlement permit, the card is valid for ten years and, in the case of EC long-term residents, for five years.

The EC long-term residence permit was introduced into Polish law as a result of a transposition of Council Directive 2003/109/EC of 25 November 2003 on the status of the third-country nationals who are long-term residents. The main condition to obtain this permit is a lawful uninterrupted stay within the territory of Poland for a period of at least five years directly prior to filing the application (Aliens Act, Art. 65(1)). Furthermore, an applicant must fulfil the criteria stipulated in Article 5(1) of the Directive, thus having to possess a stable and regular source of income and health insurance.

The settlement permit allows certain groups of third-country nationals to settle in Poland, that is, persons whose stay in Poland is lawful and with respect to whom it is justified to grant a permit for permanent residence in Poland, but who do not fulfil the criteria to acquire an EC long-term residence permit or who are not entitled to apply for such a permit. A settlement permit can be granted only to the categories of foreigners explicitly mentioned in the relevant provisions of the Aliens Act (Aliens Act, Art. 64), which notably includes certain family members.



### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 *Family Reunification*

Regarding the exercise of the right to family reunification, eligible sponsors include Polish citizens, EU citizens and third-country nationals residing on the territory of the Republic of Poland: (1) on the basis of a settlement permit; (2) on the basis of an EC long-term residence permit; (3) for at least for two years on the basis of a residence permit for a specified period; (4) and who have been granted refugee status.

Family members are understood under the relevant legislation as: spouses, where the marriage is recognized under the Polish law in force; minor children of the sponsor and his spouse, including adopted children; minor children of the sponsor or his spouse, including adopted children, if he or she exercises actual parental control over the child.

General requirements regarding housing and financial means apply in cases of family reunification, except with regard to the following persons: spouses of Polish citizens; aliens having a settlement permit; aliens having a long-term resident's EC residence permit on the territory of the Republic of Poland; aliens who have been granted refugee status.

In addition, if the applicant is a minor child of the sponsor or his spouse, the parental consent of any persons who exercise parental control over the child is required before a residence permit will be granted (Aliens Act, Art. 60(2)).

As a general principle, family members are granted a residence permit for a specified period not longer than the validity period of the sponsor's permit. Settlement permits are granted in the following cases: where the family member is a minor child, born in the territory of the Republic of Poland, of a sponsor possessing a settlement permit; where the family member has been married to a Polish citizen for at least three years and directly before submitting the application had continuously resided in the territory of the Republic of Poland for at least two years on the basis of a residence permit for a specified period of time; and where the family member is a minor child of a citizen of the Republic of Poland, if the parent exercises parental authority over the child (Aliens Act, Art. 64).

Regarding the right to work, the following family members do not require a work permit: the spouse of a Polish citizen; descendants of a Polish citizen who are under 21 years old or who remain supported by him; and the spouse of a third-country national who holds refugee status, a settlement permit or residence permit for a specified period of time granted due to the fact that he held either an EC long-term residence permit in Poland or another Member State, or a permit for tolerated stay.

#### 2.3.3.2 *Work*

##### Employment

Undertaking employment provides a third-country national with the possibility of acquiring the right of residence through either a stay visa for the purpose of performing

work for a period of up to one year (Aliens Act, Art 26(4(h))) or a residence permit for a specified period of time (Aliens Act, Art. 53(1)). The visa and the residence permit may be issued to a foreigner who possesses a promise to issue a work permit in the territory of Poland or a written guarantee from an employer that they intend to provide them with a job in the event that a work permit is not required. Before an employer submits the application to grant a third-country national a work permit, a one-time fee shall be paid amounting to the minimum work remuneration per person.

Once the foreigner is in Poland, the *Voivodship Marshal* shall issue a work permit only if the employer previously obtained a promise to issue the work permit<sup>424</sup> and if the foreigner has obtained a proper visa or a residence permit for a specific period of time in Poland (Promotion of Employment Act, Art. 88(2)). Knowledge of the Polish language may constitute a condition for performing specific occupations, as is the case for doctors and dentists, as well as paramedics, nurses and midwives.<sup>425</sup>

The promise to issue a work permit, as well as the work permit itself, shall be issued if the third-country national meets the requirements referred to in the relevant legislative provisions, taking into account the local labour market situation and, if necessary, the usefulness of an entity for the labour market and for the economy (Promotion of Employment Act, Art. 88(6); Art. 88(7)).<sup>426</sup> Before the issuance of the work permit, the *Starosta* (chief official of a district) competent within the location of the alien's work shall analyse the registers of the unemployed and persons looking for work, as well as employment offers submitted to the Labour Office, and initiate actions in order to advertise the offer more widely, in order to give an opinion on whether a work permit should be issued.

The considered employer must fulfil the following criteria: (1) he must prove that the income referred to in his tax declaration is greater than the sum of 12 average salaries preceding the day the declaration was submitted; (2) he must have employed, for a period of at least one year prior to the submission of the application, two or more persons enjoying a full-time job employed for an indefinite period of time and who are not subject to the obligation to hold a work permit; and (3) as of the day of submitting the application, he must prove the availability of the resources allowing him to meet the requirements set forth in points 1 and 2 within 12 months of the registration of the employer's (Work Permit Reg.).

<sup>424</sup> The promise to issue the work permit is issued by the Voivodship Marshal.

<sup>425</sup> Pursuant to the provisions of the Act on the profession of a doctor and dentist, a third-country national can only be granted the right to perform these occupations if he graduated in medical studies conducted in Polish or if he speaks Polish well enough to perform the occupation of a doctor, which must be certified with a Polish language exam (Occupations of Doctor and Dentist Act, Art. 7(3)).

<sup>426</sup> Several exemptions from the labour market test exist, including third-country nationals who are: doctors or dentists and who are participating in required traineeships according to the provisions regarding post-graduate traineeships for doctors or dentists; entitled to represent a foreign company in its branch or agency on the territory of Poland; sport coaches or athletes working for sport clubs and other entities whose statutory task includes promoting sport and physical activity; performing work in Poland according to international agreements on employment, if the need to entrust this work to a foreigner is confirmed by a competent authority, according to the procedure indicated in the agreement; citizens of Turkey whose employers have applied for a prolongation of their work permit, provided that they have been legally performing work in Poland for the period of one year for the employer who requested the prolongation.

Additionally, a third-country national is obliged to hold the qualifications or skills that are required with respect to the work he intends to undertake.

The employer is also obliged to meet certain requirements. He must not refuse, without giving a justified reason, to employ the unemployed persons or the persons who are looking for work appointed by a *Starosta* to the position offered to the third-country national. Moreover, the remuneration offered to an alien must not be lower than the remuneration offered to a Polish employee for a similar work. In addition, the employer may not breach the provisions regarding the employment promotion and the institutions of the labour market, if such a breach was discovered during the administrative control and if one year has not yet passed since the control protocol was drafted. The employer must also not conduct any activity which does not comply with the position or the type of work offered to the foreigner (Work Permit Reg.).

There are a number of categories of aliens who are not obliged to hold a work permit (Reg. on aliens without necessity of work permit).<sup>427</sup> A work permit is also not required for third-country nationals who hold a settlement permit or a residence permit for a specified period of time, granted due to the fact that he held either an EC long-term residence permit issued in Poland or another Member State or a permit for tolerated stay, or who enjoys temporary protection in Poland (Promotion of Employment Act, Art. 87). In addition, the spouse, dependent children under 21 and dependent ancestors of a Polish citizen do not require a work permit if they hold a residence permit for a specified period of time granted for the purpose of family reunification (Aliens Act, Art. 53(1)).

### Self-employment

Aliens conducting economic activity in Poland have the possibility of legalising their stay through acquiring a stay visa for the purpose of economic activity (Aliens Act, Art. 26) or a residence permit for a specified period of time granted on the basis that the foreigner conducts an economic activity in conformity with the legal regulations applicable in Poland, which is beneficial to the national economy and, in particular, contributes to growth in investment, transfer of technologies, introduction of favourable innovations or the creation of new jobs (Aliens Act, Art. 53).

Article 13 of the Act on Economic Activity stipulates the categories of third-country nationals that have the right to undertake and conduct a business activity on the same

<sup>427</sup> These include, but are not limited to: students of full-time studies during holidays or students on apprenticeships; persons whose employment period does not exceed three months in the calendar year; citizens of Turkey having been legally employed in Poland for four years, members of their families if they have resided together in the territory of Poland for at least five years, as well as citizens of Turkey who graduated from Polish schools and universities and who are children of citizens of Turkey having been legally employed in Poland for at least three years; persons who are research workers performing their duties in research and developmental institutions; persons who are doctors or dentists, who have graduated from Polish medical universities and who are participating in required traineeships according to the provisions regarding the post-graduate traineeships for doctors or dentists; persons who are nurses or midwives, who have graduated from Polish nurse and midwife schools and who are participating in required traineeships according to the provisions regarding the post-graduate traineeship for nurses and midwives; citizens of Poland's neighbouring countries, if they execute duties connected with seasonal work for a period not exceeding three months within six consecutive months.

conditions as Polish entrepreneurs. These include foreigners who have obtained a settlement permit, an EC long-term residence permit, or a residence permit for a specified period of time issued due to their stay in the territory of Poland with the purpose of family reunification, as well as holders of an EC long-term residence permit issued in another country or family members of such residents intending to stay in Poland. The remaining aliens and foreigners have the right to undertake and conduct business activity exclusively in the form of commercial companies and partnerships, such as limited partnerships, limited joint-stock partnerships, limited liability companies and joint-stock companies.

In the case of third-country nationals applying for a residence permit for a specified period of time, they are required to prove that the economic activity is beneficial to the national economy. As a general principle, a permit for self-employment is obtained on the same conditions and under the same procedure as in the case of employment.

### Seasonal work

Aliens intending to work in Poland seasonally may be granted a visa for a period corresponding to that indicated on the promise to issue a work permit, in any case not longer than six months within a twelve-month period (Aliens Act, Art. 32). Specific conditions concerning seasonal work are regulated in Section 27, Part 2 of the Regulation of 30 August 2006 on performance of work by aliens without the necessity of obtaining a work permit. They are applicable with reference to citizens of neighbouring countries (Germany, Russia, Belarus and Ukraine), provided that for a period not exceeding three months within a consecutive six months they perform work connected with agriculture, horticulture (with the exception of vegetable growing), farming or the breeding of animals.

### **2.3.3.3 Studies and Training**

Third-country nationals who wish to study in Poland are entitled to apply for a short-stay or long-stay visa for an educational, scientific or training purpose that does not include employment (Aliens Act, Art. 26). Furthermore, specific groups of foreigners who study or undergo training in Poland for longer than three months may apply for a residence permit for a specific period of time not exceeding one year<sup>428</sup> (Aliens Act, Art. 53(5)1)). An applicant must provide a medical or accident insurance policy, as well as a medical certificate attesting that there are no health-related reasons preventing him from starting his studies in a chosen faculty and in a chosen education mode. Foreigners who apply for a residence permit for a specified period of time are obliged to possess sufficient resources to cover their subsistence and return travel costs (other groups have to prove they possess a stable and regular source of income). In addition, students have to provide evidence that during their stay they will have sufficient resources to cover the relevant study costs. Knowledge of Polish is not an immigration requirement; it is nevertheless relevant for the admission procedure at the university or other educational institution applied to.

<sup>428</sup> The maximum period is up to two years for aliens participating in training and professional internships within the programmes of the European Union.

The enrolment in first and second degree studies or in uniform masters studies without the obligation to follow admission procedures may be available for third-country nationals who hold a Polish certificate of maturity or a document obtained abroad which is recognized as the equivalent<sup>429</sup> and authorizes a foreigner to take up studies in the country of issuance (Regulation on Aliens Continuing Education).

The following persons may undertake and continue their education as well as participate in scientific research and developmental works according to the rules applying to Polish citizens: third-country nationals holding a settlement permit, as well as members of their family if they are domiciled in Poland; third-country nationals holding a residence permit for a specified period of time on the basis of family reunification; and third-country nationals possessing a long-term resident's EC residence permit in another Member State along with a residence permit in Poland, as well as their family members (Higher Education Act, Art. 43(2)). In other cases, foreigners may undertake their education and participate in scientific research and developmental works pursuant to international agreements and agreements concluded between universities, as well as decisions issued by a competent minister or the President of a university (Higher Education Act, Art. 43(3)).

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Polish law is generally consistent with human rights obligations and with the European Union *acquis*. There are, however, a few regulations that may lead to human rights violations.

The compliance of Polish legislation the right to private and family life, as embodied in Article 8 of the ECHR, may be problematic. The right to family reunification under Polish law is limited to members of the nuclear family: the spouse and minor children of the sponsor and/or the spouse (as required under Directive 2003/86/EC on family reunification). Polish law does not allow family reunification of relatives in the direct ascending line, adult unmarried children and unmarried or registered partners (where the decision is left to the Member States). Such persons can apply for a residence permit for a specified period of time under the general clause, which allows for the granting of a permit when there are other important reasons justifying the foreigner's stay in Poland for more than three months. However, while in the case of family reunification the authority "shall" issue the residence permit once conditions provided by law are fulfilled, permits "may" be granted under the general clause; thus leaving more discretion to the authorities.

According to Article 27 of Directive 2004/58/EC of 29 April 2004 on the right of EU citizens and their family members to move and reside freely within the territory of the Member States, the only conditions which allow the limitation of the right to enter and stay are reasons of public policy, public security and public health. The first two

<sup>429</sup> A diploma or other document certifying graduation from any school abroad, legalized or certified with apostille, recognized pursuant to the provisions regarding the validation of school graduation diplomas obtained abroad or according to an international agreement.

conditions should be utilized with regard to the principle of proportionality and based only on the personal conduct of the person. These provisions of the Directive have not been fully implemented into the act amending the Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members (Act on the entry and residence of EU nationals).

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

There is no active migration policy as such in Poland and only recently has the need for developing it been recognized among the policy makers. Migration flows to Poland have been shaped by the specific geographical location of Poland as a country bordering both former Soviet States and Schengen countries. As a result, Poland has been perceived as a transit country for many immigrants, mostly from Asian and African countries. Poland's European Union membership has made it more attractive for visitors and hence has had a major influence on migration. Until now, the economic conditions and high unemployment (currently amounting to approximately 15 per cent) prevented authorities from opening the labour market to foreigners. The number of residence permits granted to individuals decreased from 2003 (8651 permits) to 2005 (5905 permits), with most of the permits being granted to foreigners working in small companies with less than ten workers.

However, the situation has changed since Poland's accession to the EU in 2004, when many Polish citizens started moving to other EU countries (mainly Great Britain and Ireland) where labour markets had been opened to Poles. These new migration flows, together with positive trends in the economy, led to significant changes in the labour market, revealing a lack of workers, especially in agricultural and construction work. One of the few positive examples of the activities undertaken by Polish authorities as a reaction to the situation described above is the 2006 regulation on seasonal work.

Another response to market needs is a proposition of the Ministry of Labour, which is working on a new regulation that would allow foreigners to work in Poland for three months without a work permit if they obtain confirmation from the employer of the employment.

Since 2006 three new institutions were created with the task of creating a Polish migration policy. It is still too early to evaluate their work. On 6 July 2006, the Migration Policy Department in the Ministry of Interior and Administration was created by Regulation No. 97 of the Prime Minister of 23 June 2006 (Reg. on Ministry of Interior). The Department is responsible for all the issues within the competence of the Minister of Interior and Administration related to migration. Its tasks include: preparation of the migration policy guidelines and presenting them to the government; gathering information and analyzing the migration situation in the country; initiating and organising events and activities aimed at increasing the awareness of the issues connected to the migration policy; cooperating on creating and realizing integration policy towards immigrants; and initiating, analyzing and preparing opinions on draft laws and other documents relating to the migration policy.

It can finally be noted that one of the most important shortcomings of the Aliens Act is the lack of a margin of discretion left to the administrative authorities. It seems that even when humanitarian considerations or general rules of law would require a solution different from the one imposed by the legislation, the administrative authorities are obliged to follow conclusions imposed by the Act.

## **5. Cooperation with Third Countries**

There are three possible models for enabling access for social security and pension rights for aliens who gained these rights according to Polish law. The first model is related to EU citizens who are entitled to social benefits on the basis of the EU *acquis*. In the case of citizens of some third countries, the right to such benefits is guaranteed on the basis of bilateral agreements. Currently there are three such agreements: between Poland and Argentina (reimbursement for work accidents), Libya and Macedonia. Three new agreements are under negotiation - with Australia, Canada and the United States of America. Other third-country nationals are entitled to social security and pension rights if they fulfil the criteria established under Polish law. In such a situation, the benefits are transferred to their bank account opened in Poland or to the person that represents them. According to the representative of the Ministry of Labour and Social Affairs, everyone who is entitled to such benefits will obtain them, irrespective of the fact that the agreement between Poland and his or her country of origin does not exist.

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## 1. General Immigration Policy and Trends

In the last 15 years, Portugal has experienced a significant increase in immigration: between 1990 and 1999, the number of immigrants doubled from 100 000 to 200 000, and then doubled again to 440 000 in 2004. Foreigners now make up four per cent of the resident population and 5.3 per cent of the active population. In 2006 it was estimated that immigrants in Portugal contributed seven per cent of the GDP (de Sousa Ferreira 2006).

Throughout the 1990s, immigrants arriving in Portugal were primarily from former colonies in Africa that share Portuguese as their official language, including Cape Verde, Angola and Guinea-Bissau. In addition, immigrants arrived from Spain and the United Kingdom. In the late 1990s, Portugal experienced an increase in economic productivity that required additional labour than that supplied by the native-born population, increasing the need for immigration.

In recent years these flows have expanded and become dominated by Brazilians and Central and Eastern Europeans. Foreigners residing in Portugal between 2001 and 2004 were primarily from Brazil (14.9 per cent of foreigners), Ukraine (14.7 per cent), and Cape Verde (14.3 per cent), followed by immigrants from Angola (7.9 per cent), Guinea-Bissau (5.6 per cent), Moldova (3.0 per cent), Romania (2.7 per cent), São Tomé and Príncipe (2.7 per cent), China (2.1 per cent) and the Russian Federation (1.8 per cent). In the past five years, Eastern Europeans have become one of the most important immigrant groups in Portugal, currently making up one-third of the foreign-born active population.

The sectors in which foreigners are employed in Portugal are increasingly diversified as a result of the changes in magnitude and origin of migrant in-flows. Nevertheless, construction remains the primary sector employing immigrants in Portugal.

According to a 2003 report, foreigners in Portugal have been peacefully absorbed despite the growing number, without an apparent increase in social and racial tensions (Robels 2003). However, in 2002 the High Commission for Ethnic Minorities and Immigration (ACIME) was created, directly under the Office of the Prime Minister, with the goal of facilitating the integration of immigrants into Portuguese society. ACIME developed the National Immigrant Support Centres (CNAI) to provide support to immigrants and information sharing among the government agencies serving them. ACIME also plays an active role in formulating proposals for new legislation relating to entry, settlement and exit or removal of foreigners.

The legislation regulating immigration prior to August 2007 included Executive Law n° 34/2003 of 25 February 2003, which regulated the entry, stay and exit of foreigners. In addition, the Adjustment Statement n° 2-D/2003 of 31 March 2003 and the Regulation Order n° 6/2004 of 26 April 2004 served as important pieces of secondary legislation regulating immigration into Portugal. Legislation primarily concerning the entry and stay of EU citizens also applies to foreigners who are members of Portuguese families. This legislation includes Executive Law n° 60/93 of 3 March 1993, as amended by the Executive Law n° 250/98 of 11 August 1998.

In August 2007, a new immigration law (Act 23/2007) came into force. This new immigration legislation altered the regulations concerning entry, stay and exit of foreigners in the Portuguese territory, as well as transposing EU Directives to bring Portuguese legislation into conformity with European law.

## **2. Laws and Conditions of Immigration**

### **2.1 Overview of Immigration Types**

Act 23/2007 replaced a complicated legal framework for residence consisting of eight types of permits (including four types of work permits, a study permit, a temporary residence permit with work authorization, residence authorization and permission to stay authorization) with a twofold system that includes a temporary residence permit and a permanent residence permit.<sup>430</sup> As a general rule, different types of immigration status, such as employment, self-employment, family reunification and research and studies, are contained within this dual permit system.

It can be noted that new legal channels were created in the same Act to allow for entry of temporary seasonal migrants and researchers and scientists. A simplified procedure was also designed for temporary placement or transfer of workers in companies or groups of companies having business in Portugal and which are from member countries of the World Trade Organization. In addition, the status of EC long-term resident was created by the new legislation, in conformity with European law.

### **2.2 Admission Rules – Visa Policy**

#### **2.2.1 Competent Authorities**

In principle, visas are granted by diplomatic and consular offices abroad (Act 23/2007, Art. 48). In several cases, including residence and temporary stay visas, former approval of the Service for Border Control and Aliens (SEF) is required (Act 23/2007, Art. 53).

Exceptionally, transit visas, short stay visas and special visas (for humanitarian purposes) may be granted at border posts (Act 23/2007, Art. 66; Art. 67). In this case, the Director of the SEF (either personally or by legal substitution) is the authority competent to grant such visas (Act 23/2007, Art. 69).

#### **2.2.2 Procedural Steps – Conditions to be fulfilled**

Portugal grants the following types of visas: stopover visas, transit visas, short-stay visas, temporary stay visas and residence visas (Act 23/2007, Art. 45).

Short-stay visas are granted for a maximum validity period of one year for stays that do not exceed three months within a six month time period (Act 23/2007, Art. 51). In most

<sup>430</sup> Permission to stay authorizations refer to a legal mechanism created by the Decree-Law n° 4/2001 of 10 January 2001, to allow the legalization of immigrants without permits who were already working in Portugal. The new law revoked this legalization mechanism, but this revocation does not hinder applications that were already being processed.

cases, temporary stay visas are granted for a period of three months (Act 23/2007, Art. 54(2)). The purpose of such a visa can be, for example, medical treatment, professional activity that does not exceed six months in duration or scientific research. Residence visas are granted to foreigners in order for them to apply for a residence permit (Act 23/2007, Art. 58). Consequently, regarding foreigners who are required to obtain a visa for entry, immigration is in principle dependent upon the grant of a residence visa. Residence visas give a right to stay for a period of four months and may be granted for the purpose of employment, self-employment, research, studies or family reunification.

The following information must accompany a visa application: the objective of the stay; the length of stay intended; two photographs; complete identification of the applicant; a certificate of their criminal record; a medical attestation and health insurance; and proof of conditions of accommodation (Enabling Decree 6/2004, Art. 8; Art. 9). Moreover, according to Article 52 of Act 23/2007, common conditions for granting visas are the following: the applicant must hold a valid travel document and travel insurance; he must not have been subject to a removal measure or under a ban of entry; an alert must not be issued under the SIS system or SEF's Integration Information System; and he must possess sufficient means of subsistence. A visa may not be granted to an applicant who has been convicted of an offence that is punishable with a prison sentence of more than one year. An application may also be rejected in cases where the applicant's entry is a threat to public order, safety or health.

Under national legislation, the maximum length of procedure to be granted a temporary stay visa is 30 days (Act 23/2007, Art. 54(3)), compared with 60 days in order to be granted a residence visa (Act 23/2007, Art. 58(4)).

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

Decisions granted by the Director of SEF are susceptible to administrative appeal to the Minister for Internal Administration and judicial appeal to the administrative court. In other words, decisions which imply the approval of SEF (in other words, the granting of temporary stay visas and residence visas) are indirectly appealable.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

Applications for a residence permit are submitted from within Portugal to the SEF. Permits are granted by the Director of SEF.

#### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

As a general rule, applications must be presented by a foreigner who is present in the Portuguese territory. Applications for a residence permit require that the applicant present two passport photos, a document confirming adequate accommodation and a document confirming sufficient means of subsistence. If the individual does not have adequate

accommodation and/or means of subsistence, a Portuguese citizen or a foreign citizen living in the national territory may guarantee accommodation and/or subsistence for the individual during his stay. The sponsorship must be stipulated on a special form and authenticated by the SEF.

The application for a residence permit must be decided within 60 days of its submission (Act 23/2007, Art. 82).

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

A rejection of a residence permit application is communicated to the applicant, together with an indication of the grounds for the rejection and notification of any possible routes of appeal, along with their respective time limits (Act 23/2007, Art. 96).

Decisions granted by the Director of SEF are generally susceptible to administrative appeal as well as judicial appeal to the administrative court. However, in some cases, the law only foresees judicial control.

Appeals do not have a suspending effect, with the exception of issues related to permanent residence status.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

A temporary residence permit may be granted for a maximum of one year, but can then be renewed in periods of two years (Act 23/2007, Art. 75).

Specific conditions regarding the delivery of a temporary residence permit include: holding a valid residence visa; being registered in the social security system; not having been convicted for an offence punishable with a prison sentence of more than one year; not being subject to a removal measure or under a ban of entry; and an alert not having been issued under the SIS system or under SEF's Integration Information System (Act 23/2007, Art. 77).

A temporary residence permit may be refused on grounds of the applicant threatening public order, security or health. A medical examination may be imposed with regard to the latter condition (Act 23/2007, Art. 77).

As a general rule, the renewal of a temporary residence permit is dependent upon the continued existence of the conditions for which the first permit was granted. It can nevertheless be noticed that a disease contracted after the issuance of the first permit cannot be considered grounds for a refusal of renewal (Act 23/2007, Art. 78(4)).

### ***2.3.2.2 Permanent Residence***

Under the new Portuguese immigration legislation, two permanent residence statuses coexist: a national permanent residence permit (Act 23/2007, Art. 76) and an EC long-term residence permit (Act 23/2007, chapter VII).

Although it has no time limit, the national permanent residence permit must be renewed every five years, or whenever an alteration to the identification elements on the document occurs (Act 23/2007, Art. 76). Such a permit is granted under the following specific conditions: a foreigner has held a temporary residence permit for at least five years; during this period he has not been sentenced to a penalty exceeding one year imprisonment; and he has a basic command of the Portuguese language (Act 23/2007, Art. 80).

An EC long-term residence permit is granted to a third-country national who: has had legal and uninterrupted residence in Portugal for at least five years; has a stable and regular income; holds health insurance; has adequate lodging; and is proficient in basic Portuguese (Act 23/2007, Art. 126). Foreigners who hold a permit for studies, unpaid professional internships or volunteerism are not entitled to benefit from this status (Act 23/2007, Art. 125). The decision on an application is to be made within six months, and the absence of a decision within nine months is equivalent to the approval of the request (Act 23/2007, Art. 129(5)). The EC long-term residence permit is valid for five years and is automatically renewed upon application (Act 23/2007, Art. 130). Long-term residents benefit from equal treatment with national citizens, including with regard to access to work and education (Act 23/2007, Art. 133).

### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 Family Reunification

An individual holding a residence permit has the right to reunification with family members.<sup>431</sup> Family members eligible for reunification include: a resident citizen's spouse; minor children or children who are dependent on the resident citizen or spouse; minors adopted by the resident citizen or spouse; dependent parents of the resident citizen or spouse; children of whom the couple or one of the spouses is in charge of and who studies in Portugal; and underage brothers or sisters if under the tutelage of the resident (Act 23/2007, Art. 99). Under the new legal regime, reunification with the *de facto* partner of the resident is also permitted. Family reunification is also extended to unmarried underage children and dependant or adopted children of *de facto* partners (Act 23/2007, Art. 100). Family members may already be present in Portugal when they apply, so long as they have legally entered the country; in contrast, the previous regime required applications prior to a family member's entry into Portugal in the majority of cases (Act 23/2007, Art. 98).

Requests for family reunification are now managed by a single authority, whereas previously both the consular offices and the SEF handled such requests.<sup>432</sup> The request for family reunification must be presented to the SEF, accompanied by the following documents: documents proving the existence of the relevant family ties or of the *de facto*

<sup>431</sup> Individuals who under the old legal regime held permission to stay authorization or work permits are considered to have a residence permit under the new regime.

<sup>432</sup> Under previous legislation, for relatives outside Portugal the consular office in the place of residence could issue a temporary stay permit with a validity of no more than one year, and in all cases for an equal or shorter duration than that of the resident. For a relative of a resident already in Portugal, a permanent extension could be granted by SEF Regional Services.



union; documents that prove the fulfilment of all the conditions required to obtain family reunification; and copies of travelling documents belonging to the family members (Act 23/2007, Art. 103(3)).

Family members of a resident with a temporary residence permit will be issued a residence permit with similar validity to that of the resident (Act 23/2007, Art. 107(1)). Family members of a permanent resident will receive a residence authorization valid for two years (Act 23/2007, Art. 107(2)). In both cases, after two years under the initial residence authorization, and if the family ties persist, the relatives shall have their own right to residence authorization in Portugal independent of the resident family member (Act 23/2007, Art. 107(3)). Under the new legislation a spouse may be issued a residence authorization independent of the resident citizen upon initial application if the marriage has existed for five years or more.

Family members are entitled to work and have the right to an education (Act 23/2007, Art. 82).

The SEF must issue a decision within three months of receiving an application (Act 23/2007, Art. 105). In the case of a positive answer from the SEF, a residence visa is immediately issued to the family members (Act 23/2007, Art. 64).

### **2.3.3.2 Work**

#### Employment

Recent legislation established a new legal regime for the admittance of foreign workers, moving away from the work permit system established under the previous law.<sup>433</sup> One key difference is the opportunity for legal entry that may be granted to foreigners who are suitable for job postings released by the Institute of Employment and Professional Training (IEFP), which are jobs not filled by Portuguese citizens, EEA citizens, or third-country nationals who legally reside in Portugal.

According to Act 23/2007, short-term employment (in other words, professional assignment which as a rule does not exceed a period of six months) can be performed under a temporary stay visa provided that the foreigner has a labour contract and the labour market test is satisfied (Act 23/2007, Art. 54). The Employment and Vocational

<sup>433</sup> Under previous legislation, work permits were granted to allow entrance into Portugal to temporarily practice a professional activity, whether dependent or not. This permit could be granted for up to one year. The work permit was sub-divided into the four following types: work permit I, issued for professional activities in the area of sports or shows; work permit II, issued for scientific investigation or to individuals with highly qualified technical knowledge; work permit III, issued for independent professional activity within the scope of rendering a service; and work permit IV, issued for the practice of a dependent professional activity. Granting of a work permit of types I and II required the promise of labour engagement signed by both parties. A work permit of type III required a contract and document substantiating that the individual had the necessary qualifications. Granting of a work permit IV required that the employer communicate the intention to employ, as well as confirmation that space existed within the maximum annual limit of entrances based on the report of job opportunities undertaken by the IEFP (Institute of Employment and Professional Training), the presentation of a job offer issued by the IEFP, and the positive opinion of the IGT (Working General Inspector).

Training Institute keeps an information system that compiles the temporary job offers that have not been taken by EU or EEA citizens or third-country nationals who legally reside in Portugal (Act 23/2007, Art. 56). The temporary stay visa is granted for the duration of the work contract. It can be granted for a period exceeding six months in exceptional cases (Act 23/2007, Art. 56(5)).

Participating in long-term employment depends upon the granting of a residence visa for dependent professional activity. In this case, job opportunities must exist that are not taken by Portuguese nationals, EU or EEA nationals, or third-country workers who reside legally in Portugal. In order to evaluate these professional opportunities, the government annually adopts a global quota that indicates the availability of job offers, and may exclude specific sectors or activities that do not require further workers (Act 23/2007, Art. 59).

Within quota limitations, a residence visa may be issued provided that the applicant has signed a work contract, possesses the promise of a work contract or that he possesses the necessary qualifications, competences and expertise that have been acknowledged for accomplishing one of the activities opened to third-country nationals and the employer has shown a specific demonstration of individual interest in employing him (Act 23/2007, Art. 59(5)). Consequently, the new legislation allows the legal entry not only of foreigners who have a work agreement, but also of candidates for jobs not filled by national or communitarian preference that possess the suitable professional qualifications to fill the existing job opportunities, as long as the employer manifests an individual interest towards the said candidate. The foreign worker, when on Portuguese territory, will then be issued a temporary residence permit on the same grounds. Contrary to the granting of a visa, the granting of a residence permit is strictly dependent upon the existence of a work contract (Act 23/2007, Art. 88(1)).

Under new legislation, more favourable provisions apply to scientific investigators and highly qualified professionals. In such cases, a petitioner must also show evidence of his admission into a research centre or a labour agreement for a highly qualified service.

### Self-employment

Third-country nationals may be granted a residence visa for immigrant entrepreneurs, provided that they have made investments and that they possess sufficient financial means in Portugal (Act 23/2007, Art. 60(2)). A temporary residence permit for the purpose of carrying out an independent professional activity will be issued on the Portuguese territory, providing that: a company has been formed in accordance with the law; the applicant possesses the necessary qualifications to engage in an independent activity; the applicant possesses sufficient financial means; and the applicant is registered in the social security system (Act 23/2007, Art. 89).

### Seasonal work

Under new legislation, seasonal workers may be employed under a temporary stay visa provided that the foreigner has a labour contract and the labour market test has been satisfied (see above) (Act 23/2007, Art. 54 (1(c))).

Contrastingly, the previous law did not have a specific regime for seasonal workers, who were instead subject to the same rules as others applying for work permits.

### ***2.3.3.3 Studies and Training***

The pursuit of study in Portugal depends upon the granting of a residence visa and then a temporary stay permit. The following conditions have to be met in order to be granted a residence visa for the purpose of study: the applicant must be of the minimum age and not exceeding the maximum age for that purpose and he must have been accepted at a secondary level teaching institution (Act 23/2007, Art. 62). In most cases the temporary stay permit for studies is granted for a period of one year and is renewable for equal periods. When the duration of study is less than one year, the permit shall be issued for the duration of study only (Act 23/2007, Art. 91). Students are entitled to work (Act 23/2007, Art. 83).

## **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Act 23/2007 transposes several EU directives, including: Council Directive 2003/86/EC concerning family reunion; Council Directive 2003/109/EC concerning the status of long-term residents; Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; and Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research.

## **4. Real Impact of Immigration Legislation on Immigration in Practice**

The new legislation (Act 23/2007) creates a more transparent and systematic regime, lessening the difficulty for citizens in understanding the law and all the benefits that come from it.

Some changes make the new regime more suitable for the integration of foreign citizens into Portuguese society, especially the standardization of the entrance and residence permits and the corresponding standardization of the juridical status of the holders, as well the new regime for family reunification.

## **5. Cooperation with Third Countries**

Portugal has signed several bilateral agreements regarding cooperation with regard to migration issues, such as three agreements with Cape Verde (including a social security convention in 2005), as well as agreements with Brazil (notably on the reciprocal hiring of nationals in 2003).

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## 1. General Immigration Policy and Trends

Following the overthrow of the communist regime in 1989, Romania began a steady period of transition. On 1 January 2007, Romania joined the European Union; however, its transition remains on-going even following its accession to the EU.

Romania is primarily considered as a state of emigration and transit and only secondarily as a destination for immigrants. Net migration in Romania remains negative, meaning that the number of emigrants in a given year exceeds the number of immigrants.

The principal source country for immigration of third-country nationals to Romania is the Republic of Moldova. This trend appears to be on-going, facilitated by the common language shared by the two States and fuelled by the superior economic conditions in Romania. Other source countries of third-country nationals immigrating to Romania include Australia, Canada, Israel, Serbia, Switzerland, the Syrian Arab Republic, Turkey, Ukraine and the United States of America.

Romanian migration policy has been modelled to conform to European legislation. The legal status of aliens in Romania is presently regulated by Emergency Ordinance 194/2002, which has been modified various times since its adoption.<sup>434</sup> Very recently, the Government adopted two emergency ordinances, changing important aspects of immigration policy. The two ordinances were published in the Official Journal of Romania on 26 June 2007, and entered in force on the same day. Emergency ordinance 55/2007 established the Romanian Immigration Office, reorganizing (in effect, merging) three authorities dealing with immigration issues prior to the new legislation: the Authority for Aliens, the National Office for Refugees, and the Office for Labour Force Migration. Emergency ordinance 56/2007 deals with the employment of aliens, work authorization and the temporary transfer of working force.

The legal definition of the term *alien* has recently changed. Prior to June 2007, aliens were defined as persons without Romanian citizenship. There were thus two categories of aliens, because special rules had been adopted for aliens with EU citizenship.<sup>435</sup> In contrast, an alien is now defined as a person who is not a Romanian citizen or a citizen of another EU or EEA Member State. Therefore, starting with the latest changes, the legislation on aliens applies only to non-EU and EEA citizens (i.e. third-country nationals). EU and EEA citizens have the same status as Romanian citizens. This new approach has simplified the application of the law.

Secondary legislation regarding the organization of the Romanian Immigration Office has also been adopted (Government Decision 639/2007). Accordingly, the Romanian Immigration Office has been placed under the Ministry of the Interior and Administrative Reform.

<sup>434</sup> The Ordinance has been modified by: Law 357/2003; Law 309/2004 regarding free circulation of EU and EEC Member State citizens; Law 482/2004; Emergency Ordinance 113/2005, passed by Law 306/2005; Law 56/2007; and Emergency Ordinance 55/2007.

<sup>435</sup> For example, the Emergency Ordinance 102/2005 on free movement on Romanian territory of EU and EEA (European Economic Area) Member State citizens. The Regulations on the legal status of aliens, frequently modified in the pre-accession period, also contained special rules for EU and EEA Member State citizens.

In 2004, the Romanian Government adopted a National Strategy on Migration (Government Decision 616/2004). The most important principles of the strategy are: EU accession, national interest, favourable effects of controlled migration, fighting illegal migration and international solidarity and cooperation. Romania gained PHARE<sup>436</sup> assistance for legal harmonization in the field of migration regulation.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

A short-stay visa, which allows aliens to request entry into the Romanian territory for reasons other than immigration, with a view to an uninterrupted stay or several stay intervals for which the total duration of stay should not exceed 90 days within six months from the first entry. According to this definition, the short-stay visa does not confer an immigrant status.

Long-stay visas are documents issued for entry and stay in Romania for up to 90 days, but which grants the possibility to apply for a longer stay in Romania.<sup>437</sup> Long-stay visas are issued for the following purposes: economic activities, professional activities, carrying out commercial activities, employment, studies, family reunification, religious or humanitarian activities, research purposes and other purposes, such as medical treatment.

Holding a long-stay visa is a precondition for requesting the extension of a temporary right to stay.<sup>438</sup> An alien who has obtained the right to stay on the territory of Romania, or an alien whose right to stay has been extended by the Romanian Immigration Office through its territorial offices, will receive one of three types of stay permit: a temporary stay permit is issued to an alien who held a right of temporary stay, or whose right was extended; a stay permit for work purposes is issued to an alien who held a temporary right to stay and the right to work,<sup>439</sup> or whose right was extended; and a permanent stay permit will be issued to an alien who held a permanent right to stay.

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

The long-stay visa is issued by the diplomatic missions and consular offices of Romania. Long-stay visa applications require the consent of the National Centre for Visas, a specialized structure of the Ministry of Foreign Affairs, as well as the opinion of the Romanian Immigration Office.<sup>440</sup>

<sup>436</sup> PHARE is a pre-accession assistance programme for candidate EU Member States, assisting with funding towards institution building and alignment with the *acquis*.

<sup>437</sup> This type of visa is granted for the following purposes: mission, tourism, visit, business, transportation, sporting activities, cultural, scientific, humanitarian activities, short-term medical treatment or other activities which do not breach the Romanian legislation.

<sup>438</sup> The extension can also be requested by aliens who do not need a visa.

<sup>439</sup> This is a separate document from the work authorization.

<sup>440</sup> This opinion verifies the entry conditions regarding: the border crossing document; Romanian or Schengen interdiction measures; if an alien is thought to represent a threat to national defence or security, or public order, health or moral probity; whether the alien is delinquent or there is a possibility he may commit delinquency; and whether there is a reason to consider that the visa request is for the purpose of irregular migration. The opinion may also consider the specific conditions relating to the type of visa.

This opinion officially serves only as a recommendation; however, it can be noted that a negative opinion will likely lead to the refusal of a visa. The Romanian Immigration Office shall issue the opinion within a 30 day period from receiving the demand from the Ministry of Foreign Affairs. The visa is then issued only if, at the time of issuance, the conditions existing at the time of the approval continue to be fulfilled. In this way, the diplomatic missions and consular offices provide an additional control.

### **2.2.2 Procedural Steps – Conditions to be fulfilled**

Upon requesting the entry visa for Romania, aliens must present themselves personally to the authorities competent in granting visas. Both the short- and long-stay visas are issued with a consular tax of 25 USD (17 EUR) for one entry and 60 USD (42 EUR) for multiple entries. The fee does not include the cost of the visa, which must be paid separately and ranges from 35 to 70 USD (24 to 47 EUR).

Generally, third-country nationals require a visa to enter Romania, as determined by the Council Regulation 539/2001/EC of 15 March 2001, which lists the countries whose nationals must be in possession of visas when crossing external borders and those whose nationals are exempt from that requirement (Emergency Ordinance, Art. 30).

Citizens of the States with whom Romania has signed agreements in this respect are exempt from visa compulsion under the conditions and staying intervals settled upon in these agreements. In addition, the Government may establish through a decision the unilateral exemption of citizens of certain States from visa compulsion.

Entry into the Romanian territory may be permitted if the alien satisfies the following conditions: possession of a valid State border crossing document accepted by the Romanian State; possession of a Romanian visa issued under the restrictions of the law or, as the case may be, a valid stay permit, if not otherwise provided for by international agreements; presentation of documents that justify the purpose and conditions of their stay and that prove the existence of appropriate means both for their support during the interval of their stay and for the return to their State of origin, or for transit to another State where there is a certainty that they shall be allowed to enter.

In addition, aliens seeking entry must not be included in the category of aliens against whom interdiction has been applied or who have been declared undesirable. Aliens shall not have breached in an unjustified way the declared purpose for the visa requested, nor shall they have attempted entry into Romania with falsified documents. The SIS shall also not contain an alert about the person, and the alien must not represent any threat to national defence or security, or public order, health or moral probity.

An alien shall be refused entry into the territory of Romania if: he does not meet the entry conditions; he is identified by international organizations to which Romania is a party, as well as by institutions specialized in combating terrorism, as providing financial, organizational or any other support to acts of terrorism; there are indications that he is part of organized criminal groups with transnational character or which support, through any means, the activity of these groups; there are serious reasons to consider that he



has committed criminal offences or has taken part in committing criminal offences against peace and humanity or war crimes or crimes against humanity, according to the international conventions to which Romania is party (Emergency Ordinance, Art. 8).

A Romanian visa shall not be granted if the conditions regarding entry into Romania are not complied with or there is a reason for interdicting entry into Romania. A visa shall be granted only if: there are no negative indications in the Information System of migration, asylum and visa; there are no reasons established by the European Union and EEC for the refusal of the applicant's entry to the territory of the Schengen States and the territory of those states who have signed the Agreement regarding the abolition of border control (The Schengen Agreement); there are no reasons to believe that the visa is requested for the purpose of illegal immigration; and the alien has not been finally sentenced for having committed offences abroad incompatible with the purpose for which he has requested the visa.

Border police bodies may also reject the entry of an alien into the territory of Romania if the alien committed criminal offences during other stays in Romania or abroad, if they were against the Romanian State or a Romanian citizen, or in cases where the alien has irregularly entered or attempted to assist other aliens in irregularly entering the Romanian territory. In addition, an alien may be refused if he has previously not respected the declared purpose of a visa, or who suffers from a disease that can severely endanger public safety, as established by order of the Minister of Health.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

The Romanian immigration legislation does not provide procedural rules for complaints or appeals. However, the general rules of administrative jurisdiction, as provided by the Law 554/2004, do apply. After a compulsory and preliminary administrative procedure (complaint), an action can be brought to the competent administrative court. The court may annul the administrative act (in full or in part) and may also oblige the public authority to amend the act or to issue a certificate or any other document.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

The Romanian Immigration Office or its territorial units may extend the right of temporary stay to aliens who entered Romania on the basis of a long-stay visa, as well as to aliens who are exempt from the obligation of obtaining a long-stay visa under the conditions provided by law. Specific procedural rules are established for the right to permanent stay, which is approved by the chief of the Romanian Immigration Office, on the proposal of a special commission.

#### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

The applicable conditions for immigration depend on the type of stay permit requested. Nevertheless, in the vast majority of cases the applicant must: possess health insurance,

sufficient accommodation and sufficient financial means; and not represent a danger to public order or national security.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

The decision to reject the prolongation of a temporary right of stay application can be appealed at the Bucharest Court of Appeals within 10 days of the communication by the Romanian Immigration Office to the applicant.

The refusal and the motivation for the refusal of the right to permanent stay can also be contested at the Bucharest Court of Appeals.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

The Romanian Immigration Office or its territorial units may extend the temporary right of stay to aliens who enter Romania on the basis of a long-stay visa, as well as to aliens who are exempt from the obligation of obtaining a long-stay visa. A temporary permit specific to the purpose of stay is issued to aliens granted the right to stay and may be extended for one year at a time, providing that the conditions for stay continue to be met. The issuance of a long-stay visa and the later extension of that stay right are based on specific conditions according to the immigration purpose.

It is also required that, during the stay on Romanian territory, none of the reasons for interdicting the alien's entry into Romanian territory have been registered. The alien must hold a valid travel document,<sup>441</sup> and he must request that the right to stay on Romanian territory be granted or extended for the same purposes for which the visa, the right to stay or the extension of the right to stay were previously granted.

Additional requirements for an extension of the right to stay include that the alien previously complied with the purpose for which his stay on Romanian territory was granted and, except in the case of aliens whose family members are Romanian citizens, that he has adequate accommodation. In such a case, a statement by a Romanian citizen offering dwelling space to the alien will be sufficient. The alien must also provide proof of health insurance coverage for the entire stay.

The extension of the stay right may be granted for periods longer than one year, under the conditions of the law or based on reciprocity. If necessary, the applicant will be invited for an interview.

Costs include 70 EUR for consular tax and 120 EUR for the issuance of a permit.

### ***2.3.2.2 Permanent Residence***

A permanent stay permit is issued to aliens who have been granted the permanent right to stay and shall be renewed every five years.

<sup>441</sup> Except the cases where the document has expired after entering Romania and, for reasons irrespective of the will of the alien, the document could not be renewed.

Aliens may be granted the right to permanent stay in Romania if they have had temporary, continuous legal stay for five years prior to submitting the request.<sup>442</sup> In addition, for permanent residency it is required that an alien proves that he has adequate means of support in the amount provided for by the law, with the exception of aliens who are family members of Romanian citizens. Aliens must also provide proof of health insurance, under the conditions of the law, as well as proof of legally holding an appropriate dwelling space. He must speak the Romanian language to a satisfactory level<sup>443</sup> and may not represent a danger to public order or national security.

Third-country nationals of Romanian origin or born in Romania, as well as those whose stay is in the interest of the Romanian State, may be approved the permanent stay right without meeting the conditions provided above.

The decision regarding permanent right of stay shall be issued within six months of the submission of the application. The head of the Romanian Immigration Office may extend this term for a further three months if there are objective reasons, but the applicant must be notified of any such extension.

An alien who has been granted the permanent right to stay benefits from equal treatment with Romanian citizens (under the conditions of the law) regarding access to the labour market, provided that the activity carried out would not imply, even occasionally, using public authority prerogatives. Those functions that imply using public authority prerogatives are not accessible for aliens. Access to all forms of education and professional training, including scholarships, are also equal, as is access to social security, social and health care, social protection and medical assistance.

The right to permanent stay may not be granted to the following categories of third-country nationals: holders of a temporary stay right for studies, those who request the right to asylum, beneficiaries of temporary humanitarian protection or temporary protection and holders of diplomatic or official visas (Emergency Ordinance, Art. 69).

Costs include 170 EUR for consular tax and a tax for the permanent stay permit.

### **2.3.3 Conditions for Specific Immigration Types**

#### **2.3.3.1 Family Reunification**

The following categories of aliens may request a visa for the purpose of family reunification with a Romanian citizen: a spouse; an unmarried alien living as his companion, if they have at least one child together; children of the sponsor or his spouse or companion, including adopted children who are under 21 years of age; children, including adopted

<sup>442</sup> The stay shall be considered continuous when the period of absence from the Romanian territory is less than six consecutive months and does not exceed a total of ten months for the entire period. The stay shall be considered legal if there were no measures of expulsion against the alien during the entire period of stay. At the calculation of the period of continuous and legal stay, only half of the period in consideration may have been under the scope of study and none of that period may have been for a stay granted by a diplomatic visa or a visa obtained for employment as a seasonal worker.

<sup>443</sup> Upon in-person submission of the application, the applicants will pass an interview in order to prove their Romanian language skills.

children, or other aliens being supported by the sponsor or his spouse or companion; and relatives of first degree kinship in the ascending line of the sponsor or his spouse or companion. Aliens holding a temporary or permanent stay permit may request family reunification with: a spouse; minor, unmarried children; dependent relatives of the sponsor or his spouse of first degree kinship in the ascending line, in cases where they are unable to look after themselves; and adult unmarried children of the sponsor or his spouse, in cases where they are unable to look after themselves due to medical reasons. Aliens with a right to stay for the purpose of studies may request family reunification with a spouse and minor children, provided that the marriage was concluded before the stay right was obtained.

The standard application shall be accompanied by the following documents: the marriage certificate or other proof of kinship, as the case may be; the applicant's statement attesting that he will live together with family members; a copy of the stay permit; proof of adequate dwelling space (currently defined as 12 square meters for each family member); proof of means of support, amounting to the minimum net salary allowed in the Romanian economy for each family member; and proof that the applicant is covered by medical insurance. In cases where there are doubts regarding kinship, the Romanian Immigration Office may request additional evidence. Family reunification in situations of polygamy will not be approved.

The application is usually decided upon within three months of the date of submission. In the case of refusal, the reasons for the refusal will be communicated to the third-country national in written form. The visa shall be issued by the diplomatic missions or consular offices of Romania in the country where the family members have their residence or domicile.

The visa is generally issued for a period of 90 days. The prolonging of the stay right is possible for the duration of the stay right of the sponsor or, in the case of family members of a Romanian citizen, for a period of up to five years.

Aliens holding a right of stay for family reunification may have their right of stay extended independently if: they reach adulthood or if the person who requested the family reunification dies or the marriage upon which reunification was made ends in divorce or annulment. For the family members of a Romanian citizen, the permit may be prolonged if the alien reaches 21 years of age, the Romanian citizen died or the marriage ends. The right to stay provided shall be renewed for a maximum period of six months.

### **2.3.3.2 Work**

#### **Employment**

A long-stay visa for employment is granted on the basis of a work authorization issued by the Romanian Immigration Office, which shall be issued upon the request of the employer. The employer must provide proof that he carries out a legal activity in Romania, that he does not have debt and that he made a legal selection with regard to the potential third-country national employee.

There is the precondition that the position cannot be filled by a Romanian citizen, EEA Member State citizen or by an alien holding a permanent stay permit. The employer requesting the work authorization must present, among other things, the following documents: a certification issued by the Labour Force Agency on the available working force in the area, a previous announcement in a large circulation newspaper about the selection for the post and a record on the efforts of the employer on the selection procedures.

In addition, the employer must submit documents attesting to the alien's professional qualifications and the experience of the alien in the profession. Furthermore, evidence must be provided proving that the alien does not have a medical condition that would prevent him from carrying out the respective activity. The alien must have a minimal knowledge of Romanian, and there must also be space remaining within the quota approved by the Government every year for work authorizations. Presently, the quota system is regulated by Emergency Ordinance 56/2007. The quotas are proposed by the Ministry of Labour, Family and Equal Opportunities, based on the Romanian policy of working force migration and the situation of the labour market. The Government, through Decision 1910/2006, determined the number of work authorizations for the year 2007 to be 12 000.

The visa request should be accompanied by the following documents: a work authorization issued by the Romanian Immigration Office; proof of financial means of support at the level of at least the minimum guaranteed salary in the national economy for the entire period of the visa validity; a criminal record certificate or other document of the same legal value issued by the authorities of the domicile or residence country; and proof of medical insurance coverage for the validity period of the visa.

A long-stay visa for employment shall also be issued to aliens who are cross-border workers in Romania and to athletes hired with an employment contract to play on Romanian teams. Long-stay visas for the purpose of employment are not granted to those persons who in the last two years had a stay permit for commercial activities and have not respected their business plan.

Both the work authorization and the stay permit for work are issued for a period of one year. If the stay right is prolonged, the work authorization is automatically prolonged for a further period of one year. If the labour contract is terminated, the work authorization is annulled and another work authorization must be requested if a new labour contract is concluded. The stay permit is not restricted to a single employer, region or type of work.

### Self-employment

The long-stay visa for economic activities, the long-stay visa for individual professional activities and the long-stay visa for commercial activities may be granted to third-country nationals who are to undertake such activities in accordance with the relevant legal provisions.

With regard to the first type of visa, the economic activities permitted are distinct from professional and commercial activities; hence this type of visa may be granted to aliens that are to perform independent economic activities or economic activities within family associations. There is a contradiction between the Regulation on aliens and the special regulation on these types of businesses, Law 300/2004. According to this law, these activities are only accessible in Romania to EU and EEA Member State citizens. The long-stay visa for professional activities, on the other hand, theoretically refers to such professions as auditors, lawyers, expert accountants, translators, etc.

These two types of visa may be granted to applicants complying with the following conditions: provision of proof of compliance with the conditions related to the performance of the respective economic activities or profession; provision of proof that in the country of origin they carry out a similar profession to the one they intend to carry out in Romania, if intending to carry out professional activities; possession of health insurance for the visa validity period; presentation of a criminal record certificate or other document with the same legal value.

A long-stay visa for commercial activities is granted to third-country nationals who are, or will become, shareholders or associates in Romanian commercial companies, having responsibilities for running and administering them. This type of visa shall be granted on the basis of approval from the Romanian Agency for Foreign Investment, which shall be granted to aliens complying with the following conditions: provision of a business plan containing data regarding the nature, location and duration of the relevant activity and the estimated needs for labour force, as well as data concerning financial activity during the amortization of the investments; the presentation of an account excerpt that proves that the applicant possesses the necessary funds to carry out the activity, in an amount of at least 100 000 EUR if they are to become shareholders, or 70 000 EUR if they are to become associates in a Romanian limited liability company; the investment to be made by the company should be materialized through capital and technology contribution in a minimum amount of 70 000 EUR for limited liability companies and 100 000 EUR for joint stock trading companies; and the creation of a minimum number of ten jobs in the case of limited liability companies and fifteen jobs in the case of joint stock trade companies.

Those third-country nationals who have previously obtained an approval for a certain activity may apply for another approval only after they have proven that the previous plan could not be realized due to objective reasons. The approval of the Romanian Agency for Foreign Investment is issued for a period of six months and is meant to establish the fulfilment of technical and economic utility conditions of the activity to be carried out by the alien.

The visa application shall be accompanied by the following: the approval of the Romanian Agency for Foreign Investments; a criminal record certificate or other document of the same legal value; and proof of medical insurance for the period of visa validity.

Seasonal work

The regulation regarding seasonal workers is included in the text of Emergency Ordinance 56/2007. A seasonal worker is a person working in Romania for a determined period, at most six months within a twelve-month interval, under an individual labour contract in a seasonal sector. This person requires a work authorization, which will be issued by the Romanian Immigration Office at the request of the employer and which cannot be prolonged for the pursuit of another type of work.

**2.3.3.3 Studies and Training**

The long-stay visa for the purpose of study is granted to third-country nationals who wish to enter Romania to attend high school, undergraduate or graduate courses, as the case may be, or for obtaining scientific titles within state or accredited private institutions under the law. The long-stay visa for studies may be granted to aliens, upon request, who are students or participants in student-exchange programs. Aliens are considered students if they have been accepted by an accredited Romanian school or institution for study according to the legislation in force, including PhD studies.

For students, an application for a long-stay visa must be accompanied by: a letter of acceptance for studies from the Ministry of Education and Research; proof of payment of the tuition fees; proof of means of support, being at least the amount of the sum representing the minimum monthly wage for the entire period of the visa; a criminal record certificate or other document of the same legal value; proof of medical insurance; the permission of the parents or legal guardian, if the applicant is a minor.

Third-country nationals who are granted scholarships by the Romanian State as well as those with an ancestor who had or has Romanian citizenship are not required to present the proof of material support.

Emergency Ordinance 55/2007, transposing Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, created a new type of long-stay visa, for research purposes. This visa is granted with the approval of the National Authority of Scientific Research, at the request of a research institution and with the approval of the Romanian Immigration Office.

**3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Romania has transposed the European legislation on migration into national law. However, the transposition is very mechanical, mainly due to the short time available in which to transpose it; the legislation was adopted by the Government and only later was it (partially) approved by the Parliament. There still remains a lack of national experience in certain aspects of immigration.

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

The correct application of the national legislation is difficult because of continuous changes being made to it and because of the executive structures applying the regulations. The new executive structure dealing with migration, the Romanian Migration Office, is functional, but the transformation process is difficult. One sign of that difficulty is that, on 19 June 2007, the former director of the recently closed Office for Labour Force Migration signed a protest addressed to the prime minister, asking for the withdrawal of the new regulation on administrative structures dealing with migration.

Furthermore, the criteria defined for immigration (the issuance of long-stay visas and extension of the temporary right to stay) are vague or subjective in some cases.

#### **5. Cooperation with Third Countries**

Cooperation with third countries is important for Romania, especially with the Republic of Moldova. An accord signed by the Governments of Romania and of the Republic of Moldova on mutual journeys of citizens grants a special status for Moldavian citizens; for example, they do not have to pay visa fees.

In past years, a PHARE/TACIS Neighbourhood Program was achieved, based on the 2003 Commission Communication ‘Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours,’ which proposed that “the European Union should aim to develop a zone of prosperity and a friendly neighbourhood [...] with whom the European Union enjoys close, peaceful and co-operative relations.”

A German-Romanian project, involving the public authorities of the participant countries, began in May 2007 and is ongoing. The goal of this project is to promote sustainable development in the field of asylum and migration in the Republic of Moldova.



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# Slovakia

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## 1. General Immigration Policy and Trends

Traditionally, Slovakia had been a country of emigration rather than of immigration. However, the collapse of communism brought about a radical change in migration patterns. Slovakia is now a country of transit for many migrants and has even become a country of destination for some, especially since the country's accession to the EU in 2004 (Divinský 2006). In January 2005, the Slovak Government passed the Conception of the Migration Policy of the Slovak Republic: a comprehensive framework for managing migration. The document outlines policies in the domains of international cooperation, legal migration and the integration of immigrants, asylum, undocumented migration, human rights protection and prevention of xenophobia, intolerance and discrimination.

In 2006, there were 32 153 immigrants residing in Slovakia, representing 0.6 per cent of the country's total population. Prior to 2004, their absolute number remained stable, but following Slovakia's accession into the EU in 2004, the number of immigrants has increased considerably as a reaction to much simpler conditions regarding the movement of nationals from EU Member States and their family members. Immigrants from neighbouring countries (for example Ukraine, Poland and Hungary) make up a large proportion of the foreigners residing in Slovakia, with Czechs represent 16 per cent of all foreign residents in the country. This is probably due to the fact that they are likely to have had relatives and working relations in the country before they entered. These immigrants are primarily employed or doing business in various sectors of the economy, although many also arrive for the purpose of family reunification (Divinský, forthcoming).

Another subgroup of immigrants consists of those from countries with historically developed foreign communities in Slovakia and/or countries that possess a Slovak minority (for example, Russia, Serbia, Romania, Bulgaria and Croatia). Citizens of these countries work, study and create families in Slovakia and gradually join their national minorities within the country. It can also be noted that rising inflows of immigrants from Asian countries form a new trend in Slovakia.

Finally, since 2004, foreign nationals from the 15 initial EU countries have constituted the most dynamic component of migrants. In 2006, these immigrants accounted for 21.5 per cent of the total number of foreigners in Slovakia, as compared to 9.8 per cent in 2003. This subgroup of migrants is primarily involved in economic activities in the tertiary and quaternary sectors as highly-skilled experts, representatives, consultants, lecturers, researchers and so on. Family reunification is less common for this group, as their work is usually of a temporary nature (Divinský, forthcoming).

The rise in newly issued residence permits for foreigners in Slovakia (from 4622 in 2000 to 12 631 in 2006) is evidence of the fact that accession to the EU caused a fundamental change in immigration trends and an increased interest in Slovakia as a country of destination for migrants; their inflows grow almost exponentially.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Immigrants may legally enter and stay in the territory of Slovakia for the purposes of family reunification, employment, business, seasonal work, studying and training, research, special activities (lecturing, artistic and sport activities) or for the fulfilment of official duties by civil units of the Armed Forces (ASA 2002, Art. 18).

### 2.2 Admission Rules – Visa Policy

#### 2.2.1 Competent Authorities

Applications for visas are submitted at a diplomatic mission or consulate office of the Slovak Republic abroad.<sup>444</sup> A foreign mission may grant a visa only upon consent of the Ministry of Interior, which is binding on the foreign mission. However, the Ministry of Interior and the Ministry of Foreign Affairs of the Slovak Republic may conclude an agreement determining in which cases the foreign mission may grant a visa without the consent of the Ministry of Interior.

#### 2.2.2 Procedural Steps – Conditions to be fulfilled

Under Slovak legislation, an alien may be granted an airport transit visa, a transit visa, a short-term visa or a long-term visa. A short-term visa shall authorize an alien for one or several entries for a length of stay not exceeding 90 days in six months. A long-term visa shall authorize an alien for an entry and stay of more than 90 days in six months, provided that it is necessary for the fulfilment of obligations by the Slovak Republic arising from international treaties.

In order to be granted a visa, an alien must submit a travel document and current photograph to the relevant authority. Upon request, the alien must, in addition, provide the following documentation: proof of the purpose of his intended stay; evidence of the financial coverage of his stay (the minimum monthly salary required is 8100 SKK (25 EUR)); proof of the financial means for return back to his country of origin; and a certificate of health insurance covering any costs that may incur in connection with his repatriation due to an illness, or for being provided with urgent health care on the territory of the Slovak Republic (in the amount of at least 30 000 EUR). Also upon request, an alien shall appear personally for an interview. The granting of a visa may be conditional upon an invitation verified by the police department,<sup>445</sup> a deposit in the amount of the necessary costs related to return to the country of origin or the submittal of a return travel ticket.

<sup>444</sup> The ASA 2002 stipulates an exemption, according to which the transit visa as well as the short-term visa may be granted by the police department at border crossing points based on humanitarian grounds where the alien proves that his entry is acute and he could not predict it, or where the granting of a visa is in the interest of the Slovak Republic; the maximum validity period for such a visa is 15 days.

<sup>445</sup> An invitation shall be submitted on an official form, which includes information relating to both the inviting person and the invited alien, the purpose for which the alien is invited to the territory of the Slovak Republic and the commitment of the inviting person that he will cover all expenses related to the stay and departure of the invited alien. The inviting person shall be obliged to prove that he is capable of fulfilling the latter commitment.

When processing a visa application, the foreign mission shall take into account: the security of the State; the observance of public policy; the protection of health or the protection of the rights and freedoms of others and, on the determined territories, also the interest in the protection of the nature; the purpose of the expected stay; any previous stays the alien may have had; and the interests of the Slovak Republic.

A foreign mission shall decide on a visa application within 30 days of its receipt.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

Administrative or judicial control of the decisions is not regulated by Slovak legislation.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

The competent authority for deciding on the application for a residence permit is the Department of the Alien Police in the place of residence, or presumed place of residence, of an alien in Slovakia (ASA 2002, Art. 80(1)).

#### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

Applications for the granting of a stay permit require the following supporting documentation: a valid travel document (in most cases); two current photographs; a document confirming the purpose of residence; proof of financial coverage of the stay (amounting to at least the minimum wage, which is currently set at 8100 SKK (240 EUR) per month); proof of secured accommodation;<sup>446</sup> a document confirming health insurance coverage for the time of stay, as well as a document confirming that an alien does not suffer from a disease that may endanger the public health; and a document confirming that the alien will not constitute a burden to the social security system of Slovakia.

The fees for permits vary according to the length and purpose of stay, but the general figures are as follows: 7000 SKK (210 EUR) for the purposes of self-employment or business; 5000 SKK (150 EUR) for employment; 1000 SKK (30 EUR) for seasonal work; 3000 SKK (90 EUR) for studying and special activities; and 4000 SKK (120 EUR) for family reunification.

When considering an application, the police department shall take into account the following: the public interest, particularly with regard to public security and health; the economic needs of the Slovak Republic, with emphasis on the level of contribution of the alien's business activities to the economy of the Slovak Republic; the alien's personal and

<sup>446</sup> This shall not apply in the case of: an alien who regularly crosses a state border in order to come to work or to school from the neighbouring state; an alien who was granted a temporary residence permit based on the purpose of studying at a university; or an alien who was granted a temporary residence permit and works in research or development.

family situation, including the interests of any minor children he may have; his financial situation; and the length of his stay.

A police department shall dismiss an application in the following circumstances: the alien is an undesirable person; there is a reasonable suspicion that during his stay the alien would endanger the security of the State; it is in the interests of public policy, health or the rights and freedoms of others and, on the determined territories, also the nature; it can be assumed that the alien would constitute a burden to the social security system and to the health care system of the Slovak Republic; there is a reasonable suspicion that the alien entered into marriage with the aim to obtain a stay permit; or the alien deliberately stated false or misleading data or submitted false or modified documents.

The police department shall issue a confirmation of the application's receipt on the day of its filing. It shall then decide on an application for a stay permit within 90 days from the day of the application's submission. In particularly complicated cases this time limit may be extended by a maximum of another 90 days.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

The authority competent for deciding on the appeal against permit rejection is the Department of Aliens Police of the Police Directory, as the supreme authority to the Departments of the Alien Police (Administrative Procedure Code, Art. 58). According to the Administrative Procedure Code, the appeal against the decision must be lodged with the competent authority that issued the decision within 15 days of the date of promulgation of the decision (Administrative Procedure Code, Art. 54(1); Art. 54(2)). An appeal submitted within the legal period has a suspending effect on the decision, unless it is denied by the special provisions of the ASA 2002. The supreme authority may change or reject the first instance decision, or it may dismiss the appeal and uphold the decision. The decision of the appellate authority is definitive, with no legal possibility for a further administrative appeal.

If an appeal is not successful and the decision becomes valid, there is the legal possibility to challenge the decision through a civil action to the Regional Court, competent according to the habitation of the authority concerned. The action does not, in most cases, have a suspending effect<sup>447</sup> and must be lodged within two months of the delivery of the last-instance decision.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

A temporary residence permit may be granted to an alien for the purpose of conducting business, employment, studying, special activities,<sup>448</sup> family reunification or the fulfilment of official duties by civil units of the Armed Forces (ASA 2002, Art. 18).

<sup>447</sup> The court may suspend the enforcement of the decision upon the request of the participant, if there is a risk of serious harm inflicted by the execution of the decision.

<sup>448</sup> Special activities include lecturing activities, artistic activities and sport activities.

In most cases, an initial application for the grant of a temporary residence permit shall be submitted to a diplomatic or consular office of the Slovak Republic in the country of origin.<sup>449</sup>

Initial permits for temporary residence may be granted for a maximum period of two years and for one purpose only. If the alien decides to perform an activity other than the one for which the temporary residence permit was granted, he must submit a new application. If the purpose for stay remains unchanged and an alien fulfils the conditions for residence, the residence permit may be renewed for a further period of three years.

### **2.3.2.2 Permanent Residence**

In principle, an initial application for the grant of a permanent residence permit shall be submitted to a diplomatic or consular office of the Slovak Republic in the country of origin. However, when the applicant is already residing in Slovakia, the application can be directly submitted to the competent authority (the Department of Aliens Police).

An initial permanent residence permit may be granted for five years. After residing in Slovakia for five years on the basis of this initial permit, an alien may request the police department grant him a permanent residence permit for an unlimited period of time.

A first permit may be granted to an alien who is: the spouse of a Slovak citizen or a direct dependent relative of a Slovak citizen; a single child younger than 18 years of age and who has been put into the personal custody of a foreigner who is the spouse of a Slovak citizen; a single child (younger than 18 years of age) of a foreigner with a permanent residence permit or a child younger than 18 years that has been put into the personal custody of a foreigner holding a permanent residence permit; a dependent child over 18 years of age of a foreigner holding a permanent residence permit; or if it is in the interests of the Slovak Republic.

The police department may grant the subsequent (unlimited) permit to an alien who: was granted the first permit; has a temporary residence permit for the purpose of employment, conduction of business or family reunification; has a permanent residence permit that has lasted at least five years before submitting the subsequent application; or who is a child younger than 18 years of age of an alien with a subsequent permit.

When considering an application, the police department shall take into account, in addition to the general requirements (see section 2.3.1.2), the level of the alien's integration in the Slovak society.<sup>450</sup>

<sup>449</sup> There are certain exceptions to this principle, thus an alien may submit the first application for a temporary residence permit on the territory of the Slovak Republic when: a visa is not required; the alien's temporary residence is for the purpose of employment, for which a permit is granted regardless of the situation of the labour market; the alien's residence is under the category of special activities (lecturing, artistic or sporting activities), fulfilment of official duties by civil units of the Armed Forces or family reunification; the alien is the spouse of a person granted asylum; or if so stipulated by an international treaty. In these cases, the alien may file an application for a temporary stay permit at a police department on the territory of the Slovak Republic.

<sup>450</sup> The legislation does not detail what is embraced within the notion of level of integration; it might comprise, among other things, the level of knowledge of the Slovak language.



### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 *Family Reunification*

Depending on their situation and on the status of the sponsor, family members are granted either a temporary or a permanent residence permit.

Aliens allowed to apply for a temporary residence permit for the purpose of family reunification are: the spouse of an alien with either a temporary or permanent residence permit, where the spouses are at least 18 years of age; a single child less than 18 years of age of aliens with temporary residence permits, of an alien with a temporary residence permit or the spouse of such a person, or of a person granted asylum or the spouse of such a person, and who takes care of the child based on law or on a decision of the competent authority; a dependent child over 18 years of age (but with a maximum age of 25 years for a studying child) of an alien with a temporary residence permit, or of his spouse; a direct relative of a person granted asylum who is less than 18 years old; a single parent dependent on the care of an alien with a temporary residence permit for the purpose of business or employment or dependent on the care of an alien with a permanent residence permit; and a dependent person pursuant to an international treaty (ASA 2002, Art. 23).

The police department shall dismiss an application for the renewal of a temporary residence permit where the temporary residence permit was granted for the purpose of family reunification and the husband and wife do not lead a common family life (ASA 2002, Art. 27(6)). An alien who was granted a temporary residence permit for the purpose of family reunification cannot submit an application for a change of the purpose of residence.

A permanent residence permit may be granted, based on family ties, to an alien: who is the spouse of a citizen of the Slovak Republic; who is a direct dependent relative of a citizen of the Slovak Republic who usually resides on the territory of the Slovak Republic; who is a child younger than 18 years of age placed in the custody of an alien who is the spouse of a citizen of the Slovak Republic who usually resides on the territory of the Slovak Republic; who is a single child younger than 18 years of age of an alien with a permanent residence permit or who is a child younger than 18 years placed in the custody of an alien with a permanent residence permit; who is a dependent child over 18 years old (but with a maximum age of 25 years for a studying child) of an alien with a permanent residence permit; or in cases when it is in the interest of the Slovak Republic (for example, a sport player) (ASA 2002, Art. 35).

Individuals seeking permission to stay in Slovakia for the purpose of family reunification shall, in addition to other general application requirements, submit a document issued by the Birth Registry verifying the relevant family relationships. Where the family reunification involves the grant of a temporary residence permit to a child, the given consent of any parent who does not have custody of the child, but who is entitled to meet with him or her, must also be submitted.

An alien being legally on the territory of the Slovak Republic based on family reunification purposes may study and/or be employed without the need to be granted a work permit (either permanently or temporarily).

### **2.3.3.2 Work**

#### Employment

In most cases, a temporary residence permit for the purpose of employment may be granted to an alien only upon the presentation of a work permit, or confirmation from the employer that the alien shall execute activities for which a work permit is not required.

An alien may apply personally for a work permit, or the application may be submitted by a future employer. The application shall be submitted to the competent Office of Labour, Social Affairs and Family, based on the location of the employer. The primary component of the work permit application is the employer's promise to employ the alien. In addition, necessary documents to be included with the application include: an employment contract; a statement from the Office of Labour, Social Affairs and Family confirming that the position cannot be taken by a Slovak national; a statement from the employer explaining the reasons for which he will employ the alien; a verified copy of the proof of education officially translated into the Slovak language; a copy of the alien's passport; and an abstract from the Register of Criminal Records of the Slovak Republic.

The Office of Labour has 30 days in which to grant the work permit. In most cases, the Office of Labour, Social Affairs and Family has to consider the situation in the labour market.<sup>451</sup> A work permit may be granted to an alien only if the available vacancy cannot be filled by an applicant in the Register of unemployed job seekers. The work permit is valid only for the specific type and place of work for which the alien has applied. After being granted the work permit by the respective Office of Labour, Social Affairs and Family, an alien shall subsequently submit an application for the granting of a temporary residence permit based on the ground of employment at a foreign mission of the Slovak Republic. This should be done as soon as possible as a temporary residence permit will not be issued if the work permit is more than three months old.

A quota system exists, according to which only a limited number of aliens per country may obtain a work permit. The number of aliens that may enter the Slovak labour market is based on the bilateral agreement between the Slovak Republic and the respective

<sup>451</sup> The Office of Labour, Social Affairs and Family shall grant the work permit to an alien without considering the situation in the labour market if so stipulated by a binding international treaty, or to an individual who: will be employed for a certain period of time (at most one year) for the purpose of increasing their qualification; is not older than 26 years of age, who is occasionally, or for a limited time, employed within an exchange programme between schools or within youth programs in which the Slovak Republic participates; is continuously undertaking educational or scientific research activities as a pedagogical employee or as an academic employee at a university, or as scientist, researcher or developer in research activities; is undertaking clerical activities upon authorization from registered churches or religious organizations; was granted subsidiary protection according to the ASA 2002; to whom the permission for tolerated stay was extended based on the reason that the alien is a victim of the criminal offence related to human trafficking; or who was granted the permission for tolerated stay with respect to his private and family life (Act on Services of Employment, Section 22/5).

country. If such an agreement does not exist then the quota system does not apply; there are currently no bilateral agreements in force.

A work permit is not required from an alien who: has a permanent residence permit on the territory of the Slovak Republic; was granted a temporary residence permit for the purpose of family reunification and is entitled to enter labour relations; was granted a temporary residence permit for the purpose of studying and his employment will not exceed ten hours per week; is an alien with Slovak origin; whose employment on the territory of the Slovak Republic has not exceeded seven consecutive calendar days or a total of 30 calendar days in a calendar year and who is a pedagogical employee, an academic employee at university, a scientist, a researcher or a developer taking part in a special profession-related event, an artist actively taking part in an artistic event or a person ensuring in the Slovak Republic delivering goods and services based on the commercial contract or warranties for repair; who are employed based on a binding international treaty stipulating that a work permit is not required to employ an alien; or who is undertaking his work within continuous training for a profession and the training is organized by recognized schools or school facilities (Act on Services of Employment, Section 22/7).<sup>452</sup>

### Self-employment

According to the Commercial Code a businessman is: a person registered in the Commercial Code; a person conducting business based on a trade licence; a person conducting business based on other than trade licence; or a person engaged in agricultural production activities and listed in a register according to special regulation. To conduct a business on the territory of the Slovak Republic is possible either as a businessman or as a legal entity, such as a commercial company, a co-operative, a foundation or an association.

According to the ASA 2002, “Business” may serve as a basis for the granting of a temporary residence permit. An application for a temporary residence permit shall be submitted from outside of the Slovak Republic’s territory. A trade license is issued after the presentation of a temporary residence permit. During the period of the granted temporary residence permit based on conducting business, the holder may not enter in labour relations or any other similar employment relations.

An alien shall be obliged to attach to the application for renewal of a temporary residence permit for the purpose of undertaking business a document proving that he has fulfilled his tax and customs obligations and has paid the health insurance premium, the social insurance premium and contributions to old-age pension savings. If the alien is not a taxpayer or if he is not obliged to pay the health insurance premium or social insurance premium, he shall attach a document confirming this fact. He is also obliged to prove that he is capable of supporting himself as well as his family on a taxed income from this business.

<sup>452</sup> These are only some of the exceptions to the requirement for a work permit, for a full list see Section 22/7 of the Act on Services of Employment.

Seasonal work

A temporary residence permit for the purpose of seasonal employment, for a maximum of 180 days per calendar year, may only be granted to an alien upon presentation of a work permit. For the granting of a work permit for seasonal work, see the section on “Employment” as the procedural steps are the same.

An alien who was granted a temporary residence permit based on the purpose of seasonal employment may not submit an application for a change regarding the purpose of his stay. A police department may, however, renew a temporary stay permit for the purpose of seasonal employment up to the maximum 180 days if it was granted for less than 180 days and termination of the work requires further stay.

**2.3.3.3 Studies and Training**

A temporary residence permit for the purpose of studying shall be granted by a police department to an alien who is a pupil or who studies at a university in the Slovak Republic. Along with the general application requirements (see section 2.3.1.2), an applicant shall submit a document issued by the respective state administration, school or other educational institution confirming the alien’s admission for studies. A police department shall decide on an application for a temporary stay permit based on studying within 30 days from the application’s delivery to the police department.

An alien who was granted a temporary stay permit may not submit an application for a change of the purpose of his stay at a police department. The only exception to this is an alien who has terminated his studies and applied for a temporary residence permit for the purpose of employment in the profession for which he was preparing during his studies.

Foreign students are allowed to work for duration of ten hours per week without being required to obtain a work permit.

**3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

The Slovak Republic is transposing the secondary legal acts of the European Communities into its legal system. Studies and training of third-country nationals are regulated on the territory of the Slovak Republic, as well as family reunification by the amended Act No. 48/2002 Coll. on the Stay of Aliens. Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service was transposed into the national legislation by amendment No. 693/2006 Coll. to the ASA 2002 and came into effect on the 1 January 2007. Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research was transposed into the national legislation by amendment No. 693/2006 Coll. to the ASA 2002 and came into effect on the 1 January 2007.

#### 4. Real Impact of Immigration Legislation on Immigration in Practice

Insufficient attention has been paid to the phenomenon of legal migration and immigrants in Slovakia up until now, with undocumented migration, border protection and asylum matters receiving a greater share of attention (Divinský 2005).

As already outlined, immigrants from the European Economic Area currently represent a certain exception; these individuals have been granted a preferential status in the respective legal norms and daily practice, and they are commonly employed as highly-skilled workers in usually well-paid positions. Their presence in Slovakia is welcome, but many other immigrants complain about partial indifference to their living conditions and needs.

Particularly some immigrants from Asian, African, and Middle Eastern countries face serious challenges. These communities express discontent with unfair treatment, as demonstrated by an unwillingness of the competent authorities to grant them residence and work permits, placing artificial obstacles to be overcome, such as problems with visa, health certifications and invitations for family members, prior to granting a permit. In addition, these immigrants may face discriminatory treatment in everyday life, as well as manifestations of intolerance and xenophobia by the autochthonous population (Divinský 2007).

Similarly, it is evident that Slovakia should improve in fostering the integration of immigrants into Slovak society. According to opinions of Slovak migration experts, the country desperately lacks a national conception of integration and a naturalization policy. Analogously, issues regarding labour immigration still remain underestimated, with practically no analysis (Divinský 2007; Divinský 2005a). The creation of a new department on immigrant integration within the Ministry of Labour, Social Affairs and Family, expected to occur this year, will be a substantial contribution towards ameliorating the present situation.

The system of institutions advocating migrants in Slovakia is incomplete, fragmented and unconsolidated. Some of these institutions are weak in number or unstable (for example, the NGO sector) or subject to frequent organizational modifications (for example, State organizations) and their mutual collaboration is not effective. However, there are plans to establish one central State authority with clear competencies in the country in 2010. Similarly, the absence of an official parliamentary or governmental Committee for the Matters of Foreigners (Migrants) to cover the relevant legal and political issues is increasingly regarded as a shortcoming (Divinský, forthcoming).

#### 5. Cooperation with Third Countries

From a long-term viewpoint, Slovakia – as an EU Member State – follows the objectives set in the Hague programme and its Action Plan that accentuate, among other things, the need to cooperate and develop partnerships with third countries. All the relevant EU legal norms and positions relating to this area are gradually accepted, transposed and approximated by the country. Likewise, activities of Slovakia in respective committees of

the EU, Council of Europe, UNO and other global institutions are performed in support of the idea.<sup>453</sup>

No special schemes facilitating the transfer of remittances to countries of origin exist. Remittances are thus believed to be sent to home countries in both ways – through official channels and unofficially. No more detailed information on this subject is available at the moment.

The Slovak Republic tries to fulfil its commitments in the field of official development assistance (ODA) and other kinds of development aid within the EU, as well as outside it. In 2006, Slovakia provided ODA in the extent of 1638 million SKK (49 million EUR), about 0.10 per cent of GDP (MZV SR 2007). However, this figure is several times lower than contributions made by the 15 initial EU Member States. Although the trend should be upward – 0.17 and 0.33 per cent of Slovak GDP are planned for 2010 and 2015 respectively – experts from the Ministry of Foreign Affairs believe these targets to be unrealistic. ODA is primarily distributed to selected Balkan countries and the least developed countries; in both cases immigration from these regions to Slovakia is not negligible.

<sup>453</sup> This was also emphasized during the recent conference *Migration and Development* held in Bratislava on 3 April 2007 and organized by IOM and the Ministry of Foreign Affairs of the Slovak Republic.

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Ministry of Education. See <http://www.minedu.sk/>

Migration Information Centre. See <http://www.domavsr.sk>



# Slovenia

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## 1. General Immigration Policy and Trends

As part of the former Yugoslavia, Slovenia predominantly experienced emigration flows until the 1960s, at which point immigration surpassed emigration levels (Kavkler 2002). The largest inflow of migrants took place throughout the 1970s and early 1980s, amounting to approximately 5000 persons per year and falling to approximately 3000 persons per year for the remainder of the decade (Lavtar 2006). The immigration trend was interrupted between 1990 and 1991, when migrant workers from other republics of Yugoslavia and members of the Yugoslav National Army left the country in response to Slovenia's independence (Kavkler 2002).

Recent immigration flows to Slovenia may be conceptually divided into three time periods. In the first period, between 1992 and 1998, Slovenia received a large number of refugees from Bosnia and Herzegovina. In the second, between 1999 and 2004, Slovenia experienced high levels of illegal immigration. The third period covers the time between Slovenia's accession to the European Union in 2004 and the present. During this period, Slovenia has enhanced border control and emphasized illegal immigration management as a focus of immigration policies. Also during this time, legal movement in and out of Slovenia has significantly increased. In 2005, 15 000 new immigrants came to the country, while 8600 persons left Slovenia in the same year.

The majority of migrants move to Slovenia for the purpose of employment (42 per cent in 2005), followed by seasonal work, family reunification, studies and other purposes. In 2005, one third of all migrants were from Bosnia and Herzegovina, one quarter from Serbia and Montenegro, 7 per cent from Croatia, 13 per cent from EU Member States and 20 per cent from other European countries (Lavtar 2006).

In summary, Slovenia's immigration policy has been strongly influenced by high levels of immigration from Croatia, Bosnia and Herzegovina, Serbia and Montenegro and by the European integration process (Zavratnik Zimic 2003).

The Aliens Act of 2006 and two resolutions on Immigration Policy passed by the National Assembly in 1999 (Resolution 40/1999) and 2002 (Resolution 106/2002) are the primary national legislation regulating the entry of foreigners and the return of emigrants, as well as promoting integration. All Slovenian legislation concerning migration has been developed in accordance with the EU *acquis*.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Foreigners who enter and reside in Slovenia may be understood as falling into one of three general categories, based on the purpose and length of stay. These types of status are distinguished by the document issued, whether a visa, temporary residence permit or permanent residence permit.<sup>454</sup> A residence permit is necessary for any foreigner who

<sup>454</sup> The granted visa or residence permit and a valid passport do not necessarily suffice for entering the Republic of Slovenia. Namely, although a foreigner fulfils these two conditions, his entry can still be denied

wishes to reside in Slovenia for a longer period of time than allowed by a visa, or who wishes to enter and reside in Slovenia for different reasons than those for which a visa may be issued (Aliens Act, Art. 25(1)). It grants the foreigner permission to enter and reside temporarily in Slovenia for a specific reason or purpose, or to reside permanently in Slovenia, depending on the type of permit (Aliens Act, Art. 25(2)). Permission for temporary residence can only be issued for a specific purpose (Aliens Act, Art. 26(2)), such as work or employment, self-employment, seasonal work, family reunification, research, studying, education, specialization and professional training and participation in or attendance of international volunteer exchange programs or other programs that are not part of the formal education system (Aliens Act, Art. 30(1)). It can also be noted that a relative of up to the fourth degree of a Slovenian citizen in a direct descending line has the right to obtain permission for temporary residence.

## **2.2 Admission Rules – Visa Policy**

### **2.2.1 Competent Authorities**

Visas are issued by Slovenian Embassies and Consulates abroad and must be obtained before the foreigners' entry into the State.

### **2.2.2 Procedural Steps – Conditions to be fulfilled**

Nationals of certain countries, as defined by EU legislation, require a visa to enter Slovenia (Aliens Act, Art. 8(2)). Foreigners from countries for which visas are not required may enter Slovenia and reside on its territory for a maximum of 90 days in a six-month period, starting from the day of their first entry. Third-country nationals holding an EC long-term residence permit in another EU Member State may enter Slovenia if they possess a valid passport and there is no reason under the Aliens Act to refuse their entry. They may remain in Slovenia for a maximum of three months, or until their EC long-term residence permit in the other Member State expires.

Visas can be obtained for reasons of: airport transit (visa A); transit through the State territory (visa B); short-term residence for up to 90 days within a six-month period for the purposes of tourism, personal reasons or a business visit (visa C); and long-term residence for more than 90 days within a six-month period (visa D). The cases where a visa D will be granted, the conditions that need to be fulfilled, the validity and the reasons for termination of such a visa are to be defined with a decree of the Government (Aliens Act, Art. 17); such a decree has not yet been adopted. Visas do not entitle a foreigner to a right to employment and work (Aliens Act, Art. 14(5)).

All visa applicants must enclose a valid passport and a colour photo, as well as pay an administrative fee of 35 or 60 EUR (depending on the country of origin). Other documents that need to be enclosed depend on the reason of stay in the Republic of Slovenia (for example, a letter of guarantee for a personal visit or a letter of invitation for a business visit). A personal interview may be required by the consular representative (Aliens Act,

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for reasons stipulated in the Schengen Borders Code, according to Art. 9(1) of the Aliens Act.

Art. 19). The application for a visa will be denied if there are reasons to deny entry, if the passport or other documents are not enclosed with the application, or if a foreigner does not personally attend a meeting at the consular representation if the latter so requires (Aliens Act, Art. 20(1)).

The procedure of issuing a visa depends on the consular representation, but it usually takes a few days. As with all other administrative bodies, the consular representations must issue a decision within a period of two months, as prescribed by Article 222 of the General Administrative Procedure Act.

The granted visa does not necessarily suffice for entry into the Republic of Slovenia. Entry can be denied due to the third-country national being a danger to public order or security, or to the international relations of the Republic of Slovenia. Such a danger exists in the following cases:

- If the foreigner was prosecuted in the Republic of Slovenia for a crime with a foreseen punishment of imprisonment for a minimum of two years;
- If a substantiated suspicion exists that while residing in Slovenia a foreigner will commit violent acts or threaten the public order with any other activity;
- If a substantiated suspicion exists that a foreigner will abuse his residence in Slovenia for illegal entry into another State;
- If in the last two years, two or more proposals for procedures due to offences against public order or in accordance with the laws concerning state borders or foreigners have been filed in the Republic of Slovenia with regard to the foreigner.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

The decision of consular representation of the Republic of Slovenia on rejecting the visa application does not need to state reasons for the rejection and there is no possibility of administrative or judicial control of such a decision.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

The application procedure for residence permits varies depending on the purpose of the application and whether or not it is an initial application or an application for extension. In most cases, a residence permit must be issued to a foreigner before he enters Slovenia. Only after the permission for temporary residence is issued to the foreigner may he enter the country. Exceptions to the general procedure apply in the case of renewal of a temporary residence permit or in some cases of application for permanent residency, as well as in cases where the applicants for residence permits are also visa holders.

The residence permit is granted or refused by the respective Administrative Unit in Slovenia (according to the intended place of stay). Residence permits granted by the

Administrative Unit are then issued through the Slovenian Embassy or Consulate in the country of current residence, prior to entry into Slovenia. In the case of foreigners applying for residence permits from within Slovenia, applications may be submitted directly to the Administrative Unit in the region of intended stay.

### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

There is no medical test required for foreigners to be admitted into the country. However, a foreigner has an obligation to arrange for appropriate health insurance for the time of his residence in Slovenia (Aliens Act, Art. 27(3)).

A foreigner who wishes to reside in Slovenia must prove that he possesses sufficient means of subsistence for the time of residence in the country, or that means of subsistence are guaranteed to him by another person or institution (Aliens Act, Art. 27(3)). The means obtained must be no less than the minimum monthly income to which Slovenian citizens are entitled.

There are no requirements for language, knowledge of Slovenian culture or history, declarations or proof of capacity to integrate into Slovenian society.

An application for a temporary residence permit requires a fee in accordance with the Administrative Fees Act of 31.90 EUR; while the fee for applying for a permanent residence permit is 74.45 EUR.

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

The Administrative Unit has to issue and serve the decision on the third-country national's application for temporary or permanent residence within two months (General Administrative Procedure Act, Art. 222(1)). If the decision is not issued within the prescribed period of time the applicant has the right to file an appeal to the Ministry of Interior as if a negative decision has been issued (General Administrative Procedure Act, Art. 222(4)).

The appeal is not allowed in all kinds of residence permit application procedures, rather only for foreigners who were rejected or denied their application for temporary residence on the basis of studying, family reunification, holding an EC long-term residence permit in another EU Member State or as foreigners of Slovenian descent. In addition, a foreigner who already had temporary residence in Slovenia also has the right to appeal a decision denying the application for an extension of the temporary residence permit (Aliens Act, Art. 31(4)). An appeal may also be made by foreigners whose application for permanent residence is rejected or denied.<sup>455</sup> The appeal is decided upon by the Ministry of Interior as a second instance administrative body.

The judicial control of the second instance administrative decision is performed by the Administrative Court of the Republic of Slovenia. An appeal may be filed to the Supreme

<sup>455</sup> In all such cases the competent body (i.e. the Administrative Unit) is obliged to provide reasons for its decision. In other cases, where an appeal is not allowed, the first instance body is not obliged to provide such reasoning (Aliens Act, Art. 65(3)).

Court against a judgment of the Administrative Court (Administrative Disputes Act, Art. 73(3)).

## 2.3.2 Conditions according to Length of Stay

### 2.3.2.1 Temporary Residence

Temporary residence permits are granted for a specific period of time<sup>456</sup> and can only be issued for a specific purpose (Aliens Act, Art. 26(2)), such as work or employment, self-employment, seasonal work, family reunification, research and study, education, specialization and professional training and participation in or attendance of international volunteer exchange programs, or other programs that are not part of the formal education system (Aliens Act, Art. 30(1)).

The temporary residence permit will not be granted if any of the following conditions apply (Aliens Act, Art. 43(1)):

- The applicant is denied entry into the State;
- There are reasons to presume that the applicant will not voluntarily leave the State after the expiry of his residence permit;
- There are reasons to suspect that the applicant will represent a threat to public order and security or to the international relations of the Republic of Slovenia;
- It is established that the applicant comes from areas where contagious diseases are present with a possibility of epidemics (stated in international health regulations of the International Health Organization) or from areas where contagious diseases are present that could endanger the health of people and for which special measures are required in accordance with the law;
- There are reasons to presume that the applicant will not respect the legislation of Slovenia;
- It is revealed in the procedure for issuing the first residence permit that the applicant already resides in Slovenia;
- In the last three months the applicant was already denied a visa application due to representing a threat to public order or security, or the international relations of the Republic of Slovenia.

The permission for temporary residence is issued for the period of time necessary to fulfil the stated purpose, with a maximum of one year, if not otherwise stipulated by law. A third-country national may reside in Slovenia only until the expiration of the temporary residence permit and only for the purpose stipulated by it (Aliens Act, Art. 30(4); Art. 30(5)).

<sup>456</sup> Temporary residence permits are generally granted for a maximum of one year, unless otherwise stipulated by the law, as defined in Art. 28(4) of the Aliens Act.

Permission for temporary residence may be extended under the same conditions as it was issued. An application may also identify a purpose of residing in Slovenia that differs from the purpose for which the previous permit was granted (Aliens Act, Art. 31(2)). For example, if a foreigner first resides in Slovenia for work or family reunification, he may enrol in a university programme and apply for a temporary residence permit for the purpose of studying. Switching from one type of temporary residence to another is therefore possible, although with some exceptions.<sup>457</sup>

### **2.3.2.2 Permanent Residence**

After residing in the Republic of Slovenia uninterruptedly for five years on the basis of a temporary residence permit, a foreigner may be issued a permanent residence permit if he fulfils the general conditions established in the Aliens Act. A permanent residence permit will not be issued to a foreigner who, in the last three years, has been sentenced to imprisonment for a period of more than one year in total.

The five-year requirement is fulfilled if the foreigner was absent from Slovenia for periods not exceeding six months and if, in total, the periods do not exceed ten months (Aliens Act, Art. 41(1)). However, only half of any periods of temporary residence for the purpose of study or vocational training count towards fulfilling the five-year requirement. Furthermore, a permanent residence permit will not be issued to a foreigner who, at the time of considering his application, holds a permit for temporary residence for the purpose of studying, professional training or seasonal work, or as a directed worker or as a daily migrant worker (Aliens Act, Art. 41(4)). The purpose of this provision is to prevent foreigners who have no real ties to the Republic of Slovenia from obtaining a permanent residence permit in the country.

A foreigner who obtains permission for permanent residence has the status of a long-term resident in Slovenia, which is marked with a sticker on the permit (Aliens Act, Art. 26(4)). Permanent residence permits are always issued by the Administrative Unit in the locality where the foreigner resides (Aliens Act, Art. 42(2)).

## **2.3.3 Conditions for Specific Immigration Types**

### **2.3.3.1 Family Reunification**

The right to family reunification has been legally established for close family members of Slovenian citizens, EU citizens and third-country nationals who have permission for permanent residence or temporary residence in Slovenia for the duration of at least one year (Aliens Act, Art. 93k(8)). Family members included in this definition are: spouses; unmarried children of the sponsor or his spouse who are under 18 years of age; parents (in the case of the sponsor being a minor); and adult unmarried children or parents who are legally dependent on the sponsor or his spouse (Aliens Act, Art. 36(3)). In the case of a polygamous family, the permission for temporary residence due to family reunification may be issued to only one spouse (Aliens Act, Art. 36(4)). Other members of the sponsor's

<sup>457</sup> For example, it is not possible for a seasonal worker to extend his permission for temporary residence on grounds of family reunification or studies (Aliens Act, Art. 34(4)).

family may be considered as family members only exceptionally, if the circumstances so require (Aliens Act, Art. 36(1); Art. 93k(1)).

In order for a family member to be granted a residence permit, the sponsor must submit evidence that he possesses sufficient financial resources to support the family members who intend to reside in Slovenia (Aliens Act, Art. 36(5)). The application for family reunification is submitted to the Administrative Unit for the place of intended stay in Slovenia (Aliens Act, Art. 36(2)).

There are several specific provisions relating to the temporal validity and extension of a residence permit due to family reunification, given that the residence permits of family members depend upon the residence permit of the third-country national with whom they are uniting. The issuance of initial residence permits for family members of a third-country national is only possible if the sponsor's residence permit is valid for at least one year. However, even if the sponsor's residence permit is valid for less than one year, a current residence permit may be extended for the purpose of family reunification (Aliens Act, Art. 36(6)). The temporal validity of the first temporary residence permit of a close family member is, in principle, the same as the one issued to their sponsor, but it cannot exceed one year. The permit can be extended for the same periods as that of the sponsor's permit, however, the validity period of the extensions cannot exceed two years. Family members may have their temporary residence permits extended for one year even if their sponsor dies or they divorce, as long as the marriage lasted for a minimum of three years while residing in Slovenia (Aliens Act, Art. 36(9)).

Family members who obtain residence permits in Slovenia have the right to work; they do not need a work permit and are not limited by quotas.

### **2.3.3.2 Work**

#### Employment

If a foreigner wishes to reside in Slovenia for employment, the employer must submit the necessary application for him at either the Slovenian Embassy or Consulate abroad or at the Administrative Unit in Slovenia (Aliens Act, Art. 34(3)). In the case of workers that are employed by a foreign company located abroad (directed workers), it is the legal representative of both the employer and the directed worker who files the application (Aliens Act, Art. 34(7)). In case of third-country nationals holding an EC long-term residence permit in another EU Member State, the application for a residence permit should be filed at the Slovenian Embassy or Consulate in the Member State where they currently reside (Aliens Act, Art. 37(3)).

A foreigner may obtain work in Slovenia if he has been issued a work permit and has been registered at the Employment Office by the employer (Employment and Work of Aliens Act, Art. 4(3)). The number of work permits per year issued to foreigners who wish to reside in Slovenia in order to work is limited by a quota defined by decree, adopted annually on the basis of the National Assembly's Resolution on Migration Policies (Employment and Work of Aliens Act, Art. 5(1)). The quota includes sub-quotas of employed workers,



directed workers, workers on vocational and other training, seasonal workers and workers performing individual services (Employment and Work of Aliens Act, Art. 5(4)).<sup>458</sup> The quota varies from year to year, however, by general rule it cannot exceed five per cent of the working age population of Slovenia, as defined by the Statistics Office (Employment and Work of Aliens Act, Art. 5(6)). The work permit quota for 2007 limited the number of aliens issued work permits to 18 500.

In addition to establishing quotas, if it is in the public interest the Government may also limit or prohibit employment of third-country nationals in fields of economy, companies and vocations, or limit the inflow of workers in general or those coming from certain regions (Employment and Work of Aliens Act, Art. 5(7)). Such circumstances include, for example, high levels of unemployment.

As already mentioned, a foreigner may only be employed in Slovenia if he has a work permit. In accordance with the Employment and Work of Aliens Act, there are three different types of permit: 1) a personal work permit, 2) an employment permit and 3) a work permit (Employment and Work of Aliens Act, Art. 8(2)). Only personal work permits may be issued for an unlimited period of time. A personal work permit enables a foreigner free and unlimited access to the labour market (except if it is issued with a validity of one year) and these permits are not subject to annual quotas (Employment and Work of Aliens Act, Art. 10(1)). The employment permit is tied to the needs of the employer, thus for the duration of the permit the third-country national may only be employed by the employer that applied for the permit. This type of permit is usually issued when a suitable individual for the position cannot be found in the domestic labour force (Employment and Work of Aliens Act, Art. 11(1); Art. 11(3)). Lastly, the work permit is issued for a limited period of time to seasonal workers, directed workers, workers on vocational and other training and workers performing individual services (Employment and Work of Aliens Act, Art. 12(1); Art. 12(2)).

Accordingly, foreigners who wish to reside in Slovenia are obliged to obtain both a residence permit and a work permit. These two permits are closely connected: the temporal validity of the residence permit corresponds with that of the work permit, but it cannot be issued for more than one year (Aliens Act, Art. 32(2)). Residence permits can be extended for a maximum of two years, if the foreigner still possesses a valid work permit (Aliens Act, Art. 32(3)). However, if the foreigner resides in Slovenia with a temporary residence permit that is valid for three years, after such time the permit can be extended for more than two years (Aliens Act, Art. 32(4)).

### Self-employment

Foreigners who wish to establish a company in accordance with the Companies Act and act as its representative, or foreigners who wish to work as private individual

<sup>458</sup> Quotas, however, do not include: workers who are, in accordance with an international agreement, in an equal position as citizens of Slovenia (such as EU citizens and recognized refugees); workers for whom work permits are not required (such as close family members of legally resident foreigners and Slovenian citizens, accredited journalists and artists); foreigners with a personal work permit; and representatives and directed workers who attend additional training in Slovenia.

entrepreneurs, must obtain personal work permits for self-employment with a validity of one year (Employment and Work of Aliens Act, Art. 10(4)). With respect to the type of business the third-country national intends to perform, the same conditions are in place as for Slovenian citizens. Business plans are not specifically examined, but foreigners are required to fulfil the conditions set out by the Companies Act and are subject to insolvency law. Self-employment of foreign workers is, in general, not limited by annual quotas.<sup>459</sup>

### *Seasonal work*

A work permit is the type of permit issued for a limited period of time by seasonal workers, directed workers, workers on vocational and other training, and workers performing individual services (Employment and Work of Aliens Act, Art. 5(9)). Annual quotas determine the number of permits issued for seasonal work (as discussed in the previous section on employment). An application for a temporary residence permit for the purpose of seasonal work may be filed by the third-country national or by the employer. Such a permit has a maximum validity period of six months, or exceptionally nine months in areas that require this amount of time (Aliens Act, Art. 34(1)).

#### **2.3.3.3 Studies and Training**

A temporary residence permit may be issued to a foreign student or trainee who is enrolled in a university programme or other form of education, a specialization, professional training or practical training, or who cooperates in international study exchange programs or other programs that are not part of the formal education system. In addition to the general conditions already discussed, proof of enrolment must be included with the application for temporary residence in these cases (Aliens Act, Art. 33(1)). The permission is issued for the period of time necessary to complete the studies or training, but for a maximum of one year. If the studies last for more than one year, the permission may be extended annually (Aliens Act, Art. 33(2)). A foreigner who has such permission may, while studying, obtain work or employment in accordance with the Employment and Work of Aliens Act; meaning that he must obtain a work permit (Aliens Act, Art. 33(5)). Employment can also be obtained after a foreign student completes the programme of study. However, this is done under the same conditions as other third-country nationals, as discussed in section 2.3.3.2.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

In general, the national legislation of the Republic of Slovenia concerning migration and the regulation of legal statuses of foreigners is comprehensive and in accordance with the relevant EU legislation.

One area of concern arises in cases where third-country nationals are refused entry into Slovenia. In accordance with the Schengen Borders Code a foreigner may file an appeal,

<sup>459</sup> However, if the unemployment rate is increasing due to a lack of self-employment limitations, the Government has the authority to limit the self-employment of foreigners (Employment and Work of Aliens Act, Art. 5(9)).

but due to the lack of any suspending effect, the person must await the decision outside the territory of Slovenia (Aliens Act, Art. 9). Furthermore, in accordance with the Aliens Act, it is not possible to file an appeal against a negative decision on an application for a visa or for a temporary residence permit for the purpose of employment and work (Aliens Act, Art. 65(3)). In such cases, the competent body does not even have to provide reasons for why the application was denied. Since work and employment are the primary reasons why people migrate and apply for residence permits outside their countries of origin, it is questionable whether the right to an effective remedy is respected, as stipulated in Article 13 of the ECHR.

Finally, another possible violation of human rights could arise from the absence of provisions defining whether or not registered same-sex couples have the right to family reunification. Due to the absence of clear provisions on this matter, some applicants receive residence permits on the basis of family reunification while others do not.

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

Due to the lack of integration policies and language training, the majority of migrants in Slovenia originate from other republics of the former Yugoslavia. The improved integration policies could encourage diversification in the countries of origin of migrants in Slovenia, especially those arriving for the purpose of work or education.

#### **5. Cooperation with Third Countries**

After returning to their country of origin, migrants can access their social security and pension rights if their countries of origin and Slovenia have concluded an Agreement on Social Security. Until May 2007, Slovenia had concluded such agreements with Croatia and Macedonia only. It was foreseen that by the end of 2007, the National Assembly would also ratify such an agreement concluded with Bosnia and Herzegovina, which was signed on 19 February 2007 (Ministry of Labour, Family and Social Affairs 2007). In order to ensure effective implementation of these agreements, the contracting parties have also established administrative agreements (i.e. implementing acts).

There are no measures available that would enable brain circulation by extending the principle of Community preference to those who have already worked for some years in the EU before returning to their country of origin.

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### **Persons Interviewed**

Mr. Miha Šepec, Employment Office of the Republic of Slovenia, 07 May 2007.



# Spain

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## 1. General Immigration Policy and Trends

Immigration to Spain has increased significantly in recent decades. According to the Municipal Rolls, in 1995 Spain had only 500 000 foreigners residing within its territory, amounting to 2 per cent of the total population. In comparison, at the beginning of 2007, there were more than 4.48 million foreigners in Spain, representing 9.9 per cent of the total population (National Institute of Statistics).

Immigration policy over the past ten years has consisted of attempts by successive Spanish governments to regulate migratory flows in response to the needs of the national labour market, leading to the establishment of immigrant worker quotas. Border policies combating illegal immigration and human trafficking mafias have also been a priority in the past decade. Moreover, Spain's recent immigration policy is characterized by continued regularization processes.

Attempts have been made to manage immigration, but legislative instability, insecurity and misinformation regarding applicable rules, along with contradictory immigration policies, have led to the presence of an estimated 1 300 000 irregular immigrants in Spain. Furthermore, the lack of integration of the immigrant population has led to friction between the host society and the new entrants.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Spanish legislation distinguishes between two situations: foreigners in Spain can be in a situation of stay or residence. Stay is defined as presence on Spanish territory for a period of time up to 90 days, except in the case of students, who can stay for a period equal to that of the courses in which they are matriculated. On the other hand, residents are foreigners who live in Spain with a valid residence authorization. They can be in a situation of temporary or permanent residence. The legislation also contemplates three specific situations: the special regime for students, the residence of stateless persons, undocumented people and refugees, as well as the residence of minors.

Accordingly, one can state that the two principal legal situations in which third-country nationals may find themselves in Spain are visitors or residents. A visitor may stay in Spanish territory for a limited period of time, in principle, not exceeding 90 days and does not require a prior authorization, apart from the requirement of a visa to enter the country, where applicable. On the other hand, the situation of a resident is precisely defined by law as requiring an authorization to reside, whether temporarily or permanently.

Within this framework of temporary and permanent residence and special regimes, the legislation covers the entry and residence of family members, employed and self-employed persons and students.



## 2.2 Admission Rules – Visa Policy

### 2.2.1 Competent Authorities

The Spanish Embassy or Consulate in the foreigner's country of residence is the competent authority to accept visa applications and subsequently issue visas.

It must nevertheless be noticed, that with regards to visas of residence, the Embassy or Consulate shall (when the request is not considered as inadmissible) forward the request to the Ministry of Foreign Affairs and Cooperation, as well as to the Delegation or Sub-Delegation of the Government of the region in which the applicant wishes to reside. The Delegation or Sub-Delegation is the competent authority to grant the authorization of residence that is incorporated in the visa.

### 2.2.2 Procedural Steps – Conditions to be fulfilled

A visa is required for a third-country national's entry into Spain, except in cases where an international treaty has established otherwise.<sup>460</sup> Visas shall be applied for at the Spanish Embassy or Consulate in the foreigner's country of residence, and they may be issued for the purpose of transit, temporary stay, residence or studies.

A temporary stay visa permits a stay in Spain for a maximum period of 90 days within six months.<sup>461</sup> A residence visa qualifies a foreigner to reside in Spain. It is granted for no more than three months, but it incorporates the initial authorization of residence. Different types of residence visas can be distinguished.

A first type of visa of residence qualifies the immigrant to reside in Spain without carrying out any professional activity. The visa request has to be accompanied by the following documents: a valid passport; a criminal record or equivalent document; a medical certificate; and documents that prove possession of sufficient financial means. This type of visa includes several subcategories.

The Residence Visa for Family Regrouping is granted to relatives of foreigners legally residing in Spain, in order to guarantee their right to family life and privacy. Once regrouped and legally residing in Spain, the spouse of the sponsor and his or her children over the age of 16 years can ask for an authorization to work and undertake a remunerated profession or job.

On the other hand, the Residence Visa for Non-Lucrative Activities is granted if residence in Spain is not for the purpose of undertaking economic activities. The existence of sufficient economical means to live in Spain during the stay must be proved in order to be granted this type of visa.

<sup>460</sup> The list of countries from which nationals do not require a visa for short stays is now determined by reference to Council Regulation 539/2001 (Organic Law, Art. 18; Implementing Regulation, Art. 42; Art. 44; Art. 159; Art. 160; Art. 161; Art. 162).

<sup>461</sup> Citizens from several specific countries can apply for extra time in Spain, within the first three months of their stay, but this will only be granted under exceptional circumstances.

To obtain a Residence Visa to Undertake Activities that do not require a work authorization, the applicant must first obtain an official certificate whereby Spanish authorities declare that a work permit is not required.

A visa of work and residence qualifies the foreigner to undertake a professional activity and reside in Spain. The visa application has to be accompanied by the following documents: a passport; a criminal record or equivalent document; a medical certificate; and a copy of the conditioned authorization of residence and work.

Finally, mention can be made of the visa for studies, which qualifies a foreigner to remain in Spain for the attendance of courses, studies, or works of investigation or formation.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

As a general rule, the administrative decisions and resolutions adopted in relation to foreigners may be appealed. The appeal process follows the general legal regime, with the exception of some special expulsion cases. Decisions shall be accompanied with information regarding the possible remedies against it, the competent organ before which to appeal and the period of time in which to do so.

The reasons for a visa refusal must be given if the visa requested concerned residence for the purpose of family reunification or for remunerated work. If the refusal of the visa is due to the fact that the applicant is included in the list of non-permissible people established in the Agreement of application of the Schengen Agreement of 14 June 1990, it will be thus communicated to him, in accordance with the norms established by this Agreement.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

Residence authorizations are granted “in-country” by the Ministry of Interior and the Ministry of Labour and Social Affairs, both acting through the Foreigners Bureau of the Sub-delegation of the Government in each province (Organic Law, Art. 67(2); Implementing Regulation, Art. 159; Art. 160; Art. 161; Art. 162).

#### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

A foreigner wishing to reside in Spain (i.e. stay longer than three months) is required to possess an authorization of residence. A principal distinction is made between temporary residence, from three months up to five years, and permanent residence. As conditions and requirements depend significantly upon the type of status applied for, they will be analysed in the following sections.

#### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

As a general rule, the administrative decisions and resolutions adopted in relation to foreigners may be appealed. Their execution will follow the general legal regime, with

the exception of some special expulsion cases.

### **2.3.2 Conditions according to Length of Stay**

#### ***2.3.2.1 Temporary Residence***

A temporary residence authorization is granted for no less than 90 days and up to five years. It may be granted for several purposes, such as residence without exercising a professional activity, family reunification or for professional activity (employment and self-employment). The conditions and requirements with regard to the granting and renewal of such authorizations depend on the specific status applied for.

It is notable that the first residence authorization is incorporated in the visa for residence (see section 2.2.2). It is therefore applied for at the diplomatic or consular mission in the country of origin. As a general rule, the initial temporary residence authorization is granted for a period of one year. The authorization may be renewed for a period of two additional years, taking into account the circumstances that motivate the application for renewal, up to a maximum of five years in total.

#### ***2.3.2.2 Permanent Residence***

Permanent residency authorizes an individual to reside indefinitely and to work in Spain. Individuals who have had legal temporary residence for at least five continuous years have a right to permanent residency (Organic Law, Art. 32; Implementing Regulation, Art. 71; Art. 72). Next to this first category of individuals, other categories benefit from the right to permanent residence without the five-year requirement, including: retired residents benefiting from the Spanish social security system; foreigners born in Spain and who at the age of majority have spent at least three years of continuous and legal residence in Spain; foreigners who were originally Spanish and lost their Spanish nationality; and foreigners who have contributed to the economical, scientific or cultural development of Spain.

When the applicant is granted the status of permanent resident, he has one month within which to acquire an identification card for foreigners. This card is to be renewed every five years.

### **2.3.3 Conditions for Specific Immigration Types**

#### ***2.3.3.1 Family Reunification***

Family reunification can be applied for if the sponsor has been living in Spain for one year and has an authorization to stay for at least another year (Organic Law, Art. 16; Implementing Regulation, Art. 38).

Family reunification is permitted for legal spouses, children of the sponsor or his spouse who are under the age of 18 or dependent and unmarried, including adopted children, as well as for the sponsor or his spouse's ancestors, if they are dependent upon him or her (Organic Law, Art. 17(1); Implementing Regulation, Art. 39).

For reunification to take place, the sponsor must present: documents evidencing the family relationship; a copy of his passport; a copy of his resident title; proof of employment and/or proof of sufficient financial means to support himself and his family members; and evidence proving that he possesses adequate housing. Additionally, in the case of family reunification with a spouse, the sponsor must establish that he does not reside in Spain with another spouse.

When family reunification is granted, the family members must present a request for a visa of residence to the consulate or diplomatic mission of their place of residence. The visa is granted for no more than three months, during which family members must enter Spain and then acquire an identity card for foreigners.

The duration of the residence authorization granted to the family members is dependent on the status of the sponsor. If he has a temporary residence authorization, the right of residence of family members expires on the same date as the sponsor's. When the sponsor is a permanent resident, the first resident title granted expires on the same date as the sponsor's identity card for foreigners expires. The next residence authorization granted shall then be permanent.

Reunited spouses and ancestors will be able to obtain an independent authorization of residence if they obtain an authorization to work. Children who are reunited with a parent will obtain an independent authorization of residence when they reach the legal age and obtain an authorization to work. In any case, independent residence may be obtained after five years of residence with regard to spouses and, in relation to children, when they reach majority and have spent at least five years in Spain.

Moreover, the spouse and children of the sponsor may obtain a work authorization without having independent resident status if the proposed work contract is part-time or for the completion of services and does not supply a remuneration superior to the minimum salary for full-time employment.

### **2.3.3.2 Work**

#### Employment

Spanish legislation recognizes two cases in which an employer may hire a non-resident third-country national. The first is when the national employment situation permits hiring in cases of "hard to fill employment", the employer having provided evidence of an inability to find an employee to fill the vacancy. The second circumstance is by way of a scheduled hiring of foreign workers on the basis of a quota system approved annually by the Spanish Government (Navarro 2004).

With regard to the first case, it is envisaged that every three months a catalogue of occupations will be compiled for each province, as well as for Ceuta and Melilla, containing information on job offers submitted by employers to the public employment services.

The second circumstance referred to is the hiring of non-resident third-country nationals in accordance with a quota system. In the light of the national employment situation and taking into account proposals submitted by the Autonomous Communities and the most representative trade union and employer's organizations, the Government may approve a quota for foreign workers (Organic Law, Art. 39; Implementing Regulation, Art. 77; Art. 80). The purpose of the quota is to facilitate a scheduled hiring of foreign workers by setting a provisional number of stable job offers and defining their characteristics. The number of job offers may be reviewed over the course of the year in order to respond to any changes in the labour market.

The establishment of the annual quota may also set a certain number of visas for job-seekers (Implementing Regulation, Art. 81), as well as reserving a number of visas for family members of Spanish citizens (Implementing Regulation, Art. 82). Other visas may be reserved for certain sectors of activity or occupations in a specific geographical area (Implementing Regulation, Art. 83). Hiring through the quota system does not involve immigrants already residing in Spain. Instead, workers are to be selected in their country of origin on the basis of blanket offers made by the employers, with priority given to countries with which Spain has signed an agreement on the regulation and management of migratory flows. Such countries include Colombia, Dominican Republic, Ecuador, Morocco and Peru (Carulla 2004).

As a general rule, foreigners are required to obtain a temporary residence and work authorization in order to perform a salaried activity.<sup>462</sup> This authorization is granted on the employer's request by the Ministry of Work and Social Affairs, through their provincial office or the Foreigners' Office of the province of the employer. The initial authorization is granted for one year and may be limited to a specific region or professional sector.

Several conditions have to be met in order to issue a temporary residence and work authorization, including: the situation of employment must allow the recruitment of foreigners (i.e. a labour market test applies); there must be a guarantee of continuous employment during the authorization period; the employer must have registered the employee within the social security system; and the conditions of the job offer must correspond to the norms within the professional activity and the region.

The work authorization system is based on the assumption that the job-seeker is in another country and receives an offer of employment from a Spanish employer while he is abroad. The Diplomatic or Consular authority then requests a report from the Spanish labour authorities to verify that the job cannot be filled by a Spanish worker. This is known as

<sup>462</sup> Among several exceptions to the work authorization requirement there are: 1) technicians and scientists, invited or contracted by the State or autonomous communities with the intent of promoting and developing science and investigation; 2) professors invited or contracted by a Spanish university; 3) foreign directive staff and teaching staff of prestigious public or private cultural institutions, officially recognized in Spain, with aims to develop cultural and educational programs; 4) civilian or military civil employees of a foreign state coming to Spain by virtue of agreements of cooperation; 5) journalists; 6) artists coming for a specific performance; 7) clergy or personnel affiliated with a religious organization, provided their activity is limited to religious functions; and 8) people born in Spain who have lost their Spanish nationality (Organic Law, Art. 41; Implementing Regulation, Art. 68).

the labour market test. Once this is approved, a contract of employment is drawn up. However, a labour relationship is a personal relationship and one cannot expect that, in most cases, a Spanish employer will hire a foreign worker without direct knowledge of his training, skills and personal disposition. Paradoxically, an employer cannot legally hire an immigrant who is already in Spain and whom he knows personally unless the immigrant has a valid residence permit because he has already been working in Spain based on a previous employment contract.

There are several exceptions to the labour market test requirement (Organic Law, Art. 40). Among the notable ones are: spouses or children of a resident foreigner with a renewed authorization; a foreigner who is the legal guardian of a Spanish national's ancestors or descendants; a foreigner who has obtained residence authorization for humanitarian reasons or because of collaboration with law enforcement; and foreigners who have been authorized to work as seasonal workers for a period of four years and have returned to their country of origin.

To obtain a work authorization, it is generally required that an individual pass a medical exam, as well as provide a formal declaration stating that he is not infected with any contagious disease. Depending on the type of employment, it may also be required that the foreigner submit documents showing he has obtained the relevant certification and diplomas needed to undertake the work or service. Knowledge of the Spanish language is often necessary to be hired and may even be obligatory in certain types of employment.

### Self Employment

To be self-employed in Spain, a foreigner must fulfil all the requirements that the relevant legislation demand of Spanish nationals for the opening and development of the activity, as well as provide a sufficient level of investment and have the potential to create employment (Organic Law, Art. 37; Implementing Regulation, Art. 58; Art. 59; Art. 60; Art. 61; Art. 62).

The initial residence authorization shall be granted for one year and may be renewed for a period of two years.

### Seasonal Work

The authorization of work granted to an individual for the purpose of undertaking seasonal or harvesting activities may have a duration equal to that of the contract of work, with a maximum time limit of nine months within a period of twelve consecutive months. It is notable that no formal labour market test is applied with regards to seasonal work.

The seasonal worker demand is oriented with preference towards the countries with which Spain has signed agreements on regulation of migratory flows (Implementing Regulation, Art. 55).

### **2.3.3.3 Studies and Training**

Foreigners wishing to study in Spain must obtain a visa for studies. An application for such a visa shall be accompanied by the following documents: a passport; evidence of

admission at an officially recognized, public or private teaching institution; a copy of the content of the curriculum, formation or investigation that the student will undertake; proof of medical insurance cover; proof of sufficient financial means and lodging; and in the case of minor students, the corresponding authorization of the parents or tutors. When the duration of the studies or the investigation surpasses six months, the applicant will also be required to provide a medical certificate and a copy of his criminal record.

Foreign students are considered to be present on a stay in Spain rather than as residents. The duration of the authorization is equal to that of the course for which they are registered. The authorization may, however, be prolonged annually if the holder demonstrates that he continues to meet the conditions met for the initial authorization and that he fulfils the requirements demanded by the institution he is attending.

Foreigners who hold a visa for the purpose of study may be authorized to work in public institutions or private organizations if the employer presents a request for work authorization and all the relevant requirements are fulfilled. These activities will have to be compatible with the accomplishment of the studies and the obtained income must not be a necessary resource for the student's sustenance or stay. In the case of such employment being full-time, its duration will not be able to surpass three months, nor to supersede enrolment.

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Some small differences exist between the Spanish and EU legislation with regard to the protection granted to a permanent resident in Spain against expulsion measures, which may be adopted only for serious breaches of public policy or security (Organic Law, Art. 54(1); Art. 57(5)).

The temporary residence authorization is more problematic, as Article 49 of the Implementing Regulation requires, in most cases, that the first application for a temporary authorization of residence and employment be accompanied by a currently valid residence visa. There are some exceptions to this requirement, for example: foreigners with a residence authorization in force and students, or when there is an application for exemption from the residence visa requirement, which is granted only in a few specific cases. However, in all the other cases the foreigner must leave the Spanish territory and apply for a residence visa from abroad.

With regard to the right to family reunification, both Organic Law 4/2000 and its amendments under Organic Law 8/2000 provide for the right to reunification with members of the nuclear family. At the same time, Organic Law 8/2000 eliminated two categories of relatives that Organic Law 4/2000 had included amongst those eligible for reunification: relatives of Spanish nationals not coming under the EU definition (i.e. relatives other than the spouse, children aged under 21 years and ancestors, where economically dependent on the Spanish national); and any other relative of the legal resident where there are humanitarian considerations. The Spanish rules do not recognize common-law marriage, other than to deny reunification of relatives for legally-married

persons not living together, unlike Council Directive 2003/86/EC on the right to family reunification.

Regarding regulation of the admission of economic immigrants, both the practical and the theoretical approaches of the EU reveal certain generally-shared lines of action with which the Spanish legal provisions conform. The Spanish legislation distinguishes between a general regime and certain special situations, such as fixed-term jobs or transnational services. The procedures introduced for the legal admission of workers are based on justified economic needs, as determined by the national employment situation, alongside a quota system. Furthermore, in response to reiterated calls for reform, the Spanish legislation introduces a visa for job-seekers as a supplement to searching in the country of origin. Finally, it facilitates the application formalities by establishing a single procedure for residence and work authorizations and involves the employer in the process by allowing him to present the application form on behalf of the third-country national.

The recent legal reforms in 2003 did not include the principle of 'Community preference,' afforded to those who have already worked in the European Union for some years before returning to their country of origin. Only if they have worked for a Spanish public institution will they not be required to obtain a work authorization to remain and continue working in Spain.

In conclusion, it could be said that the Spanish legislature has comprehensively amended the law on aliens over the past years in order to adapt its legislation to meet international and European Union obligations. However, some differences remain with regard to European Law. The restrictions on fundamental rights such as respect for private and family life, the right of assembly and association and the right to demonstrate and to strike contained in Organic Law 4/2000, as amended by Organic Law 8/2000, clearly impinge on the general scope of these rights as defined in the European Union Chart of Fundamental Rights and the ECHR.

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

Due to the lack of relevant accurate information, it is difficult to ascertain the real impact and consequences of the implementation of the legislation on immigration in practice. In principle, there is no great difference between the legal conditions of immigration at national, regional and local levels because, pursuant to the Spanish Constitution, the policy and legislation on foreigners and immigration fall exclusively within the jurisdiction of the central government. Notwithstanding this, autonomous communities have the ability to develop and implement certain aspects of these policies and laws. In addition, autonomous communities can affect the living conditions of foreigners in such matters where the community has obtained exclusive jurisdiction, including health care, education and social assistance.

Indeed, there is evidence of disparities between regions and provinces in Spain with regard to living conditions of foreigners. For example, the actual conditions in Ceuta and Melilla, the Canary Islands or Andalusia, as points of arrival for waves of irregular immigrants, are completely different from one another, as well as from the rest of the country. On the



other hand, large cities such as Barcelona, Madrid or Valencia, are places of residence for the majority of the foreign population. Having more economic and human resources and better infrastructures, these urban areas can often provide better conditions. However, it is also true that in these cities problems of social integration of immigrants into the host society, and the resulting racism or xenophobia, are more apparent than in small towns. El Egido in Almeria represents a special case, where there is a large population of immigrant workers with challenges of social integration.

Regarding the “immigrant worker quotas”, without evaluating actual results, the job offers published over the past 15 years by the Spanish State to cover normal or hard-to-fill jobs are notably low. There is a large gap between official and real demand. The final result is that actual demand can only be met by resorting to irregular immigrants.

## 5. Cooperation with Third Countries

The most important measures adopted by the Spanish government to regulate migration flows in cooperation with countries of origin, particularly those countries from which flows are of a significant size, are bilateral agreements on foreign workers. These bilateral agreements may serve as instruments with which to develop a global national policy on immigration (Carulla 2004). The Spanish Government has signed agreements of this kind with Colombia, Ecuador, Morocco, the Dominican Republic and Peru. These treaties apply to migrant workers defined as nationals of the contracting parties authorized to engage in remunerated activities as employed persons on Spanish territory, including seasonal workers. Although these agreements may take a variety of forms, their content focuses on migration for employment and a willingness to manage the labour market and to control migratory flows.

These bilateral agreements regulate the following issues: notification of job offers; selection of candidates; conditions and signing of employment contracts; issuance of permits for stay and work in Spain; travel and reception in Spain; employment and social conditions of workers in Spain; rights of migrant workers during their stay in Spain and also before and whilst travelling to Spain; and migrant workers return to their countries of origin. The agreements have a comprehensive and coordinated approach to all the aspects of the migration phenomenon in Spain. They provide for development cooperation and for cooperation in the fight against irregular immigration, exploitation and violation of social rights, document fraud and, in particular, illegal trafficking in human beings.

It is interesting to note that, in general, all of these bilateral agreements provide different subjective rights to migrant workers. The agreements acknowledge the right of these migrant workers to reunite with certain members of their family, as specified under Spanish law.

Workers who have had the chance to train and gain professional experience abroad can be important agents for development in their countries of origin. The treaties in question are linked to the idea of joint development or co-development between developed and developing countries. To this end, the agreement with Colombia establishes that measures shall be put in place to encourage the reintegration of migrant workers in Colombia,

with the added value of the emigration experience constituting a factor of economic, social and technological development. For the same purpose, the agreement with Ecuador establishes that the parties shall foster the development of projects designed to encourage the professional training of migrants and recognition of the professional experience gained in Spain, the promotion of the establishment of small and medium-sized enterprises by migrants returning to Ecuador, as well as the creation of bi-national undertakings associating employers and workers.

The new agreements do not deal with the full migratory cycle, which may be the main obstacle to the achievement of the wide set of objectives envisaged by the treaties. In the case of Morocco, for example, the migration cycle does not always begin in the territory of Morocco, but often in Sub-Saharan Africa; Morocco is a country of transit. These agreements fail to take into account this fact, since their scope is limited to national citizens of both countries, and not to all the people living in them.

In order to increase the geographical scope of its approach and to take into account the full migratory cycle, in the last year a new class of agreement has been signed by Spain with Sub-Saharan African States (including Gambia, Guinea, Guinea Bissau and Mauritania). These agreements provide for the repatriation of citizens that arrive in Spain by illegal means or who are staying in Spain in an irregular situation.

Migrants can access social security and pension rights paid by them in the host State during their stay in Europe when they return to their country of origin. Spain has signed many agreements with other States to guarantee the transfer of entitlements acquired in either country, taking into account the length of service, place of employment, social security and taxation. Migrants may also transfer money to countries of origin using the postal service, the banking system or any other private enterprise in Spain.

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## 1. General Immigration Policy and Trends

The character of the migration flows in Sweden has changed over time. Up until the 20<sup>th</sup> century, Sweden was largely considered a country of emigration. However, since the Second World War, Sweden has primarily experienced the immigration of foreigners. Migration in-flows began with guest-workers that arrived in the 1960s and 1970s, predominantly coming from Spain, Greece and Italy (SOU 2006). In recent decades, the flow of work-related migration has decreased, largely due to a shift in Swedish policy since 1968 that requires permission for employment to be obtained prior to entry into Sweden. Today, it is difficult for those who come from outside Scandinavia and Western Europe to obtain a work permit (SOU 2006). Thus, migration consists primarily of those who come to Sweden for the purpose of family reunification and as refugees.

Sweden first adopted legislation to address migration issues following the Second World War. Initially, it was primarily concerned with the expulsion of non-desired foreigners (Wikrén and Sandesjö 2006). The scope of Swedish legislation has been extended since that time to include the provision of permits for residence and work, as well as visa requirements and passport rules. The current legislation (the Aliens Act 2006) was adopted on 31 March 2006,<sup>463</sup> replacing the 1989 Aliens Act. This Act aims to distinguish more clearly between the grounds for a residence permit and to enforce the Swedish obligations under EU law. The new Act brings Swedish legislation into accordance with Council Directive 2003/109/EC concerning third-country nationals who are long-term residents, Council Directive 2003/86/EC regarding the right to family reunification and Council Directive 2004/38 on the right of citizens of the EU and their family members to move and reside freely within the territory of the EU.

The Government's expressed goals for current Swedish migration policy are to maintain regulated immigration, to introduce enhanced possibilities for work-related immigration and to further the harmonization of the national and EU migration and asylum policies (Budget Goals 2007).

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

Third-country nationals may obtain permission to stay in Sweden on the grounds of family reunification, studies and work or self-employment, as well as in special cases such as sports, visits, medical treatment or adoption. Most of the immigration to Sweden, apart from that of EU and Nordic citizens, is for the purpose of family reunification. The second largest group consists of asylum seekers. Students and labour migrants make up the third largest immigration group.

<sup>463</sup> For further elaboration of this legislative development, see Wikrén and Sandesjö (2006), pp. 14-26.

## 2.2 Admission Rules – Visa Policy

### 2.2.1 Competent Authorities

A visa application is submitted to the Swedish Embassy or Consulate abroad, or in its absence to the foreign representation of a Schengen country represented in that region.

The Swedish Migration Board is, in most cases, the authority that determines visa applications. Within the Migration Board, visa applications are considered by the division of Visits and Housing. The Government Office can, under certain circumstances, also make decisions on these matters (Aliens Act, Art. 3(5)). The police authority can make decisions involving refusal of entry for individuals who have never been issued a permit to stay and who do not meet the conditions to obtain one (Aliens Act, Art. 8(4)).

### 2.2.2 Procedural Steps – Conditions to be fulfilled

Sweden primarily issues Schengen uniform visas for the entry and stay of a foreigner for a maximum of three months in a six-month period (Aliens Law, Art. 3(2)). However, when the preconditions for a uniform visa are not fulfilled and a particular reason exists, national visas can be granted as a subsidiary measure. ‘Particular reasons’ encompass humanitarian reasons, strong national interest in granting the visa, business or family constraints. Such visas can be granted for a longer period than uniform visas, but with a maximum of one year.

A visa is not required from nationals benefiting from a visa exemption or from foreigners who have been granted a residence permit (Aliens Law, Art. 2(3)).

To obtain a visa, an individual must: hold a passport valid for at least three months longer than the intended stay; provide proof of medical insurance cover during the visit, which must cover costs up to 30 000 EUR, all emergency medical needs, and transport to the home country for medical reason; and possess sufficient means to support himself during the visit and to afford return travel at the end of the stay in Sweden, sufficient means currently being defined as at least 40 EUR per day. In addition, the applicant may also be requested to provide papers that substantiate the purpose of the visit.

A visa application will be rejected if the applicant is registered as being prohibited from entry or if he poses a risk to public safety, internal security or relations among the Schengen States (Aliens Act, Art. 3(1)). Swedish authorities may also refuse to issue a visa to an individual registered in the SIS, or to an applicant who is subject to a restriction of entry after having been sentenced in a criminal proceeding before a Swedish court. The reasons for a negative decision on a visa application must be given only if requested by the applicant.

The Migration Board weighs the need for the visit against the ‘risk’ that the applicant stays in Sweden for a longer period than that for which the visa is granted. Surrounding elements are taken into account in this regard, such as the applicant’s situation in his country of origin, prior visits to Sweden and the possibility of returning home after the visit.

The procedure and conditions for the issuance of uniform visas are consistent with the Schengen Convention. Swedish authorities generally apply a broad interpretation of visa rules, resulting in a high acceptance rate for visas. Sweden received 210 000 visa applications in 2006 and over 90 per cent were approved. The average processing time for these applications was seven days.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

There is no general right to contest, in court, a decision to reject a visa application. Only relatives of EEA nationals may appeal against the rejection of a visa application and, even then, only if the decision was made by the Migration Board (Aliens Act, Art. 14(3)).

Nevertheless, it is possible to request the authority that rejected the application (in most cases, the Migration Board) to review its decision.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

The following authorities are involved in the management of migration in Sweden: the Migration Board, the Government Office, the police authorities, three Migration Courts and the Migration Court of Appeal.<sup>464</sup>

The Migration Board is the primary authority deciding upon applications concerning residence permits, work permits, refusal of entry and deportation and retrieving of permits (in addition to visas, as stated previously).<sup>465</sup> Under certain circumstances the Government Office can also make decisions on these matters (Aliens Act, Art. 5(20); Art. 5(21)).

A peculiarity of the Swedish system is the involvement of various Government authorities on labour-related applications. The primary decision-making body for work permits is the Migration Board. The Migration Board must consult the National Markets Board concerning all applications on work permits, if the application is not to be rejected (Aliens Ordinance, Art. 5(5)). The latter also has the competence to delegate the communication with the Migration Board to a County Labour Board (Aliens Ordinance, Art. 5(5); Art. 13(14)). There are a few exceptions, where the Migration Board can make independent decisions without consultation with the National Markets Board, including cases in which the Migration Board is making a decision consistent with a guideline from the National Markets Board (Aliens Ordinance, Art. 5(5)). Employer and employee unions are also given a chance to make a statement on the case in question (Aliens Act, Art. 13(4); Aliens Ordinance, Art. 5(12)).

<sup>464</sup> It can be noted that when an immigrant has committed a serious crime, the ordinary penal courts may make the decision with regard to whether he should be deported to his country of origin (see Art. 8(9) of the Aliens Act).

<sup>465</sup> This follows from various provisions in the Aliens Act, where the competence of the Migration Board is stated in detail.



Another government authority, the Integration Board, was established in 1998 and closed in July 2007. It had been responsible for the reception of those who have obtained a residence permit and for communication with the local governments where individuals are registered once they have a permit. The Migration Board and the regional state authorities have taken over the tasks of the Integration Board.

### ***2.3.1.2 Procedural Steps – Conditions to be fulfilled***

The conditions for obtaining permits for stays in Sweden vary depending on the type of application. Nevertheless, several rules and principles are common to the different immigration statuses.

In most cases, residence permits must be applied for and granted before entering Sweden (Aliens Act, Art. 5(18)). Some exceptions to the rule do apply, for instance, in some cases of family reunification (Aliens Act, Art. 5(18)).<sup>466</sup>

Generally speaking, all applicants are subject to the fee determined for the type of application submitted and, in addition, they must provide evidence of sufficient means to support themselves for the period of intended stay in Sweden. An application for the purpose of a visit to Sweden for work or for studies costs 1000 SEK (110 EUR) for adults and 500 SEK (55 EUR) for children. Nationals from EEA countries are, however, exempted from the fee requirement.

In the cases of applications for the purpose of visiting Sweden, or for the purpose of employment or study, individuals must show proof of medical insurance coverage for the duration of stay in Sweden. There is no requirement of health or medical exams, nor is there a requirement to be familiar with the Swedish language, history or cultural traditions.<sup>467</sup> Finally, employees, self-employers, students and visitors must make a statement of intent to leave Sweden after their short stay permits have expired. There is no legal basis for this requirement, but it is an established practice of the Migration Board (SMB October 2006; SMB March 2006d; SMB March 2006e). The format of the statement is not settled by law, but as much of the administration of these matters is in written form, the statements are often written.

Regarding grounds to refuse a residence permit, it can be noted that when examining an application (based on a ground other than family reunification), the competent authorities shall pay particular attention to whether the applicant is guilty of any criminal activity (Aliens Act, Art. 5(17)). Applications for family reunification can be rejected if, for instance, incorrect information has knowingly been supplied or the applicant constitutes a threat to public order and security (Aliens Act, Art. 5(17a)).

<sup>466</sup> Regarding family reunification, an exception may be made for those who apply for the first time if it is likely that they will receive an affirmative decision and if, in addition, it would be unreasonable that they would have to leave the country.

<sup>467</sup> However, foreigners living in Sweden can participate in courses in Swedish. There is a course of at least fifteen hours a week for four weeks offered by the local government in accordance with the Act on Education. The preconditions for participation are that the student is an adult (over the age of sixteen), lacks basic knowledge in Swedish and is registered with a local government. No fees are required. As there are no requirements for knowledge about Sweden, its history, cultural traditions and politics, the language course curriculum contains only educational elements.

Finally, the applicant has a right to access documentation in all cases (Aliens Act, Art. 13(9)). This is in line with the constitutional principle within the Swedish legal system of access to public documents. The main rule is that all official transcripts are available to all and only in exceptional cases can access to them be denied. The rule is also applicable to foreign nationals and gives them a right to follow their case and to obtain all the information that the authority has received. Any decision on secrecy in a certain case does not concern the individual applicant. In addition to the general principle, the Board must inform the applicant of the status of his case. The Board must state the motivation for all decisions concerning permits or status as permanent residents (Aliens Act, Art. 13(10)).

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

The structure of the appellate system was radically altered from an administrative court-like body to a system of appellate courts in 2006 (SMB March 2006b). This change substantially improved the protection of the rights of residence permit applicants. Previously, the Aliens Appeals Board handled appeals within the administrative apparatus; this system was criticized in the light of the right to a fair trial.

Decisions can now be challenged in one of the three Migration Courts,<sup>468</sup> although a direct judicial appeal is not possible. First, an administrative review by the Migration Board has to be undergone, whereby the Board re-examines its decision and changes it if it appears that the first decision was incorrect. If the Migration Board stands by its original decision, appeal is made to one of the three Migration Courts. A further appeal against the judgement of the Migration Court can be made to the Migration Court of Appeal. In this situation, leave to appeal must be granted by the Migration Court of Appeal. Such leave to appeal may be granted in the case of “precedence exemption” or “extraordinary exemption”. The former refers to a case that might provide guidance for future decisions, whereas the latter means that there are extraordinary reasons to reconsider the appeal.

Because the new process for appeal has only recently been established, an estimate of the average length of time for appeals has not yet been calculated. A maximum time limit of four months is set for the migration courts and five months for the Migration Court of Appeal (Courts 2007). Since the establishment of the new court system, six per cent of the cases referred to the Migration Court of Appeal have been granted extraordinary exemption (Stern Interview).

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

A temporary residence permit, normally issued for the duration of one year, may be given on first application in several cases, including for the purpose of work, studies or visiting (Aliens Act, Art. 5(10)), as well as in cases of family reunification when the spouses have not lived together on a permanent basis abroad (Aliens Act, Art. 5(8)).

<sup>468</sup> Three of the County Administrative Courts in Sweden are Migration Courts.

The Aliens Act does not identify conditions and procedural rules applicable to all temporary residence permits (see sections 2.3.1 and 2.3.3 for further discussion).

### **2.3.2.2 Permanent Residence**

The main precondition for a permanent permit is that the applicant has the intention to stay more or less permanently in Sweden (Prop. 1988/89:86. In practice, this means that those who are applying for permits for the purpose of family reunification, other than newly established relationships, or employment, when the applicant has been offered a permanent employment contract (Aliens Act, Art. 5(5)), receive permanent residence permits if their intention is to stay for a long period (Wikrén and Sandesjö 2006). In other words, there is no condition regarding a certain period of stay in order to be granted a permanent permit.

An application for a permanent residence permit may be denied if the individual is suspected of future misconduct or criminal behaviour (Aliens Act 5(7)). In this situation, a temporary residence permit may be issued instead (Aliens Act 5(7)). Other possibilities to refuse a permit are if the applicant already has a criminal past, or if he provides false information about himself (Aliens Act, 5(17)). There are also special rules regarding persons who are settled in another EU country; a residence permit must not be granted if this person poses a threat to public order and safety (Aliens Act, 5(17)). A foreigner who has been granted a permanent residence permit does not require a work permit (Aliens Act, Art. 6(1)).

In addition to national permanent residence permits, Sweden also grants EC long-term residence permits. It can be noted that in most cases the EC long-term residence permit is additional to an already granted residence permit. Such a permit is delivered for an initial period of five years after the applicant has continuously resided for at least five years in Sweden under one of the following statuses: a permanent resident; a long-term resident in another EU Member State and a resident in Sweden; or a resident in Sweden and a family member of a long-term resident in another EU Member State (Aliens Act, Art. 5a(1)). A distinction is made between those who have a permanent residence permit in Sweden and those who are long-term residents in another country or are relatives of such persons. The former are granted unlimited leave to stay, whereas the two latter categories receive a residence status for only five years (Aliens Act, Art. 5(19a)). In order to be granted an EC long-term permit, the applicant must have sufficient means of subsistence to support himself and his family (Aliens Act, Art. 5a(2)). The required means of support are not high, however, as they fall below the requirements set as the minimum social standards (Wikrén and Sandesjö 2006).

### **2.3.3 Conditions for Specific Immigration Types**

#### **2.3.3.1 Family Reunification**

Regarding family reunification, a main distinction can be established between family members of EEA nationals and family members of third-country nationals and Swedish citizens.

The first category benefits from more favourable treatment. No residence permit is needed, but for a stay longer than three months, a residence card is required. The said card is valid for a maximum period of five years, after which, if residence has been continuous, a permanent residence permit may be granted. Family members benefiting from this regime are: spouses, registered partners or co-habitees; children under the age of 21 years or older if dependent; and parents if dependent.<sup>469</sup>

Family members of third-country nationals holding a residence permit (permanent or temporary), as well as family members of Swedish nationals, are entitled to be granted a residence permit. In this situation, family members are understood as: spouses, co-habitees or registered partners; prospective spouses, co-habitees or registered partners; children under 18 years of age; and close relatives over the age of 18 in exceptional cases.<sup>470</sup> In most cases, the residence permit is granted for the same period as the one granted to the sponsor (in the case of family reunification with a Swedish citizen, a permanent residence permit is granted). Nevertheless, when the relationship is newly established, in other words, the spouses, registered partners or co-habitees have not lived together for at least two years in the country of origin, a temporary residence permit is delivered for a maximum period of two years (and a minimum of six months). After a period of two years, a permanent permit shall be issued.

Family members are entitled to work.

The goal of the Migration Board is to decide on reunification matters within six months of the date of submission of the application; however, this goal has not yet been reached (Budget 2006). An application for family reunification must be accompanied by: a passport; two passport-size photographs not older than six months; and, if applicable, the marriage certificate, registered partnership certificate or a civic registration certificate. There is no requirement of adequate accommodation or means of subsistence during the stay in Sweden. Only the risk of criminal activities is taken into account in granting the residence permit (Aliens Act, Art. 5(17)).

### 2.3.3.2 *Work*

#### Employment

A Government Commission Inquiry recently reported their findings concerning labour migration and it is likely that there will be changes to come in this area (SOU 2006). One of the problems with the present regulations is that it is not specified in the law under which circumstances a work permit may be given (Wikrén and Sandesjö 2006). The work permit is normally granted for a certain trade or profession and for a period of one year at a time, or less than this if the work will be of shorter duration (Aliens Act, Art. 6(1)). If the permit is due to a temporary labour shortage, it is granted for maximum of 18 months. In certain cases, a permit can be extended after an application to the Migration Board. This

<sup>469</sup> It is notable that parents of students cannot be granted a residence card.

<sup>470</sup> Persons falling outside the nuclear family (e.g. parents) can be granted family reunification, although this area of policy has grown more restrictive recently. The current requirements are that the applicant has previously lived in the same household as the relative who now resides in Sweden and that there is a dependent relationship (financially, socially and emotionally) between the two individuals.

is the case when an immigrant resides in Sweden on the grounds of family reunification or has strong reasons not to leave before submitting a new application (Aliens Act, Art. 5(18); Art. 6(4)).

In order to grant a work permit, the Migration Board consults the National Labour Board, which applies a labour market test.<sup>471</sup> The potential employer in Sweden must report an available position to the County Labour Board, including the intent to engage a third-country national and the opinion from the employee union on the matter (SOU 2006). On the basis of this information, the County Labour Board makes a decision on the need for employees coming from outside Sweden, Scandinavia and the EU countries. Only if this decision is positive may third-country nationals submit an application (SOU 2006). In this case, an application for an employment permit must be submitted from outside Sweden to the nearest Swedish Embassy or Consulate (Aliens Act, Art. 5(8)).

If the employment is for more than three months, a residence permit is required in addition to a work permit; otherwise, a visa is sufficient. The Migration Board will ask for a written offer of employment in Sweden. The employer must guarantee salary, insurance coverage and other terms of employment at least equal to the collective agreement or practice in that particular trade. Furthermore, the employer must have arranged accommodation for the employee. The decision on work-related applications is made in approximately six to eight weeks (SMB March 2006d).

Sweden is presently working on draft legislation to increase the possibilities for labour immigration, which will be proposed to the Parliament in the next few months. The aim is to design an effective and flexible labour migration scheme that allows Swedish employers to recruit third-country nationals for whom there is a demand. According to the current proposal, a job offer must first be announced in Sweden and within the EURES database for at least ten working days before Swedish employers are able to recruit from third countries. A key difference with this new legislation is that every temporary work permit can lead to permanent residency if the migrant in question still has a job after four years of residency in Sweden. In the current system, temporary work permits can be issued to migrants who receive a firm offer of employment from a Swedish employer. These temporary work permits may be valid for up to 18 months, after which the migrant must return home. Under the new system, the Swedish Government will have no role in deciding whether or not there are shortages in the labour market. Instead, it will be up to employers to determine whether or not there is a demand for such labour migration within specific sectors. Thus, the system will be market-driven rather than State-driven.

### Self-employment

In order to perform a self-employed activity, a residence permit for this purpose is requested. It is notable, however, that a work permit is not necessary.

<sup>471</sup> There are a few exceptions where the Migration Board can make independent decisions. These are cases concerning artists visiting Sweden for a maximum period of a month, or when the Board is making a decision coherent with a guideline from the National Markets Board (Aliens Ordinance Art. 5(5)). If the applicant has been in the country long enough and personal circumstances require it, the Migration Board may also make an independent decision.

An application for a residence permit must be submitted at least three months before the intended arrival in Sweden (SMB March 2006d), and permission must be registered in the passport prior to entry into Sweden. The delivery of the residence permit is dependent on a commercial evaluation, the purpose of which is to establish that the business plan is realistic. The applicant must prove that he has access to the capital needed to establish or purchase a company and that he will be able to support himself and his family for at least one year in Sweden. The Migration Board may also request detailed documentation of business plans, such as a market forecast, a profit and liquidity budget and a general budget. Furthermore, the applicant must submit details of customer references, banking connections, experience in the field concerned and any training or education he may have received. If an existing company is purchased, the two most recent annual reports must be submitted with the application. It is also required that a report prepared by an accountant authorized in Sweden be included.

If the residence permit is granted, the self-employer must register at the Swedish Patent and Registration Office (SMB March 2006d). A residence permit is issued for one year at a time, for a trial period of two years. At the end of the trial period, a permanent residence permit may be granted.

### Seasonal work

The Swedish authorities may grant permits for seasonal work (Aliens Act, Art. 6(2)). The County Labour Board determines the number of seasonal workers to be accepted into the Swedish labour market each year (Wikrén and Sandesjö 2006). These annual quotas on seasonal labour are based on an assessment of the need for labour in the coming season. In 2006, for example, it was estimated that no foreign seasonal workers were needed (SOU 2006). According to the Board, seasonal work can only include work in forestry, gardening and related sectors.

The application for a work permit for seasonal work is submitted to the Migration Board (at an Embassy or Consulate), while the County Labour Board in the county where the work is supposed to be performed makes the decision. On average, an application for a seasonal work permit is decided upon within three months (Budget 2006).

### **2.3.3.3 Studies and Training**

Application requirements for those who intend to study at Swedish universities and colleges differ from the requirements for exchange students. In both cases, however, the application must have been submitted prior to entry into Sweden.

An application for permission to reside in Sweden for the purpose of study at a university or college requires that the applicant be granted admission to the institution and that he enrolls as a full-time student. In addition, proof of the means to support himself throughout the duration of the plan of study must be included. At a minimum, students must have a disposable income of 7300 SEK (773 EUR) a month, for ten months of the year (SMB March 2007b). Less money is required if the applicant can show that he has access to free lodging or board. Furthermore, if the studies last less than a year, the Migration Board

also demands comprehensive health insurance cover and a declaration of intent that the applicant will leave the country after the studies are completed. If the application is granted, the student has the option to work in addition to his studies, without a requirement of a work permit (SMB March 2007b).

An application for the purpose of study in Sweden costs 1000 SEK (106 EUR) for adults and 500 SEK (53 EUR) for children. Approximately 18 000 persons applied to enter Sweden as guest students in 2006, and of these, 70 per cent were accepted. Most of these came from China, Pakistan, Nigeria and India, which made up 45 per cent of the applications (SMB March 2007a). The average waiting time for a decision on applications for study in Sweden is less than three months.

An application for residence as an exchange student must be accompanied by proof that the studies will be conducted full-time and as a part of an organized exchange programme (SMB October 2006). Enrolment must be confirmed by the organization and detailed information on the contact persons in Sweden must be given. The applicant must express an intention to leave the country once the studies are completed. Permits for exchange students are granted for a maximum of one year.

A new application must be submitted when the short stay permit expires and, if the student cannot prove that he is still a student and fulfils the requirements for a study permit, then he must apply for a work permit if he wishes to stay and work.

Residence permits are also given to visiting researchers. The precondition for their stay is that they are part of an international exchange programme or that the special competence involved is in short supply in Sweden (SMB March 2006c). In addition, the employer must guarantee pay, insurance coverage and other terms of employment equal to at least the collective agreement or Swedish practice in that profession or branch of trade. Housing must also have been arranged for the third-country national (SMB March 2006c).

### **3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level**

Generally, the conditions established in Sweden concerning third-country national immigration conform to EU regulations. There are minor differences in a few cases, but nothing stands in contradiction to EU rules (Stern Interview).

### **4. Real Impact of Immigration Legislation on Immigration in Practice**

Because the new Aliens Act has only been in force since 2006, the effects of the law have yet to be evaluated. Another issue has been the accessibility of decisions from the courts and a disparity across court decisions, such that there may be differences in the outcome of a case depending on which of the three Migration Courts the case was filed with (Stern Interview).

It is too early to conclusively report on the practical effect of the implementation of the relevant EU directives. However, it can be noted that Swedish policy previously directed immigrants entering Sweden to areas where they would be provided with housing (Stern

Interview). Now, in contrast, people who have a permit to stay can choose their place of residence and they tend to reside where there seem to be jobs available and where there are people they know or who speak their language. There is also discrimination in the labour market and it is unclear how the Government plans to address this when accepting more third-country nationals into the country for the purpose of employment.

## **5. Cooperation with Third Countries**

There are no cooperation measures with developing countries with the purpose of hindering people from coming to Sweden. There is, however, cooperation for the purpose of development, which is based on the idea of providing humanitarian aid.

Swedish legislation affords migrants over the age of 65 the right to have the pensions they have earned in Sweden paid out in their countries of origin if they decide to return. Sweden is one of only three countries to have ratified the ILO's Convention on Maintenance of Migrants Pension Rights.



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### **Persons Interviewed**

Dr. Rebecca Stern, Swedish Red Cross, 7 May 2007 (Stern Interview).

# United Kingdom

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## 1. General Immigration Policy and Trends

The British immigration system following World War II distinguished between ‘subjects’ and ‘aliens:’ ‘aliens’ were subject to immigration control, whereas ‘subjects’ (persons with a connection to the United Kingdom, to a British colony or to nationals of independent Commonwealth States) were free to enter the UK. That freedom of entry changed as a result of reduced demand for migrant labour and an increase in the opposition to non-white immigration during 1962. With the UK’s accession to the EU, previous distinctions were consolidated even further and, from the 1970s until the 1990s, immigration by non-EU nationals was mainly by family members.

Since 1997, governments have generally responded to upturns in Britain’s demand for labour by expanding the level of economic migration. The period has seen the introduction of a highly skilled migrants programme in June 2002 (with 49 188 immigrants having entered the country under the programme by October 2006) (House of Lords Debate), an increase in the number of work permits issued (from 40 750 in 1996 to 91 500 in 2005), and an increase in those acquiring settlement (i.e. long-term residence) through economic categories (from 5240 in 1996 to 32 210 in 2005) (Statistical Bulletin, 1996 and 2005). The recent period has also seen the opening of the labour market to nationals of the eight Central and Eastern European States that joined the EU in 2004.

At the same time, recent government policy has grown more restrictive in relation to family migration and the acquisition of settlement and British citizenship. This more restrictive tendency has mainly resulted from the perceived lack of social integration of some persons from ethnic minorities, particularly in Muslim communities. Requirements for language capacity and knowledge of life in the United Kingdom have been introduced, first for naturalization as a British citizen (as of 1 November 2005) and then for settlement (as of 2 April 2007).

The Immigration Rules, published by the Home Secretary after the Parliament’s approval, are the most important source for law and policy on legal migration. Some provisions of the Immigration, Asylum and Nationality Act 2006 (which implements the government’s five-year strategy for immigration and asylum published in 2005) were introduced in June 2006, with full implementation of the Act not expected until some point in 2008.

## 2. Laws and Conditions of Immigration

### 2.1 Overview of Immigration Types

The main immigration categories covered by UK legislation are: visitors, students and trainees, temporary work, employment, business and family members.

## 2.2 Admission Rules – Visa Policy

### 2.2.1 Competent Authorities

As a general rule, a person seeking entry clearance<sup>472</sup> must apply to the Consular post in the country where the applicant lives and, if none are available in the country of residence, he must apply to a designated post in the region (Immigration Rules, paras. 28-29).

### 2.2.2 Procedural Steps – Conditions to be fulfilled

Before seeking entry into the UK, third-country nationals must obtain entry clearance.<sup>473</sup> For visa nationals this takes the form of a visa and for non-visa nationals it takes the form of an entry certificate. The Immigration Rules require entry clearance before departure from the country of origin in three cases: 1) nationals of the 104 visa States listed in Appendix I to the Immigration Rules, as well as refugees and stateless persons; 2) non-visa nationals seeking entry for a period exceeding six months; and 3) non-visa nationals seeking entry for six months or less, but for a purpose for which entry clearance is required under the Immigration Rules.

The question of fees is a controversial one in the UK. The “full cost recovery” policy, which charges the applicant for the full cost of processing, has resulted in what some consider to be excessively high fees, especially since April 2007. From this date, students have had to pay 99 GBP (132 EUR) for an entry clearance application; applicants holding a work permit, Highly Skilled Migrants Programme (HSMP) applicants and those falling within other employment categories must pay 200 GBP (267 EUR); and applicants falling within family settlement categories must pay 500 GBP (668 EUR).

Entry clearance may be refused if the qualifying conditions for the given category set out in the Immigration Rules have not been met. It is also possible for an application to be refused on general grounds, set out in paragraph 320 of the Immigration Rules. The mandatory grounds of refusal include the following: entry is being sought for a purpose not covered by these Rules; the individual is subject to a deportation order which remains in force; failure to produce a valid national passport or other document satisfactorily establishing his identity and nationality; or the Secretary of State has personally directed that the exclusion of a person from the United Kingdom is conducive to the public good. There are also grounds for which refusal is classed as optional, but where permission should normally be refused. These include: failure to provide requested information for entry clearance; failure to produce an adequate travel document; a previous breach of the immigration laws, or previous deception in an immigration application; failure to satisfy the relevant authorities that he will be admitted to another country after a stay in the United Kingdom (although this does not apply to partners of settled persons); children

<sup>472</sup> Entry clearance is permission to seek entry to the United Kingdom and is obtained prior to departure from the country of origin. It is traditionally distinguished from leave to enter, which is permission to enter the United Kingdom. Since 2000, entry clearance in itself legally confers leave to enter. However, it is possible for this leave to be cancelled upon arrival at a UK port of entry.

<sup>473</sup> The following are exempt from the requirement of entry clearance: students, au pairs, seasonal agricultural workers and work permit holders.

who are not accompanied by, or travelling with the consent of, a parent or guardian; refusal to undergo a medical examination; a criminal conviction of twelve months or more; failure to provide required physical data; or the submission of a false document in support of an application.

Under the UK system, the concept of a ‘long-term visa’ equates to ‘indefinite leave to enter.’ While the Immigration Rules do not provide for indefinite leave to be granted in many circumstances, it may notably be granted to: partners with four years’ residence with a settled person; children of settled persons or persons being admitted with a view to settlement (with some exceptions); and the parents, grandparents and other dependent relatives of settled persons.

### **2.2.3 Appeal and Administrative or Judicial Control of the Decisions**

The entry clearance process (in other words, visas and entry certificates) is not regulated by statute and, as such, there is no specific legal requirement for the reasons for a decision to be given. In practice, the obligation to give reasons arises from the possibility of legal redress through an appeal to the Asylum and Immigration Tribunal or judicial review proceedings in the High Court, as the case warrants.

Provision has been made in the Immigration, Asylum and Nationality Act 2006 for a restriction of appeals against refusals to grant entry clearance. When introduced, it will limit appeals to those involving only family visitors and dependants; thus withdrawing appeal rights from students, temporary work categories, employment categories, business categories and retired persons of independent means.<sup>474</sup>

Regarding administrative review in the case of entry clearance, according to management standards, refusals that do not attract a right of appeal ought to be reconsidered within 24 hours by an entry clearance manager. Whilst in the case of appealable refusals, the management standard is that a refusal should be reviewed internally once notification of the appeal is received by the entry clearance post. This is, however, merely administrative practice and the relevant authorities are under no legal obligation to grant either form of reconsideration.

## **2.3 Stay and Residence Rules**

### **2.3.1 General Rules regardless of the Immigration Category**

#### ***2.3.1.1 Competent Authorities***

When an individual is already in the United Kingdom and wishes to apply to extend his stay, or to change immigration category, the application is dealt with by the Border and Immigration Agency (BIA).

<sup>474</sup> Implementing regulations may also deny appeals regarding entry clearance refusals by some visitors and dependants.

### 2.3.1.2 Procedural Steps – Conditions to be fulfilled

Leave to remain is permission to stay in the United Kingdom. It is conferred in-country, once the individual has entered the UK.

Entry by non-nationals is made conditional on the applicant's having sufficient resources to maintain and accommodate themselves and any dependants without recourse to public funds. A person seeking admission into the UK must also meet the health requirements.<sup>475</sup>

Paragraph 322 of the Immigration Rules lists grounds on which leave should 'normally' be refused:

- Leave is sought for a purpose not covered by these Rules;
- False representations or the failure to disclose any material fact in this application or a previous one;
- Failure to comply with any conditions attached to the grant of leave to enter or remain;
- Failure by the person concerned to maintain or accommodate himself and any dependants without recourse to public funds;
- The undesirability of permitting the person concerned to remain in the United Kingdom in the light of his character, conduct or associations or the fact that he represents a threat to national security;
- A sponsor's refusal to give an undertaking as to maintenance and accommodation, or to honour such an undertaking;
- Failure by the person concerned to honour any declaration or undertaking given orally or in writing as to the intended duration and/or purpose of his stay;
- Failure, except by a person who qualifies for settlement in the United Kingdom or by the spouse or civil partner of a person settled in the United Kingdom, to satisfy the Secretary of State that he will be returnable to another country if allowed to remain in the United Kingdom for a further period;
- In the case of a child under 18 years, a lack of the written consent of the parent or guardian.

The Immigration Rules allow for people to change immigration categories once the person is admitted and residing in the UK; however, this is subject to several restrictions. For instance, as a basic principle, in-country switching is not permissible with regard to admission categories for which entry clearance is required. It is also not permissible under the Immigration Rules to switch from another category into a temporary employment category. Likewise, those already in a temporary employment category are precluded

<sup>475</sup> Where a medical inspector determines that a person is undesirable for medical reasons, his entry *should* be refused. Secondly, if a person is required to undergo a medical examination but refuses, his entry *may* be refused..

from switching to another category. Switching into work permit employment is also restricted. However, it is generally permissible to switch into a family status. Finally, the possibility of switching, even in relation to these restricted categories, may be allowed on a discretionary basis.<sup>476</sup>

### ***2.3.1.3 Appeal and Administrative or Judicial Control of the Decisions***

Negative immigration decisions are potentially appealable to the Asylum and Immigration Tribunal. However, appeal rights for students, applicants within temporary work categories, employment categories or business categories and retired persons of independent means will be curtailed by the most recent provisions in the Immigration Asylum and Nationality Act 2006, when implemented.<sup>477</sup> The alternative legal avenue for challenges to refusals is judicial review proceedings in the High Court. This avenue permits any available legal arguments to be raised, including non-compliance with the Immigration Rules and with policies or concessions.<sup>478</sup>

Alongside appeal and judicial review, a third possibility is internal reconsideration by the original immigration decision-maker. In the case of immigration employment documents, it is possible to apply for an internal reconsideration where a document is initially refused.

## **2.3.2 Conditions according to Length of Stay**

### ***2.3.2.1 Temporary Residence***

There are no general provisions for the granting of limited leave status. A different regime applies to the different immigration categories. In any case, leave ought not to exceed five years.

### ***2.3.2.2 Permanent Residence***

Within the UK system, the status of long-term resident corresponds to the concept of indefinite leave. Persons in some immigration categories can obtain indefinite leave to enter the UK (before arrival), but this is unusual.<sup>479</sup> More commonly, an individual obtains indefinite leave to remain after a period of residence in the UK. There is no specific provision in the Immigration Rules for the acquisition of indefinite leave to remain by persons who are visitors, students or trainees, or who fall within temporary

<sup>476</sup> It can be noted that, since October 2004, the policy is that this discretion is only exercised on an exceptional basis, where it would be “unduly harsh” not to do so. It is in particular not used for labour market or economic reasons.

<sup>477</sup> Implementing regulations may also deny appeal to entry clearance applications by some visitors and dependants.

<sup>478</sup> The basis for reliance upon stated immigration policy is either that the individual has a legitimate expectation that the Immigration Rules or a published policy or concessions will be followed, or that it would be contrary to the requirement of fairness in decision-making that an unpublished policy or concession applied to some cases not be applied to all. Judicial review is, however, generally considered unattractive in immigration cases. One practical consideration is that substantial cost awards may be made against unsuccessful applicants. In addition, the role of the courts is usually thought to be limited to quashing administrative decisions, whereas an appeal tribunal is able to substitute its own decision.

<sup>479</sup> Indefinite leave to enter is provided for in the Immigration Rules only for former members of the armed forces and for certain family members of persons.



work categories. Those immigrants falling within employment or business categories must fulfil the core requirement of five years residence in the given category. A residual category of indefinite leave to remain may be invoked by any person who has had ten years continuous lawful residence in the UK, or fourteen years continuous residence irrespective of lawfulness. Acquisition of indefinite leave on this basis is, however, subject to a public interest consideration.

In all cases where indefinite leave to remain is sought, the norm is that the substantive conditions applicable to the given immigration category have been complied with throughout the period of stay and are still being so at the time of application. Since 1 April 2007, most applications for indefinite leave to enter or remain require compliance with requirements as to language and knowledge of life in the UK.<sup>480</sup>

### 2.3.3 Conditions for Specific Immigration Types

#### 2.3.3.1 *Family Reunification*

British policy concerning family members can be separated into three general cases: where the family member's main sponsor is settled in the UK or is being admitted for settlement at the same time; where the sponsor has 'limited leave'; and family member's of EEA nationals.

##### *Sponsors who are settled or eligible for settlement*

Certain family members of sponsors who are present and settled (meaning British citizens or persons with indefinite leave) in the UK or who are being admitted for settlement may enter the UK for the purpose of family reunification. Family members so entitled include: spouses, if the marriage was entered in accordance with the law of the State in which it was concluded and both partners are over 18 years of age;<sup>481</sup> civil partners; cohabitantes who have been in a relationship akin to marriage for the previous two years; children of the sponsor, or of the spouse, partner or cohabitee; fiancé(e)s and proposed civil partners; and other relatives (for example, children admitted where the sponsor is not a parent and certain adult relatives) in exceptional cases (Immigration Rules, Para. 281).

Eligible partners are entitled to a leave to enter and stay for a probationary period of two years, after which it is expected that they will apply for indefinite leave. However, if the marriage, civil partnership, or cohabitation has been in existence for more than four years at the time of the application, they are eligible for indefinite leave to enter.<sup>482</sup>

Children<sup>483</sup> are eligible for indefinite leave to enter when all relevant parents are themselves settled or entering for settlement.<sup>484</sup> The Immigration Rules adopt a wide

<sup>480</sup> Persons not aged between 18 and 65, foreign nationals who were formerly in the armed forces and those admitted in the 'other relatives' category are exempted from this requirement.

<sup>481</sup> There is a proposal to increase the age requirement to 21 years (BIA, Securing the UK Border).

<sup>482</sup> The requirement of language ability and knowledge of life in the UK apply to this category and, if not met, a two-year probationary period is granted instead.

<sup>483</sup> A person has to be dependent, single and under 18 years of age in order to be considered a child under the Immigration Rules.

<sup>484</sup> If only one parent is settled or entering for settlement, the child can be admitted provided that: the other

definition of ‘parent’ so as to include persons other than the parents of children born within a marriage.<sup>485</sup> The Immigration Rules also provide for children to be sponsored by someone who is not the parent where there are serious and compelling family or other considerations that make the exclusion of the child undesirable and as long as the sponsor is a relative who is settled or being admitted for settlement. A third case is the possible admission of the children of fiancé(e)s and proposed civil partners (Immigration Rules, para. 298).<sup>486</sup>

Certain adult relatives can be admitted if they are sponsored by a person who is settled. This provision initially covers cases where: a parent or grandparent is a widow or widower over 65 years of age; parents or grandparents are travelling together and at least one is aged 65 or over; or a parent or grandparent aged 65 or over has remarried or entered a further civil partnership but cannot look to the spouse, civil partner or children of the second marriage/ civil partnership for financial support (Immigration Rules, para. 317).<sup>487</sup>

### Limited leave sponsors

There is considerable complexity in the area of family entitlements of persons with limited leave to enter and stay, given that not all limited leave categories may sponsor family members. For those categories that may do so, there are differences as to the family members who may be sponsored. For example, student and trainee categories and temporary workers can be reunified with spouses, civil partners and children, but not with cohabitees and other relatives. Similarly, the employment, business, and miscellaneous categories can be reunified with spouses, civil partners, cohabitees and children, but not with other relatives.

The following limited leave categories do not give rise to family reunification rights: persons undertaking clinical attachment or a dental observer post; au pairs and seasonal agricultural workers; and participants in the sectors-based scheme.

### Family members of EEA nationals

Family members of EEA nationals are understood as: the spouse or civil partner of the sponsor; direct descendants (under 21 years of age or dependent) of the sponsor or his spouse or civil partner; dependent direct relatives in the ascending line of the sponsor

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parent is dead; the relevant parent has had sole responsibility for the child’s upbringing; or there are serious and compelling family or other considerations which make exclusion of the child undesirable.

<sup>485</sup> The term ‘parent’ includes: the stepfather or stepmother of a child whose mother or father, respectively, is dead; the mother and father of an illegitimate child; and in the case of a child born in the UK who is not a British citizen, “a person to whom there has been a genuine transfer of parental responsibility on the ground of the original parent(s)’ inability to care for the child;” or an adoptive parent.

<sup>486</sup> There are two significant specific requirements in this case, that: there are “serious and compelling family or other considerations which make the child’s exclusion undesirable;” and “there is no other person outside the United Kingdom who could reasonably be expected to care for” the child. The expectation is that the child will progress to limited leave with the parent after the conclusion of the marriage or civil partnership, and thereafter to settlement.

<sup>487</sup> The Rules extend the privileges to certain other adult relatives: a parent or grandparent under 65, or a son, daughter, sister, brother, uncle or aunt, if they are living alone outside the UK in the “most exceptional compassionate circumstances” and are “mainly dependent financially on relatives settled in the UK.”

or that of the spouse or civil partner; and the sponsor's partner (other than civil partner) in the case of a durable relationship.<sup>488</sup> The persons outlined are granted an EEA family member permit providing that they are either: lawfully resident in an EEA Member State; or would meet the requirements of the Immigration Rules if the EEA national or the spouse/civil partner (depending on who they are related to) were "present and settled" in the UK. Their right to stay in the UK is dependent upon that of the sponsor (EEA Regulations, Art. 7; Art. 8; Art. 12; Art. 14).

### 2.3.3.2 *Work*

#### *Employment*

The first stage of admission in the "work permit" category is for the employer to obtain a work permit from Work Permits UK.<sup>489</sup> The general category of work permit is classed as 'business and commercial.' The main requirements for such a work permit are that: the employer is based in Britain; the individual is to work as an employee; the qualification required for the position is at least a university degree, a Higher National Diploma or three years experience of working at National Vocational Qualification Level 3 or above; the pay and other conditions of employment are at least equal to those for a resident worker doing similar work; and there is a genuine vacancy which cannot be filled from among the resident labour force (Immigration Rules, paras. 128-133). To comply with the latter labour market test, the employer must demonstrate through a recruitment search that no suitably qualified or experienced resident worker is available. However, the following workers are exempted from the labour market test requirement: intra-company transferees, board level posts, individuals who have made investments in a company totalling at least 250 000 GBP (333 500 EUR), sponsored researchers and people in 'shortage occupations.'<sup>490</sup> Work permits and associated immigration permissions are issued for the period of employment, with a maximum of four or five years. After five years, an individual will, in principle, be eligible for indefinite leave. It can be noted that several categories of employees do not require a work permit.<sup>491</sup>

The Highly Skilled Migrants Programme (HSMP) permits both employment and self-employment. To be eligible for the programme an applicant must obtain 75 points across the following four areas: education, earnings, links with the UK and age. An alternative route is for the applicant to have an MBA from one of 35 designated institutions. Additionally, the applicant must meet an English language requirement and must intend to make the UK their main home. A person seeking leave to enter the UK as a highly skilled

<sup>488</sup> In the case of EEA students, family reunification is limited to the spouse or civil partner of the sponsor and any dependent children of the sponsor or of his spouse or civil partner.

<sup>489</sup> Works Permits UK is a division of the Home Office.

<sup>490</sup> The occupations designated as 'shortage occupations' changes depending on which jobs require more workers; at the time of writing it included, among others, some engineering posts (transportation and highway engineers, ground engineers, aircraft engineers, and overhead electricity lines-workers), most medical occupations, veterinary surgeons and teachers (in England only).

<sup>491</sup> Persons that are representatives of overseas news agencies and broadcasting organizations, sole representatives of overseas firms, private servants of diplomatic households, domestic workers in private households, overseas government employees, ministers of religion and airport-based operational ground staff of overseas-owned airlines are classed as "permit-free employees."

migrant may be admitted for a period not exceeding two years (Immigration Rules, para. 135B). Thereafter, they may obtain an extension for a further three years, at which point they will, in principle, be eligible for settlement.

The Sectors-Based Scheme (SBS) allows employment of immigrants by a named employer in a lower-skilled occupation for a maximum of twelve months. Since 1 January 2007, it has been available to Bulgarian and Romanian nationals only. The scheme is a quota-based system which does not have to satisfy the labour market requirement. This type of permit can only be requested for workers between 18 and 30 years of age who are outside the UK and it is limited to the food-processing industry (Immigration Rules, para. 1325I).

The IGS permits graduates from UK universities to work for twelve months in the UK. The main requirement is that the individual intends to seek and take work during this period, unless he switches to remain on a work permit (under the HSMP) as a person establishing themselves in business or as an innovator (Immigration Rules, para. 135O).

The Fresh Talent Working in Scotland Scheme (FTWSS) permits persons with a qualification from a Scottish educational institution to work in Scotland for a period of 24 months only. The main conditions for admission in this category are that the individual intends to seek and take employment in Scotland and intends to leave the UK on expiry of the leave, unless he switches to remain on a work permit (under the HSMP) as a person establishing themselves in business or as an innovator.

Fees for work permits and other employment categories are around 200 GBP (270 EUR) and decision times range from five working days to fifteen. For an in-country limited leave application (in other words, extension or change of category) related to work permits, the BIA defines the following standards: 70 per cent decided within 20 working days and 90 per cent decided within 45 working days.

### Self-employment

The category of a person intending to establish himself in business covers both the establishment of new businesses and participation in existing ones. The core qualifications are the following: the applicant must have at least 200 000 GBP (287 599 EUR) to invest in the business, the funds for which must be their own and under their control; he must have an interest in the business proportionate to his investment and, in any event, a controlling or equal interest; there must be a genuine need for the applicant's investment and his services; and at least two full-time employment positions must be created by the applicant's investment and services<sup>492</sup> (Immigration Rules, para. 204).

The category of investor covers persons who intend to invest in Britain without necessarily being involved in a business and without necessarily creating employment. The core requirements are that: the applicant must control funds available for investment of at least 1 000 000 GBP (1 400 423 EUR); these funds must be their own, unless their net

<sup>492</sup> It is also necessary that the individual not intend to engage in employment, either for the business or otherwise.

personal wealth exceeds two million GBP, in which case the funds can be borrowed from a financial institution; the applicant must intend to invest at least 750 000 GBP (1 078 498 EUR) in the UK; and he must intend to make the UK his main home (Immigration Rules, para. 224).

The category of innovator was created in 2000. The starting-point for obtaining permission to work in the UK under this category is an application to Work Permits UK for approval. The criteria required to be satisfied focus on the entrepreneurial experience of the individual and there is a preference for applications in the scientific and technological fields. Under the Immigration Rules, the main requirements are that the applicant intends to set up a business that will create full-time paid employment for at least two persons in the UK and that he intends to maintain a minimum five per cent shareholding in the business during the period of stay (Immigration Rules, para. 210A).<sup>493</sup>

### *Seasonal work*

Part 4 of the Immigration Rules is concerned with temporary work categories. The only truly seasonal work provision is through the Seasonal Agricultural Workers Scheme (SAWS). The rest concern other temporary (but not necessarily seasonal) work; for example, there are provisions regarding: au pairs,<sup>494</sup> working holidaymakers,<sup>495</sup> and teachers and language assistants under approved exchange schemes.<sup>496</sup> The main condition common to all the temporary work categories is that the individual must intend to leave the UK after the work period is over.

The SAWS permits designated agricultural operators to recruit seasonal workers according to a quota. For this purpose, the operators issue work cards to the workers they recruit. The current policy is that the SAWS places should be reserved for nationals of Bulgaria and Romania, starting from January 2008.<sup>497</sup> Until this policy is fully implemented, the main requirements are that the applicant is: over 18 years of age, lives outside the EEA and is a full-time student in his home country (although Bulgarian and Romanian applicants are exempted from this requirement). The SAWS permit grants a maximum stay of six months (Immigration Rules, para. 104).

<sup>493</sup> These requirements are less onerous than for the business and investor categories. Specifically, there is no requirement for a controlling or equal interest, or that a minimum amount of the individual's own funds be available for investment. The scheme is therefore designed to cover persons setting up businesses with venture capital provided by others.

<sup>494</sup> This category covers persons who come to the UK to learn English while living with a family and working in the home. The individual must be single, be aged between 17 and 27 years, be a national of several designated countries (EU, EEA, Andorra, Bosnia-Herzegovina, Croatia, the Faeroe Islands, Greenland, Macedonia, Monaco, San Marino or Turkey) and work a maximum of five hours per day for two or three days per week.

<sup>495</sup> This category covers persons who come to the United Kingdom for a mixture of employment and a holiday visit. The status is granted for a maximum of two years to individuals being single, between 17 and 30 years old, nationals of specified countries (Commonwealth countries) and who do not intend to work for more than twelve months in total during the stay.

<sup>496</sup> The main requirement to be met by persons in this category is that they are participating in an official exchange scheme approved or administered by one of the governmental authorities in charge of education policy.

<sup>497</sup> That position is likely to continue until the transitional arrangements regarding those countries' accession to the EU cease at the end of either 2011 or 2013.

### 2.3.3.3 Studies and Training

The main categories of students and trainees are: students at publicly funded higher education institutions; persons over 16 years of age admitted to *bona fide* private educational institutions; persons admitted to study at independent fee-paying schools; student nurses, including student midwives; overseas qualified nurses and midwives admitted to specialized training programmes for those groups; prospective students in the previous five categories; postgraduate doctors and dentists; and persons undertaking a clinical attachment or dental observer post.

The various student and training categories are generally subject to similar immigration conditions: an applicant must enrol in full-time study or training and he must intend to leave the UK at the end of his studies or programme (subject to several exceptions). In addition, the applicant must not intend to engage in business or take employment in excess of 20 hours per week during term-time (but without restriction during vacations), unless with the permission of the Secretary of State. Switching from the student to the work permit category – subject to the usual work permit rules – is allowed for students who have completed their degree.

In addition, there is also the TWES, which enables immigrants to undertake work-based training for a professional or specialist qualification, or a period of work experience. The pre-condition for participation in the TWES is the issuing of a work permit for that purpose by Work Permits UK. Here too, the main requirement for the issue of such a work permit is that the applicant intends to leave the United Kingdom on the completion of the training or work experience and does not intend to take other employment. In addition, for the application to be successful the training or work experience must lead to a recognized vocational qualification; the applicant must not be filling a vacancy for an employee; and the training or work experience must total at least 30 hours per week.

## 3. Comparison of Conditions in Member State with Conditions established at EU Level and International Level

Two areas of possible conflict with the ECHR exist with regard to admission to the UK. The first are family reunification cases, where various restrictions on family migration, for both settled and limited leave sponsors, are potentially incompatible with the general duty to respect family life embodied in Article 8 of the Convention.<sup>498</sup> The second area is entry clearance. The then Immigration Appeal Tribunal held in 2005 that, with the exception of Article 8, the Convention is inapplicable to immigration decisions taken outside the territory (*Moon v. Secretary of State for the Home Department*, 2005). While the sustainability of this conclusion is doubtful, the precise role of human rights principles in entry clearance cases remains to be determined.

<sup>498</sup> In this area, the House of Lords has recently stated that the Immigration Rules should be taken as the beginning, but not the end, of the examination of compatibility with the Convention in immigration appeals (*Huang v. Secretary of State for Home Dept.*, para. 16).

Regarding consistency with relevant EU standards, the United Kingdom is not legally bound by EU standards concerning legal migration by third-country nationals. This is a result of the option given to it by the Treaty of Amsterdam to choose whether or not to participate in measures adopted under Articles 62 and 63 of the EC Treaty. Politically, Britain takes the view that it will not agree to measures which affect the admission of third-country nationals.

The most important EU measure concerning admission of immigrants is Council Directive 2003/86/EC on the right to family reunification. In general, the relatively low standards set in the directive mean that any differences between its requirements and UK policy are likely to be limited. One possible discrepancy concerns the children of a spouse: they appear to be entitled to family reunification under the directive, but are not expressly provided for under British policy in relation to sponsors with limited leave. In addition, the Directive provides for the granting of an autonomous resident permit to family members after a maximum of five years' residence. While this time-limit is consistent with UK policy, the Directive does not appear to permit integration requirements, which have been imposed by the UK upon most indefinite leave applications since 2 April 2007. However, in other areas UK law is less restrictive than that contained in the Directive. For example, the Directive allows Member States to retain an integration test for children over 12 years of age, if they arrive independently, and to restrict the admission of children over 15 years old, whereas neither of these restrictions are adopted in the UK's current policy.

#### **4. Real Impact of Immigration Legislation on Immigration in Practice**

The effects of immigration law conditions are not systematically studied in the United Kingdom. This probably reflects the highly political nature of immigration policy. Governments and officials have little incentive to open either the detailed operation of their policies, or the policies' consequences, to independent scrutiny.

#### **5. Cooperation with Third Countries**

Within the UK social security system, most benefits can be retained during temporary absences abroad. The one case where benefits are retained during a longer-term absence abroad is that of state retirement pensions. Retirement pensions are not, however, automatically up-rated in the case of persons resident abroad, as they would be for persons living in the UK. Instead, the basic rule is that the amount of the pension is fixed at the end of the period of residence in the UK. Up-rating occurs for persons resident abroad only where there is a reciprocal agreement regarding retirement pensions entered into with the State of residence.<sup>499</sup>

The UK's Department for International Development (DfID) recognizes the potential contribution of remittances to resource flows to less developed countries (House of Commons Papers, 2004). It generally sees its role as limited to the facilitation of the

<sup>499</sup> Retirement pensions are, in principle, exportable within the EEA and Switzerland. The other States and territories with which there are reciprocal agreements covering retirement pensions are: Barbados, Bermuda, Canada, Guernsey, Israel, Jamaica, Jersey, Mauritius, New Zealand, the Philippines, Turkey and the United States of America.

market in transfers. To this end, it has supported the gathering of data about remittances and has encouraged the financial services sector to exploit market opportunities. It does not see a role for more interventionist policies, such as the guaranteeing of particular remittance products or regulation of remittances beyond that already being done by the general regulator (the Financial Services Authority).

UK immigration policy makes only very limited provision for what may be termed ‘brain circulation’. There is one direct response to the possibility of ‘brain drain’ from less developed countries: a Code of Practice within the National Health Service that prohibits recruitment activities aimed at healthcare workers from developing countries.<sup>500</sup> The Code of Practice does not, however, preclude individual applications by persons from developing States. It is also indirectly prevented through the restrictions on switching to employment or business categories that are placed on several categories of migrants (see above).

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<sup>500</sup> An exception is made for government-to-government arrangements permitting such recruitment; arrangements of this kind have been entered into with China, India and the Philippines.



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## **Annexes**

Table A: Other Categories of Legal Immigration<sup>501</sup>

This table provides an overview of “*other categories*” of legal immigration, additional to those which are the main focus of this study (namely family reunification; work, including employment, self-employment and seasonal work; and studies and training). Visa facilitation for nationals of certain countries is not included in this table.<sup>502</sup>

	Other Categories of Legal Immigration
Austria	<ul style="list-style-type: none"><li>• Researchers</li><li>• Private purpose (“settlement-permit excluding employment”)</li><li>• Artists</li><li>• No visa is required for the first 6 months following the birth of a child, if the mother or caretaker of the infant is legally residing in Austria</li></ul>
Belgium	<ul style="list-style-type: none"><li>• Possibility to acquire or recover Belgian nationality</li><li>• Severe illness</li></ul>
Bulgaria	<ul style="list-style-type: none"><li>• Medical treatment</li><li>• Retired third-country nationals</li><li>• Non-profit activity</li></ul>
Cyprus	<ul style="list-style-type: none"><li>• Permanent residence is granted by the Minister of Interior if the third-country national is suitable in the opinion of the Minister and provided that public interest is not harmed</li></ul>
Czech Republic	<p>Third-country nationals will be tolerated if:</p> <ul style="list-style-type: none"><li>• They cannot be deported</li><li>• They are a witness in criminal proceedings</li><li>• They have filed an appeal against decision by immigration authority</li></ul>
Denmark	<ul style="list-style-type: none"><li>• Au pairs</li><li>• Former nationals eligible to obtain a residence permit</li><li>• Religious functions</li></ul>
Estonia	<ul style="list-style-type: none"><li>• Third-country nationals who possess sufficient means</li></ul>
Finland	<ul style="list-style-type: none"><li>• Nationals of the former Soviet Union or persons of Finnish origin</li></ul>

<sup>501</sup> Key terms for the Comparative Tables A-C: “None” means no such condition, category, etc. exists. “N/A” means such condition, category, etc. is not applicable. “No information” means no information on this point was received.

<sup>502</sup> Furthermore, the scope of the study excludes both immigration for the purpose of protection, and immigration related to the free movement of EU citizens.

	Other Categories of Legal Immigration
<b>France</b>	<ul style="list-style-type: none"> <li>• Retired third-country nationals (previously holding a long term residence permit)</li> <li>• Scientists (specific type of temporary stay card)</li> <li>• Visitors: third-country nationals who do not exercise a professional activity or who are exempt from work permit requirements (specific type of temporary stay card)</li> <li>• Artistic and cultural professions</li> <li>• Medical treatment</li> </ul>
<b>Germany</b>	<ul style="list-style-type: none"> <li>• Third-country nationals belonging to German ethnic groups in Eastern European countries or those states formerly part of the Soviet Union</li> <li>• Third-country nationals displaced in World War II and their descendants</li> <li>• Third-country nationals who lived in the federal territory as minors and who have a right to return after a durable departure</li> </ul>
<b>Greece</b>	<ul style="list-style-type: none"> <li>• Financially independent third-country nationals</li> <li>• Adult children of diplomats serving in Greece and third-country nationals serving as "members of service staff" and "private servants" of diplomats</li> <li>• Foreign press, reporters and correspondents</li> <li>• Clergymen of all recognized religions</li> <li>• Students of the Athanasios Religious Academy of Mount Athos</li> <li>• Third-country nationals wishing to practice monastic life on Mount Athos</li> <li>• Tour leaders</li> <li>• Researchers</li> <li>• Public interest</li> </ul>
<b>Hungary</b>	<ul style="list-style-type: none"> <li>• Visitors (in possession of a letter of invitation)</li> <li>• Official visitors</li> <li>• Medical treatment</li> <li>• Volunteers</li> <li>• Persons of Hungarian origin</li> </ul>
<b>Ireland</b>	<ul style="list-style-type: none"> <li>• Visitors</li> <li>• Business meetings</li> <li>• Medical treatment</li> <li>• Retired third-country nationals</li> </ul>
<b>Italy</b>	<ul style="list-style-type: none"> <li>• Medical treatment</li> </ul>
<b>Latvia</b>	No information
<b>Lithuania</b>	<ul style="list-style-type: none"> <li>• Third-country nationals under guardianship of a Lithuanian citizen or cared for by a Lithuanian citizen</li> <li>• Guardians or care-providers of a Lithuanian citizen</li> <li>• Unable to leave the country</li> <li>• Retention of the right to Lithuanian citizenship</li> <li>• Persons of Lithuanian descent</li> </ul>
<b>Luxembourg</b>	<ul style="list-style-type: none"> <li>• No provisions in current legislation</li> </ul>
<b>Malta</b>	<ul style="list-style-type: none"> <li>• Retired third-country nationals</li> </ul>

	Other Categories of Legal Immigration
<b>Netherlands</b>	<ul style="list-style-type: none"> <li>• Medical treatment</li> <li>• Au pairs</li> <li>• Staff of religious organizations</li> <li>• Former Dutch nationals</li> </ul>
<b>Poland</b>	<ul style="list-style-type: none"> <li>• Repatriation of persons of Polish origin who are citizens of the former Asian republics of the Soviet Union</li> <li>• Well-established and recognized artists</li> <li>• General clause: persons can apply for a residence permit if there are reasons to justify their stay in Poland for a period exceeding 3 months, e.g. persons attending school, receiving medical treatment, or family members that are not entitled to family reunification (unmarried partners, adult children, parents)</li> <li>• Reasons of public concern, derived from the exercise of a relevant activity in the social, economic, athletic, cultural or scientific domains</li> </ul>
<b>Portugal</b>	
<b>Romania</b>	<ul style="list-style-type: none"> <li>• Religious activities</li> <li>• Medical treatment</li> <li>• Researchers</li> </ul>
<b>Slovakia</b>	<ul style="list-style-type: none"> <li>• Fulfilment of official duties by civil units of armed forces</li> </ul>
<b>Slovenia</b>	<ul style="list-style-type: none"> <li>• Researchers</li> <li>• Foreigners of Slovenian descent</li> <li>• Children of third-country nationals born in Slovenia</li> </ul>
<b>Spain</b>	<ul style="list-style-type: none"> <li>• Persons of Spanish origin</li> <li>• Third-country nationals collaborating with authorities against crime</li> </ul>
<b>Sweden</b>	<ul style="list-style-type: none"> <li>• Researchers</li> <li>• Visitors</li> <li>• Athletes</li> <li>• Adoption</li> <li>• Medical treatment</li> </ul>
<b>UK</b>	<ul style="list-style-type: none"> <li>• Retired third-country nationals with independent means</li> <li>• Former members of the armed forces</li> </ul>

**Table B: General Conditions for Residence**

This table presents the general conditions to be fulfilled by all third-country nationals regardless of immigration category in order to be admitted for residence in an EU Member State, i.e. to obtain a residence permit for temporary or permanent stay. The specific conditions to be fulfilled additionally in order to obtain a permanent residence permit are illustrated in the table “Settlement.” The specific conditions applying to the immigration categories of work, family reunification and studies and training are illustrated in the relevant tables.

	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
<b>Austria</b>	Provincial Governor (Head of provincial government in each of the 9 provinces)	<ul style="list-style-type: none"> <li>No financial burden on the territorial authority</li> <li>Adequate accommodation</li> <li>Health insurance</li> <li>No medical requirements, except if the third-country national comes from an area with an epidemic</li> <li>Basic knowledge of the German language</li> <li>Residence is not in conflict with public interest</li> <li>No harm to international relations</li> <li>Documents proving reasons for immigration may be required</li> </ul>	<ul style="list-style-type: none"> <li>Residence ban by Austria or an EU or EEA Member State</li> <li>Conviction for evasion of border control or illegal entry within the last 12 months</li> <li>Enforceable expulsion order within the last 12 months</li> <li>Marriage or adoption of convenience</li> <li>Exceeding the period of visa-exempt entry and residence</li> </ul>	<ul style="list-style-type: none"> <li>Federal Minister of the Interior decides on appeals against decisions made by the provincial governor (or by the mandated district authorities)</li> <li>An extraordinary remedy is possible in the Administrative or Constitutional Court</li> </ul>	<ul style="list-style-type: none"> <li>Limited: € 100</li> <li>Unlimited: € 150</li> </ul>
<b>Belgium</b>	Aliens Office (Ministry of Interior)	<ul style="list-style-type: none"> <li>Proof of sufficient financial means</li> <li>No threat to public order, public security or public health</li> </ul>	<ul style="list-style-type: none"> <li>Threat to national security, public order, public health or international relations</li> <li>Having been expelled from Belgium within the last 10 years</li> <li>Lack of sufficient financial means</li> <li>Lack of adequate accommodation</li> </ul>	<ul style="list-style-type: none"> <li>Decisions taken by the administration can be appealed before the Council for Aliens Appeals (specialized administrative jurisdiction) within 30 days</li> <li>In principle, no suspension effect, but a request for suspension is possible</li> </ul>	<ul style="list-style-type: none"> <li>Short term: € 60</li> <li>Long term: € 90</li> </ul>

<sup>503</sup> Amounts were converted into Euros using exchange rate of 17 October 2007.

Bulgaria	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
	Migration Directorate together with its regional offices (Ministry of Interior)	<ul style="list-style-type: none"> <li>• Adequate accommodation</li> <li>• Health insurance</li> <li>• No general medical requirements</li> <li>• No condition linked to knowledge of the local culture or language</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to public order, national security or public health</li> <li>• Use of false documents</li> <li>• Participation in a criminal group or criminal activities</li> <li>• Previous breach of Bulgarian labour or tax legislation</li> <li>• Burden to the social system</li> <li>• Having been expelled from Bulgaria within 10 years</li> <li>• Administrative prohibition from entering Bulgaria</li> </ul>	<ul style="list-style-type: none"> <li>• Decision can be contested before the immediately superior administrative body</li> <li>• Judicial review is possible through the administrative court system</li> <li>• Administrative acts issued by ministers can be directly challenged in the Supreme Administrative Court</li> </ul>	<ul style="list-style-type: none"> <li>• 6-month permit: € 100</li> <li>• 1-year permit: € 250</li> <li>• Indefinite residence permit: € 500</li> </ul>
Cyprus	Civil Registry and Migration Department (Ministry of Interior)	<ul style="list-style-type: none"> <li>• Information on income must be provided</li> <li>• Health examination may be requested if there is a suspicion of infectious disease</li> <li>• No condition linked to knowledge of the local language or culture</li> <li>• Specific documents to prove the purpose of immigration may be requested</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to public health</li> <li>• Mentally ill</li> <li>• Considered unwanted by the Government of any foreign State or other trusted source</li> <li>• Sentenced for murder or a criminal offence punishable with imprisonment</li> <li>• Prostitutes or persons living off of the proceeds of prostitution</li> <li>• Likely to become a public burden</li> </ul>	<ul style="list-style-type: none"> <li>• Recourse before the Supreme Court is possible</li> <li>• A personal hearing by the Minister or a representative is possible</li> </ul>	<ul style="list-style-type: none"> <li>• Residence permit ranges from € 34 to € 426</li> </ul>
Czech Republic	Alien and Border Police (Ministry of Interior)	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means or an invitation with consent to cover the expenses of the third-country national's stay and return</li> <li>• Proof of accommodation</li> <li>• Health insurance</li> <li>• Medical certificate can be requested if there is a suspicion of a serious disease</li> <li>• Presentation of criminal record</li> <li>• Documents must be translated into Czech</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to national security, public order or public health</li> <li>• Failure to submit the required documents</li> <li>• Having been declared "persona non grata"</li> </ul>	<ul style="list-style-type: none"> <li>• Appeal to the Superior Administrative body within 15 days</li> <li>• Thereafter possibility of appeal to an Administrative Court within 2 months</li> </ul>	<ul style="list-style-type: none"> <li>• Stay permit: € 36 (€ 18 if younger than 15 years)</li> </ul>



	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
Denmark	Immigration Service (Ministry for Refugee, Immigration and Integration Affairs)	<ul style="list-style-type: none"> <li>No medical requirements</li> <li>Integration contract for newcomers (foresees Danish language courses)</li> <li>Documents that provide proof of immigration purpose, as required</li> </ul>	<ul style="list-style-type: none"> <li>Threat to public security, public order or public health</li> <li>Court sentence that implied expulsion</li> <li>Being under the Schengen alert system</li> </ul>	<ul style="list-style-type: none"> <li>Appeal to Ministry of Immigration, Integration and Refugees Affairs is possible within 14 days</li> <li>Appeal has a suspending effect</li> </ul>	<ul style="list-style-type: none"> <li>Fees are charged on an hourly-basis, but for no more than two hours (€ 98 per hour)</li> </ul>
Estonia	Citizenship and Migration Board (Ministry of Interior)	<ul style="list-style-type: none"> <li>Proof of sufficient financial means</li> <li>Provision of information on housing (size, etc.); exception for third-country nationals applying for residence for business, work or short-term work purposes</li> <li>Health insurance</li> <li>Obligation to register with the Population Register</li> </ul>	<ul style="list-style-type: none"> <li>Provision of false information in the application process</li> <li>Non-observation of the constitutional order and laws of Estonia (criteria not specified)</li> <li>Involved in activities directed against the Estonian State and its security,</li> <li>Inciting racial, religious or political hatred or violence</li> <li>Being or have been in the active service of the armed forces of a foreign state (except a NATO country)</li> <li>Being or having been employed by an intelligence or security service of a foreign State</li> <li>Having received special training in landing operations, or in diversion or sabotage activities, or other special training, and if the knowledge and skills acquired in the process of such training can be directly applied in the formation or training of illegal armed units</li> <li>Having committed a criminal offence (sentenced to imprisonment for a term of more than 1 year)</li> <li>Punished pursuant to criminal procedure for an intentionally committed criminal offence, crimes against humanity or war crimes</li> </ul>	<ul style="list-style-type: none"> <li>Administrative appeal to the authority that issued the decision</li> <li>Thereafter, judicial appeal to the Administrative Court</li> </ul>	<ul style="list-style-type: none"> <li>Application and extension of temporary or long-term residence permit: € 48 (€ 22 if temporary permit under 1 year and for persons under 15 years of age in cases of long-term permits)</li> <li>Temporary residence permit for employment: € 96; and business: € 160</li> </ul>

	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
<b>Estonia</b>			<ul style="list-style-type: none"> <li>Participation in a criminal or terrorist organization, money laundering activities or illegal conveyance of narcotics, psychotropics or persons across the border</li> <li>Participation in punitive operations against a civil population</li> </ul>		
<b>Finland</b>	Immigration Directorate (Ministry of Interior)	<ul style="list-style-type: none"> <li>Proof of sufficient financial means</li> <li>No medical conditions that may pose as risk to public health</li> <li>Other documents may be requested depending on the third-country national's citizenship</li> </ul>	<ul style="list-style-type: none"> <li>Threat to public security or public order</li> <li>Reasonable grounds to suspect intention to evade immigration requirements</li> </ul>	<ul style="list-style-type: none"> <li>Appeal to the Administrative Court and, subsequently, to the Supreme Administrative Court</li> </ul>	<ul style="list-style-type: none"> <li>Permit fees range from €55 (students residence permits or minors) to € 200 (for standard residence permits)</li> </ul>
<b>France</b>	Prefect (Representative of the State in the Department)	<ul style="list-style-type: none"> <li>If first application, health examination required</li> <li>Reception and integration contract for adult newcomers and third-country nationals between 16 and 18 years old who frequently enter the French territory and who are seeking long-term residence</li> <li>Provision of information regarding civil status as well as proof of domicile</li> </ul>	<ul style="list-style-type: none"> <li>Threat to public order</li> </ul>	<ul style="list-style-type: none"> <li>Appeal to an Administrative Court is possible</li> <li>An administrative claim to the Prefect or a hierarchical claim to the Minister of the Interior can also be made</li> </ul>	<ul style="list-style-type: none"> <li>Fees for permits range from € 55 for students to € 275 for any other permit</li> </ul>

	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
Germany	Regional Aliens Offices (operating under the relevant authority in the Federal State)	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means</li> <li>• Health insurance</li> <li>• Basic knowledge of the German language</li> <li>• Third-country national must sign a declaration that he is aware that the permit can be refused and expulsion can be ordered if false information is provided</li> <li>• Other documents necessary to prove the purpose of immigration</li> <li>• No grounds for expulsion must apply</li> </ul>	<ul style="list-style-type: none"> <li>• Having been sentenced to 2 or more years imprisonment</li> <li>• Having been convicted of human or narcotics trafficking</li> <li>• Participation in acts of violence against persons or property that endanger public safety</li> <li>• Belonging to an organization that supports terrorism</li> <li>• Endangering national security</li> <li>• Furnishing false or incomplete information regarding links with terrorist matters</li> <li>• Being the object of an enforceable expulsion order</li> <li>• Belonging to the leadership of an organization that has been banned because its activities are in breach of criminal laws or the third-country national opposes the constitutional order or the concepts of international understanding</li> </ul>	<ul style="list-style-type: none"> <li>• Appeal is possible</li> </ul>	<ul style="list-style-type: none"> <li>• Residence permit (up to 1 year): € 50</li> <li>• Long-term residence permit (more than 1 year): € 60</li> <li>• Extension of residence permit: € 15</li> </ul>
Greece	Directorate of Aliens and Migration of the Region (final decision is issued by the Secretary General of the Region)	<ul style="list-style-type: none"> <li>• Proof of sufficient means, covering also expenses for returning to the country of origin</li> <li>• No threat to public order, public security or public health</li> <li>• Health certificate issued by a Greek public hospital required</li> <li>• Health insurance</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to public order, public security or public health</li> <li>• Not being in possession of full health insurance</li> <li>• Lack of sufficient financial means</li> </ul>	<ul style="list-style-type: none"> <li>• Judicial review of administrative decisions regarding residence permits is possible by a first instance Administrative Court</li> <li>• Decisions of the Administrative Court may be appealed before the Council of State (the highest ranking administrative court in Greece)</li> </ul>	<ul style="list-style-type: none"> <li>• Permits up to 1 year: €150; up to 2 years: € 300; up to 3 years: € 450</li> <li>• Indefinite permit or permit for third-country nationals who acquire long-term resident status: € 900</li> </ul>

	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
Hungary	Office for Immigration and Naturalization (Ministry for Justice and Law Enforcement)	<ul style="list-style-type: none"> <li>Proof of sufficient means of subsistence (stable and authentically documented); this must cover family members' maintenance</li> <li>Legal and stable housing is required, no criteria regarding size (except for settlement)</li> <li>Conditions relating to endangering public health (sanitary authority may require a health certificate)</li> </ul>	<ul style="list-style-type: none"> <li>Threat to public security, public order or public health</li> <li>Having been banned from entry or stay</li> <li>Being under the Schengen alert system</li> </ul>	<ul style="list-style-type: none"> <li>Administrative appeal is possible (submitted orally immediately when the decision is communicated or within 3 days of the decision)</li> <li>Judicial review can be initiated against the final administrative decision (judicial control may order the repetition of the administrative procedure)</li> </ul>	<ul style="list-style-type: none"> <li>Residence permit: € 28</li> <li>Stay visa: € 50 to € 72</li> <li>Settlement permit: € 20</li> </ul>
Ireland	Naturalization and Immigration Service (Department of Justice, Equality and Law Reform)	<ul style="list-style-type: none"> <li>No general requirements</li> </ul>	<ul style="list-style-type: none"> <li>Reasons relating to the public good, national security, public policy or public health</li> <li>Inability to support himself and any accompanying dependents</li> <li>Conviction of an offence that is punishable by imprisonment of 1 year or more</li> <li>Subject to a deportation order</li> <li>Not in possession of required visa or a valid passport</li> <li>Intention to take up employment without having an employment permit</li> </ul>	<ul style="list-style-type: none"> <li>Internal review by a more senior official within the Naturalization and Immigration Service can be requested</li> <li>Negative decisions cannot be appealed to an independent tribunal</li> <li>Negative decisions can be subject to judicial review before the High Court</li> </ul>	<ul style="list-style-type: none"> <li>Varies depending on immigration category, from € 500 to € 1500</li> </ul>
Italy	Police Authority or the Regional Migration Offices (depending on the type of residence permit; both to Ministry of Interior)	<ul style="list-style-type: none"> <li>Proof of sufficient financial means, covering expenses for return to country of origin</li> <li>Immigration office may at any time during the process require proof of accommodation</li> <li>Health insurance</li> </ul>	<ul style="list-style-type: none"> <li>Insufficient proof of accommodation and financial means (also to return home)</li> <li>Threat to public order or State security</li> <li>Threat to countries with which Italy has bi- or multilateral agreements on the suppression of border control</li> <li>Having been sentenced for certain crimes</li> </ul>	<ul style="list-style-type: none"> <li>Residence permit denial can be contested in the Administrative Court (regional court)</li> <li>Appeal is possible to the State Council</li> </ul>	<ul style="list-style-type: none"> <li>€15 fee</li> </ul>

	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
Latvia	Office of Citizenship and Migration Affairs (Ministry of Interior)	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means</li> <li>• Proof of accommodation</li> <li>• X-ray or fluoroscopic examination</li> <li>• No integration requirement for temporary residence permit</li> <li>• Presentation of criminal record (if 14 years of age or older)</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to public health or public security</li> <li>• Conviction for crimes that require imprisonment for 3 or more years</li> <li>• Member of a foreign military service</li> <li>• Being under guardianship or custody of a person that has been denied the right to enter Latvia</li> <li>• Not having a genuine link with the State of residence and constituting a risk of illegal immigration</li> </ul>	<ul style="list-style-type: none"> <li>• Appeal to Office of Citizenship and Migration Affairs within 30 days; decision thereof can be subject to judicial review</li> <li>• Right of appeal exists for individuals in Latvia who invite third-country nationals and for third-country nationals who do not require an invitation to apply for the residence permit</li> </ul>	<ul style="list-style-type: none"> <li>• Residence permit up to 90 days: € 14 to € 43</li> <li>• Residence permit over 90 days: € 100 to € 243</li> </ul>
Lithuania	Migration Department (Ministry of Internal Affairs)	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means</li> <li>• Proof of accommodation</li> <li>• Health insurance</li> <li>• A list of stays and visits in other countries can be requested</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to public security or public health</li> <li>• Lack of sufficient financial means</li> <li>• No health insurance</li> <li>• No accommodation</li> <li>• Responsible for crimes against humanity</li> <li>• Provision of false information concerning reasons for permit</li> <li>• Failure to provide information to migration service in due time about changes in personal data</li> <li>• Family relation upon which the permit was based does not exist any more</li> </ul>	<ul style="list-style-type: none"> <li>• Negative decisions on residence permit applications can be appealed to Vilnius District Administrative Court within 14 days</li> <li>• Decision thereof can be appealed to the Supreme Court within 14 days</li> <li>• Appeal has a suspending effect</li> </ul>	<ul style="list-style-type: none"> <li>• Short stay visa: € 35</li> <li>• Long stay visa: € 60 (temporary or permanent residence)</li> </ul>
Luxembourg	Immigration Directorate (Ministry of Foreign Affairs)	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means</li> <li>• Proof of accommodation</li> <li>• Health insurance</li> <li>• Clean criminal record</li> <li>• Provision of information regarding civil status</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to public security, public order or public health</li> <li>• No appropriate financial means</li> <li>• Refusal to undergo medical treatment, if required</li> <li>• Committed a criminal offence which could be the object of an extradition procedure</li> <li>• Providing false information on civil status, criminal record or previous places of residence</li> <li>• Intention of exercising a professional activity without the matching authorization</li> </ul>	<ul style="list-style-type: none"> <li>• National legislation does not mention appeal rights</li> </ul>	<ul style="list-style-type: none"> <li>• Short stay visa: € 60</li> <li>• Long stay visa: € 50</li> </ul>

	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
<b>Malta</b>	Minister for Justice and Home Affairs	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means</li> <li>• Health insurance</li> <li>• Provision of information regarding civil status</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to public order</li> <li>• Threat to national security</li> </ul>	<ul style="list-style-type: none"> <li>• Appeal to the Immigration Appeals Board is possible</li> </ul>	<ul style="list-style-type: none"> <li>• Residence permit: € 116</li> <li>• Short stay visa: € 60</li> </ul>
<b>Netherlands</b>	Immigration and Naturalization Department (Ministry of Justice)	<ul style="list-style-type: none"> <li>• Tuberculosis test after arrival</li> <li>• With certain exceptions, those between the ages of 16 and 65 must take the civic integration examination abroad (an oral examination consisting of a language test and questions regarding Dutch society)</li> <li>• Provision of documents proving the purpose of immigration</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of sufficient financial means</li> <li>• Failure to cooperate with health inspection when requested</li> <li>• Applicant has no "MVV" (authorization for temporary stay) when required</li> <li>• Threat to public order or national security</li> <li>• Migrant has insufficient knowledge of Dutch society and language</li> <li>• Migrant has been employed illegally in the past</li> <li>• Migrant does not fulfil specific requirements regarding the purpose of residence</li> </ul>	<ul style="list-style-type: none"> <li>• Residence permit denial can be appealed to the Ministry of Justice within 4 weeks</li> <li>• If rejected, an appeal to the Council of State within 4 weeks is possible</li> <li>• Appeal does not have a suspending effect</li> </ul>	<ul style="list-style-type: none"> <li>• Varies from € 188 to € 830 per permit (depending on several factors)</li> </ul>
<b>Poland</b>	Voivode (Governor of the Region)	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means</li> <li>• Proof of accommodation</li> <li>• Health insurance</li> <li>• Third-country nationals not staying in a hotel or facility provided through work or in connection with medical treatment have to register their place of residence within 4 days of arrival</li> <li>• Provision of documents proving the purpose and conditions of stay</li> <li>• Documents must be translated into Polish</li> </ul>	<ul style="list-style-type: none"> <li>• Illness or infection that is the subject of obligatory medical treatment, or a suspicion thereof, and the third-country national refuses to undergo medical treatment</li> <li>• Threat to State security or public order</li> <li>• Residence on the territory is recorded in the register of undesirable aliens</li> <li>• Provision of untruthful or false information, documents or testimony</li> <li>• Purpose of entry or residence is other than that declared</li> <li>• Marriage of convenience</li> <li>• Avoiding fiscal obligations</li> <li>• Residing illegally on the territory of Poland</li> </ul>	<ul style="list-style-type: none"> <li>• Appeal to the President of the Office for Repatriation and Aliens possible within 14 days</li> <li>• Appeal has a suspending effect</li> <li>• Thereafter, the third-country national can appeal to the Regional Administrative Court and then to the Supreme Administrative Court</li> </ul>	<ul style="list-style-type: none"> <li>• Fixed-term residence permit: € 92</li> <li>• Long-term residence permit: € 172</li> </ul>

	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
Portugal	Service for Border Control and Aliens (Ministry of Internal Administration)	<ul style="list-style-type: none"> <li>• Proof of sufficient means</li> <li>• Proof of objective and conditions of stay</li> <li>• Health insurance</li> <li>• Medical exam may be requested</li> <li>• Not previously banned from entry in Portugal</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to public health, national security, public order or international relations</li> <li>• Being under the Schengen alert system</li> <li>• Being reported in the integrated information service of the Service for Border Control and Aliens</li> <li>• Evidence of intention to commit a criminal offence</li> <li>• Having committed a criminal offence punishable with prison sentence of more than 1 year</li> </ul>	<ul style="list-style-type: none"> <li>• Judicial review is possible before an Administrative Court</li> </ul>	<ul style="list-style-type: none"> <li>• Short-term visa: € 50</li> <li>• Temporary residence permit: € 100</li> <li>• Permanent residence permit: € 200</li> </ul>
Romania	Immigration Office (Ministry of Interior)	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means</li> <li>• Provision of documents proving the purpose and conditions of stay</li> <li>• Third-country national has not previously been declared as undesirable</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to public health, national security, public order or moral probity</li> <li>• Being under the Schengen alert system</li> <li>• Reasons to believe the third-country national participated in criminal offences, acts of terrorism, organized crime, war crimes or crimes against humanity</li> <li>• Reasons to believe the intention of irregular immigration</li> <li>• Criminal offences during previous stays or against the Romanian State or citizens</li> </ul>	<ul style="list-style-type: none"> <li>• Administrative complaint possible previous to an appeal</li> <li>• Right of appeal to Bucharest Court of Appeals for denial of permanent stay</li> </ul>	<ul style="list-style-type: none"> <li>• Fees range from € 24-€ 49, plus a consular tax of € 17 to € 42</li> </ul>
Slovakia	Department of the Alien Police (Ministry of Interior)	<ul style="list-style-type: none"> <li>• Proof of accommodation (except for students and researchers)</li> <li>• Health insurance</li> <li>• Confirmation that the third-country national does not suffer from a disease that endangers the public health</li> <li>• Clean criminal record</li> <li>• Provision of documents proving the purpose of immigration (not older than 90 days and translated into Slovak)</li> <li>• No threat to security or the economic development of Slovakia</li> </ul>	<ul style="list-style-type: none"> <li>• Burden to the social security system or to the health care system</li> <li>• Threat to State security, public order, public health, rights and freedom of others or to the environment</li> <li>• Undesirable person</li> <li>• Provision of false or misleading data or documents</li> <li>• Requirements for residence permit not fulfilled</li> <li>• Granting of temporary residence permit not in the public interest</li> <li>• Marriage of convenience</li> </ul>	<ul style="list-style-type: none"> <li>• Administrative appeal possible to the Bureau of Border and Aliens; in principle, does not have a suspending effect</li> <li>• The decision can be appealed to the Regional Court within 2 months; in principle, does not have a suspending effect</li> </ul>	<ul style="list-style-type: none"> <li>• Business purpose: € 208</li> <li>• Employment: € 148; seasonal work: € 30</li> <li>• Studying and special activities: € 89</li> <li>• Family reunification: € 119</li> </ul>

	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
<b>Slovenia</b>	Administrative units (regional offices of the central government, i.e. of the Directorate for Administrative Internal Matters of the Ministry of the Interior)	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means</li> <li>• Health insurance</li> <li>• In principle, third-country nationals must not come from areas with contagious diseases and possibility of epidemics</li> <li>• Provision of documents proving the purpose of immigration</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to public order, State security or international relations</li> <li>• Denial of entry</li> <li>• Reasons to believe the third-country national will not leave the country after expiration of his permit</li> </ul>	<ul style="list-style-type: none"> <li>• Appeal to Ministry of Interior is possible within 15 days, but only for: study, family reunification, long-term residence permits, or if the third-country national has previously been issued a temporary residence permit; no appeal rights for employment permits</li> <li>• Judicial review of the Ministry's decision by the Administrative Court can be requested within 30 days</li> <li>• Appeal against a decision of the Administrative court to the Supreme Court is possible within 15 days</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary residence: € 32</li> <li>• Permanent residence: € 74</li> </ul>
<b>Spain</b>	Local government	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means</li> <li>• Health insurance</li> <li>• No criminal record in Spain</li> <li>• No ban in countries with which Spain has signed an agreement</li> <li>• Justification of the purpose and conditions of stay</li> <li>• Tax or fees paid</li> </ul>	<ul style="list-style-type: none"> <li>• Third-country national has been expelled from Spain</li> <li>• Entry is forbidden because of an international treaty</li> </ul>	<ul style="list-style-type: none"> <li>• General administrative appeal procedures available</li> <li>• For refusal of residence permit for family reunification, appeal possible to the Foreigner's Office in the province of residence or to the Ministry of Work and Social Affairs in the relevant province</li> </ul>	<ul style="list-style-type: none"> <li>• € 60 for either short or long stay</li> </ul>
<b>Sweden</b>	Migration Board (operating under the Ministry of Justice)	<ul style="list-style-type: none"> <li>• Proof of sufficient financial means</li> <li>• No medical requirements (except if the stay is for the purpose of medical treatment)</li> <li>• Statement required by the third-country national declaring that he will leave Sweden once the permit expires</li> <li>• Depending on the immigration category, country knowledge may be required</li> <li>• Further documents related to the immigration purpose and diplomas may be requested</li> </ul>	<ul style="list-style-type: none"> <li>• Threat to internal security or international relations</li> <li>• Being under the Schengen alert system</li> <li>• Having been sentenced for a criminal offence in Sweden</li> <li>• Having been previously banned from entry</li> </ul>	<ul style="list-style-type: none"> <li>• Appeal possible</li> <li>• All decisions regarding permits have to be motivated</li> </ul>	<ul style="list-style-type: none"> <li>• Visits, work, study: € 110 (€ 55 for children)</li> <li>• Family reunification: € 60 (€ 27 for children)</li> <li>• Permanent residence permit: € 110 (€ 55 for children)</li> </ul>



	Authority competent to issue residence permit	Conditions Applicable for Residence Regardless of Immigration Category	Grounds for Rejection	Appeal Rights	Fees <sup>503</sup>
UK	Border and Immigration Agency (the Home Office)	<ul style="list-style-type: none"><li>• Proof of sufficient financial means</li><li>• Medical requirements for stays of longer than 6 months; in principle, referral to Medical Inspector for examination</li></ul>	<ul style="list-style-type: none"><li>• Threat to national security</li><li>• Inability to support stay without the help of public funds</li><li>• Having been declared an undesirable person</li><li>• Failure to honour declaration as to the intended duration or purpose of stay</li></ul>	<ul style="list-style-type: none"><li>• Internal reconsideration by the original decision-making authority</li><li>• Appeal possible to the Asylum and Immigration Tribunal</li><li>• Right of appeal for students, temporary work categories, employment categories, business categories and retired persons of independent means to be curtailed by the recent Asylum and Nationality Act</li><li>• Judicial review by High Court is possible</li></ul>	<ul style="list-style-type: none"><li>• Employment: € 17 to € 575</li><li>• Other limited leave from € 424 to € 1078 (depending on the category)</li><li>• Indefinite leave to remain: € 1078</li></ul>

Table C: Permanent Residence

This table looks at the different permanent residence (settlement) permits in the EU Member States, and the conditions to be fulfilled by the third-country nationals in order to be granted permanent residence.

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Austria	Settlement permit	Dependent on the applicant and the type of permit	A "settlement permit" is for permanent establishment; it is divided into five sub-categories:  1. Settlement permit – key employee, allows a limited settlement and pursuit of a specific occupation 2. Settlement permit – for private purpose, allows limited settlement without the possibility of pursuing an occupation 3. Settlement permit – unrestricted, authorizes limited settlement and pursuit of an occupation in a self-employed or non-self-employed capacity 4. Settlement permit – restricted, allows limited settlement and pursuit of an activity as a self-employed person or employee, for which an authorization pursuant to the Aliens Employment Act applies 5. Settlement permit – relative, allows limited settlement without pursuing an occupation; the pursuit of an occupation is only permitted if there is an additional change of purpose, subject to a quota requirement	Obligation to fulfil the "integration agreement" consisting of two modules:  • The first focuses on "acquisition of the ability to read and write" • The second focuses on "acquisition of knowledge of the German language"	None	• The second module of the "integration agreement" includes a component on "becoming able to participate in the social, economic and cultural life in Austria"	6 months
	EC long-term residence permit	Permanently settled during the last 5 years	<ul style="list-style-type: none"><li>• Permanently settled during the last 5 years</li><li>• Fulfilment of the general requirements for residence titles</li><li>• Compliance with the integration agreement</li></ul>				

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Belgium	Settled alien	5 years of legal and continuous residence	<ul style="list-style-type: none"> <li>Unlimited right to stay in Belgium</li> </ul>	None	None	None	5 months
	Long-term residence permit		<ul style="list-style-type: none"> <li>Unlimited right to stay in Belgium</li> <li>Stable, regular and sufficient financial means</li> <li>Health insurance</li> </ul>				<ul style="list-style-type: none"> <li>4 months, extendable for another 3 months</li> </ul>
Bulgaria	Permanent residence permit	5 years of continuous residence	<ul style="list-style-type: none"> <li>Documents proving grounds for the granting of permanent residence, as well as documents confirming the permanent residence status of the spouse, child or parents, and a birth certificate if indicated</li> <li>Sufficient financial means for the duration of stay</li> <li>Declaration of consent of both parents in cases where the applicants are unmarried minor children of a permanent resident</li> </ul>	None	None	None	<ul style="list-style-type: none"> <li>Between 60 and 180 days</li> </ul>

Cyprus						
Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
			Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Permanent residence permit	For 1): 15 years For 2): N/A	<p>1) The third-country national has resided in the Republic for a continuous period of 15 years immediately before the 16<sup>th</sup> of August 1960</p> <p>2) The third-country national is authorized to enter the Republic by a residence permit; the following categories of persons are eligible for an immigration permit for permanent residence in the Republic:</p> <p>A) Persons intending to be self-employed in the agricultural or livestock-farming sector</p> <p>B) Persons intending to be self-employed in the mining business</p> <p>C) Persons intending to be self-employed in a business</p> <p>D) Persons accepting a work offer not of a temporary nature</p> <p>E) Persons receiving a certain yearly income (unencumbered)</p> <p>F) A person receiving an unencumbered yearly income of € 6493, his wife € 3075 and each of his dependants € 3075</p> <p>For all categories:</p> <ul style="list-style-type: none"><li>• Sufficient financial means are required (the amount requested depends on the category)</li></ul> <p>For categories A-E:</p> <ul style="list-style-type: none"><li>• Certain certifications on the ability and qualifications to undertake the business/ work are requested.</li><li>• It is required that the business/work will not impact negatively on the national economy and that there is a need for third-country national workers</li></ul>	None	None	None	<ul style="list-style-type: none"><li>• 6 months, extendable for another 6 months on application</li></ul>
Long-term residence permit	5 years of legal and continuous stay	<ul style="list-style-type: none"><li>• Stable and regular financial means</li><li>• Health insurance</li><li>• Not a threat to public order or security</li><li>• Has not secured residence in the Republic by means of false representation</li><li>• Third-country nationals who have lawfully resided during the 5 years under certain immigration categories are not eligible, e.g. studies, vocational training, temporary protection, refugees, au pairs and seasonal workers</li></ul>				<ul style="list-style-type: none"><li>• 4 months, extendable for another 3 months</li></ul>

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Czech Republic	Permanent residence permit	5 years of temporary residence	Exceptions to the 5-year rule: <ul style="list-style-type: none"><li>Family members of either Czech citizens or third-country nationals holding a permanent residence permit can apply directly for permanent residence</li><li>Students must have 10 years of temporary residency</li></ul> Permanent residence can also be granted on humanitarian grounds or for "other reasons worthy of consideration", e.g. former Czechoslovak citizens, ethnic Czechs from Eastern Europe and Asia, famous sportsmen, etc.	<ul style="list-style-type: none"><li>Under discussion</li></ul>	None	None	180 days
	Long-term residence permit	5 years of continuous residence	<ul style="list-style-type: none"><li>The third-country national has not significantly disturbed public order or endangered state security of the Czech Republic or any other member state</li><li>Proof of sufficient financial means</li></ul>	<ul style="list-style-type: none"><li>Under discussion</li></ul>	None	None	60 days

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
	Permanent residence permit	7 years of lawful residence (but under certain conditions, after 5 years)	<p>7 years of lawful residence:</p> <ul style="list-style-type: none"><li>The third-country national has been issued a residence permit on the same basis throughout this period</li></ul> <p>At least 5 years of lawful residence:</p> <ul style="list-style-type: none"><li>The third-country national has been issued a residence permit on the same basis throughout this period</li><li>Has had significant ties with the labour market as an employee or has been self-employed in Denmark for the last 3 years</li><li>Has not received any assistance under the Act on an Active Social Policy or the Integration Act for the last 3 years</li><li>Has developed an "essential attachment" to the Danish society</li></ul>	<ul style="list-style-type: none"><li>Danish language test must be passed</li></ul>	<ul style="list-style-type: none"><li>Not required; but persons included in the Integration Act must have completed their integration programme, which may contain elements of civic knowledge</li></ul>	<ul style="list-style-type: none"><li>The third-country national must sign an integration contract (specific to each third-country national)</li><li>Declaration on integration and active citizenship in the Danish society is required (declaration of willingness to integrate and be an active Danish citizen)</li><li>The foreign national must have formed an "essential attachment" to Danish society; "essential attachment" means that the foreign national has achieved a high level of contact within the Danish society, that the foreign national promotes his own integration through various activities, or that the foreign national has concluded a longer education in Denmark</li></ul>	4 to 7 months

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Estonia	National permanent residence permit	5 years of continuous residence	<ul style="list-style-type: none"><li>Valid residence permit</li><li>Registration is required</li><li>Legal income</li><li>Health insurance</li><li>Does not satisfy any grounds for refusal</li><li>Persons holding a residence permit for studies, temporary employment or exceptional temporary residence permit are not eligible for (national) permanent residence</li></ul>	<ul style="list-style-type: none"><li>Basic language requirement</li></ul>	None	None	3 months
	EC long-term residence permit						
	Long-term residence permit for EU/EEA nationals	N/A	<ul style="list-style-type: none"><li>If an EC long-term resident in Estonia obtains the nationality of a Member State of the EU or EEA, her residence in Estonia will be converted into permanent residence for EU/EEA nationals</li></ul>	N/A	N/A	N/A	3 months
Finland	Permanent residence permit ("Permit P")	4 years of continuous residence	<ul style="list-style-type: none"><li>Grounds for a residence permit are met</li><li>Sufficient financial means</li><li>No reasons for rejection</li></ul>	None	None	None	6 months
	EC long-term residence permit	5 years of legal residence	<ul style="list-style-type: none"><li>Sufficient financial means</li></ul>				

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
France	EC long-term residence permit	5 years of regular presence	<ul style="list-style-type: none"><li>• Stable and sufficient financial means</li><li>• Health insurance</li><li>• Students and seasonal workers are not eligible for the EC long-term residence permit</li></ul> <p>Several types of third-country nationals having family ties in France benefit from a slightly more lenient legal regime</p>	<ul style="list-style-type: none"><li>• Reception and integration contract, signed on granting of first residence permit, requires the third-country national to take language courses</li><li>• For the "long-term resident EC permit", sufficient knowledge of the French language is required</li></ul>	<ul style="list-style-type: none"><li>• For the EC long-term resident permit sufficient civic knowledge required</li></ul>	<p>The third-country national's "Republican integration" within the French society is assessed by:</p> <ul style="list-style-type: none"><li>• Respect for the guiding principles of the Republic; and</li><li>• A sufficient knowledge of the French language</li></ul>	<ul style="list-style-type: none"><li>• No notification by administration 4 months after the application has been filed constitutes a rejection</li></ul>



	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Germany	Settlement permit	5 years	<ul style="list-style-type: none"> <li>Stable and regular financial means</li> <li>Health insurance</li> <li>Adequate accommodation for oneself and family members</li> <li>60 months social security contributions or a private insurance with equivalent protection</li> <li>Legal employment or legal self-employment or right to work and be self-employed</li> <li>Must not have received a prison sentence of 6 months or more, or a penalty of 180 days or more in the past 3 years for an intentional felony</li> </ul>	<ul style="list-style-type: none"> <li>Sufficient knowledge of the German language (equivalent to Standard B1 of the common European framework)</li> <li>Verified by successful attendance of the integration course</li> </ul>	<ul style="list-style-type: none"> <li>A basic knowledge of the legal and the social order of Germany is required</li> </ul>	None	4 months
	EC long-term residence permit		<ul style="list-style-type: none"> <li>For the 5 years of residence requirement: periods of residence under a humanitarian residence permit shall not be taken into account; only half of the period of residence for study purposes or vocational training may be taken into account</li> <li>Stable, regular and sufficient financial means</li> <li>Health insurance</li> <li>Must not have received a prison sentence of 6 months or more, or a penalty of 180 days or more, in the past 3 years for an intentional felony</li> </ul>				<ul style="list-style-type: none"> <li>No practice yet as new law has just entered in force</li> </ul>
Greece	Permanent residence permit	5 years of continuous residence	Family members of Greek citizens or citizens of another Member State must have permanently resided in Greece together with the aforementioned for a continuous period of 5 years	None	None	None	<ul style="list-style-type: none"> <li>6 months from the submission of the application, extendable</li> </ul>
	Permanent residence permit	10 years of continuous and legal residence	A third-country national who, at the time that Act 3386/2005 came into force, had completed 10 years of continuous and legal residence in Greece may be granted a residence permit of indefinite duration				
	Long-term residence permit	5 years of legal and uninterrupted residence	<ul style="list-style-type: none"> <li>Sufficient annual income to cover their own and their family members' needs</li> <li>Full health insurance coverage with a state entity that also extends to family members</li> <li>Accommodation that meets specific standards of hygiene</li> </ul>	<ul style="list-style-type: none"> <li>Adequate knowledge of the Greek language</li> </ul>	<ul style="list-style-type: none"> <li>Knowledge of elements of Greek history and Greek civilization is required</li> </ul>		

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Hungary	National long-term residence permit	0 to 3 years residence (0 years, e.g. for prior Hungarian nationals, residence permit holders, for certain groups of family members, ministerial parole etc.)	<ul style="list-style-type: none"><li>• Lawful and continuous residence in Hungary for at least 3 years (less for certain family members)</li><li>• General requirements applicable to all types of residence permits must be fulfilled</li><li>• No criminal record or any detrimental legal consequences related to their criminal record have been relieved</li></ul>	None	None	None	<ul style="list-style-type: none"><li>• Within 120 days, Security Service confirmation requires a further 45-60 days</li><li>• In practice, approximately 1 year is needed</li></ul>
	EC long-term residence permit	5 years residence	<ul style="list-style-type: none"><li>• Lawful and continuous residence in Hungary for at least 5 years</li><li>• General requirements applicable to all types of residence permits must be fulfilled</li><li>• No criminal record or any detrimental legal consequences related to their criminal record have been relieved</li><li>• Third-country nationals pursuing study, seasonal work or voluntary service activities are not eligible, but half of the previous years of residence as a student in Hungary may be included in the 5 year calculation</li></ul>				
		Interim permanent residence permit	5 years residence	<ul style="list-style-type: none"><li>• General requirements applicable to all types of residence permits must be fulfilled</li><li>• No criminal record or any detrimental legal consequences related to his criminal record have been relieved</li><li>• Status offered by the interim permanent residence permit is not permanent, but granted for 5 years with a possibility of renewal</li></ul>	None	None	None

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Ireland	Indefinite leave to remain	8 years residence	No further conditions	None	None	None	<ul style="list-style-type: none"> <li>No provisions in current legislation</li> <li>Approximately 14 months is needed</li> </ul>
	Long-term residence permit	5 years residence	<p>The Immigration, Residence and Protection Bill 2007 provides for a long-term residence permit to be issued to applicants who meet the following requirements (in addition to required period of residence):</p> <ul style="list-style-type: none"> <li>Of good character</li> <li>Has not had recourse to public funds during the previous 5 years</li> </ul>	<ul style="list-style-type: none"> <li>Reasonable proficiency in the Irish or English languages</li> </ul>		<ul style="list-style-type: none"> <li>The third-country national has made "reasonable efforts" to integrate</li> </ul>	
	EC long-term residence permit	5 years residence	<ul style="list-style-type: none"> <li>Residence over the past 5 years with a valid residence permit with the possibility of an unlimited number of renewals, including permits for employment and self-employment, family-reunification and Article 27 cases (special cases regarding foreign workers); permits for study, temporary permits or humanitarian permits, asylum permits, other short-term permits, and diplomatic permits and excluded</li> <li>Sufficient financial means</li> <li>Adequate accommodation</li> <li>No danger to the public order or the security of the State</li> </ul>	None	None	None	3 months
Latvia	Permanent residence permit	5 years legal residence	<ul style="list-style-type: none"> <li>Continuously resident in Latvia on a temporary residence permit for at least 5 years</li> <li>Minor child of a Latvian citizen, Latvian non-citizen or third-country national granted permanent residency</li> <li>Sufficient financial means</li> </ul>	<ul style="list-style-type: none"> <li>Low level of knowledge of the official language is required (exception for minors)</li> </ul>	None	None	3 months
	EC long-term residence permit		<ul style="list-style-type: none"> <li>Legally resident in Latvia for at least 5 years</li> <li>Sufficient financial means</li> <li>Sufficient accommodation</li> </ul>	<ul style="list-style-type: none"> <li>Sufficient knowledge of the Latvian language</li> </ul>			

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Lithuania	EC long-term residence permit	5 years continuous residence	<ul style="list-style-type: none"> <li>Holding of a temporary residence permit and residing in Lithuania for a continuous period during the past 5 years ("continuous" period to be clarified by law, not yet enacted)</li> </ul>	<ul style="list-style-type: none"> <li>Completion of a language examination</li> </ul>	None	<ul style="list-style-type: none"> <li>Examination on the Constitution of the Republic of Lithuania in accordance with the procedure established by law (Integration Resolution)</li> </ul>	6 months
Luxembourg	Current legislation does not explicitly provide the possibility of a permanent resident status for third-country nationals	Under draft law: 5 years continuous stay in Luxembourg	<p>The draft immigration law foresees the transposition of Directive 2003/109/EC on the status of third-country nationals who are long-term residents</p> <p>The following conditions would be required in order to grant an EC long-term resident permit:</p> <ul style="list-style-type: none"> <li>Legal, stable and sufficient means</li> <li>Adequate accommodation</li> <li>Health insurance</li> <li>No threat to public order and security</li> </ul>	<ul style="list-style-type: none"> <li>Under the draft law, 1 of the 3 official languages may be required</li> </ul>	<ul style="list-style-type: none"> <li>No provisions in current legislation or draft legislation</li> </ul>	<ul style="list-style-type: none"> <li>No provisions in current legislation</li> <li>Under the draft law, the "degree of integration" of the third-country national is taken into consideration</li> </ul>	No information

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Malta	Long-term residence permit	5 years legal and continuous residence	<ul style="list-style-type: none"> <li>Income equivalent to the national minimum wage, with an additional 20% for each family member</li> <li>Adequate accommodation</li> <li>Health insurance covering the third-country national and any dependents</li> <li>A letter documenting the third-country national's employment history, current and previous residence, family members if living with him in Malta and any other relevant information</li> </ul>	None	None	None	<ul style="list-style-type: none"> <li>4 months, extendable by another 3 months</li> </ul>
	Long-term residence permit (under the 1988 Permanent Residence Scheme)	None	<ul style="list-style-type: none"> <li>Third-country nationals must meet a number of conditions relating to the acquisition of property, annual income remitted to Malta, capital or income, qualifications and employment or engagement in business</li> <li>A bank account in Malta with annual deposits of a minimum of € 15 000, plus € 2500 for a spouse and each dependant</li> </ul>				3 months
Netherlands	Permanent residence permit	5 years residence	<ul style="list-style-type: none"> <li>After 5 years of residence on a non-temporary residence permit (those not listed as "temporary" in Aliens Decree, Art. 3.5), the migrant can apply for a permanent residence permit</li> </ul>	<ul style="list-style-type: none"> <li>Civic (oral) integration examination applies for those who did not complete the examination entry</li> <li>The civic integration examination includes a language test</li> </ul>	<ul style="list-style-type: none"> <li>Civic integration examination includes questions regarding Dutch society</li> </ul>	None	6 months

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Poland	Settlement permit	None	<ul style="list-style-type: none"> <li>• Lawful residence</li> <li>• Granting a permit for permanent residence in Poland would be justified, but individual does not fulfil the criteria to acquire an EC long-term residence permit, or is not entitled to apply for such a permit</li> <li>• A settlement permit can be granted only to the categories of third-country nationals explicitly mentioned in the relevant legislation, notably certain family members</li> </ul>	None	None	None	2 months
	EC long-term residence permit	5 years lawful and uninterrupted stay	<ul style="list-style-type: none"> <li>• Stable and regular financial means</li> <li>• Health insurance</li> </ul>				
	National permanent residence permit	5 years legal and continuous residence	<ul style="list-style-type: none"> <li>• Not having been sentenced to more than 1 year in prison</li> </ul>	<ul style="list-style-type: none"> <li>• Proficiency in basic Portuguese is required</li> </ul>	None	None	<ul style="list-style-type: none"> <li>• 60 days</li> <li>• Absence of a decision within this time limit constitutes a favourable decision</li> </ul>
Portugal	EC long-term residence permit		<ul style="list-style-type: none"> <li>• Stable and regular means</li> <li>• Health insurance</li> <li>• Adequate accommodation</li> </ul>	Basic Portuguese	None	None	<ul style="list-style-type: none"> <li>• 6 months</li> <li>• Absence of decision within 9 months constitutes a favourable resolution</li> </ul>
	Permanent stay permit	5 years legal and continuous residence	<ul style="list-style-type: none"> <li>• Sufficient financial means (amount provided by law, with the exception of family members of Romanian citizens)</li> <li>• Health insurance</li> <li>• Adequate accommodation</li> </ul>	<ul style="list-style-type: none"> <li>• A satisfactory command of the Romanian language</li> </ul>	None	None	<ul style="list-style-type: none"> <li>• 6 months, extendable by another 3 months</li> </ul>
Romania							

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
<b>Slovakia</b>	Permanent residence permit	5 years residence	<p>For certain categories, namely, family reunification, employment and business:</p> <ul style="list-style-type: none"> <li>• A first residence permit for 5 years can be granted</li> <li>• After 5 years, upon request, a permanent residence permit for an unlimited period of time may be granted</li> <li>• General conditions (adequate housing, sufficient financial means, health insurance etc.) must be fulfilled</li> </ul>	<ul style="list-style-type: none"> <li>• The level of the third-country national's integration in society will be taken into account; this may include knowledge of the Slovak language</li> </ul>	None	<ul style="list-style-type: none"> <li>• Integration into the society will be taken into account</li> </ul>	No information
<b>Slovenia</b>	Permanent residence permit (equivalent status to an EC long-term resident)	5 years legal and uninterrupted stay	<ul style="list-style-type: none"> <li>• Third-country nationals holding a permit for temporary residence for the purpose of studying, professional training or seasonal work, or as a directed worker or a daily migrant worker are not eligible</li> <li>• General conditions (health insurance, sufficient means etc.) must be fulfilled</li> <li>• Not having been sentenced to imprisonment for a period of more than 1 year</li> </ul>	None	None	None	2 months
<b>Spain</b>	Permanent residence permit	5 years legal and continuous temporary residence	<ul style="list-style-type: none"> <li>• Application for permanent residence must be accompanied by documentation proving previous legal residence in Spain during the past 5 years</li> <li>• Criminal record will be checked by the Spanish authorities</li> <li>• As an exception, a permanent residence permit will be granted to third-country nationals who were originally Spanish and lost their Spanish nationality</li> </ul>	None	None	None	<ul style="list-style-type: none"> <li>• 3 months</li> <li>• Absence of decision within 9 months constitutes a favourable resolution</li> </ul>

	Permit	Required Time of Residence	Conditions	Integration Related Conditions			Length of Procedure
				Language Knowledge	Civic Knowledge	Other Integration Related Conditions	
Sweden	Settlement permit	5 years of continuous residence	<ul style="list-style-type: none"> <li>The third-country national has the intention to stay permanently in Sweden, e.g. for the purpose of family reunification, other than newly established relationships, or employment, when the applicant has been offered a permanent employment contract</li> <li>No suspicion of future misconduct or criminal behaviour</li> <li>Has not provided false information</li> <li>No threat to public order and safety</li> </ul>	None	None	None	<ul style="list-style-type: none"> <li>In 2006: 54% of applications were proceeded within 7 days</li> </ul>
	EC long-term residence permit		<p>As well as possessing sufficient financial means to support himself and his family members, the third-country national must satisfy one of the following conditions:</p> <ul style="list-style-type: none"> <li>He holds a permanent residence permit</li> <li>He holds long-term resident status in another EU Member State and a residence permit in Sweden</li> <li>He holds a residence permit in Sweden as a family member of a person with long-term resident status in another EU Member State</li> </ul>				<ul style="list-style-type: none"> <li>No statistics available</li> </ul>
UK	Indefinite leave to remain	Dependent on the immigration category	<ul style="list-style-type: none"> <li>5 years residency for persons in employment and business categories</li> <li>10 years continuous lawful residence or 14 years continuous residence, irrespective of lawfulness</li> <li>General conditions must be fulfilled (e.g. sufficient financial means, etc.)</li> <li>There are no specific provisions for indefinite leave to remain applying to visitors, students and trainees or persons in temporary work categories</li> </ul>	Knowledge of the English language is required, except for: <ul style="list-style-type: none"> <li>Persons not aged between 18 and 65</li> <li>Third-country nationals who were formerly in the armed forces</li> <li>Those admitted in the 'other relatives' category</li> </ul>	None	None	<ul style="list-style-type: none"> <li>Waiting-periods are not set out in legislation</li> <li>As of 13 August 2007, applications made in July 2007 were currently under consideration</li> </ul>



Table D: Family Reunification

This table looks at the conditions for family reunification in the different EU Member States.

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Austria	<ul style="list-style-type: none"><li>• Third-country nationals with a settlement permit</li></ul>	<ul style="list-style-type: none"><li>• Spouses</li><li>• Unmarried minor children, including adopted and step children</li></ul>	Minor	18 years	None	<ul style="list-style-type: none"><li>• Family reunification is restricted by the quota system</li><li>• There are special provisions against marriages and adoptions of convenience</li></ul>	<ul style="list-style-type: none"><li>• Various types of settlement permit are granted depending on the legal status of the sponsor</li><li>• Usually the family members receive the same residence status as the sponsor</li></ul>	<ul style="list-style-type: none"><li>• Usually 6 months</li><li>• Problematic if no quota space is available</li></ul>
Belgium	<ul style="list-style-type: none"><li>• Third-country nationals with an unlimited or limited right to stay</li><li>• However, students must have stable, regular and sufficient financial means</li></ul>	<ul style="list-style-type: none"><li>• Spouses or partners of at least 21 years of age</li><li>• Unmarried children under 18 years of age</li></ul>	Under 18 years	21 years	None	<ul style="list-style-type: none"><li>• Medical insurance for the third-country national and family members</li><li>• Sufficient accommodation for the entire family</li></ul>	<ul style="list-style-type: none"><li>• If the sponsor holds an unlimited permit, the family members will receive a one year renewable permit during the first 3 years</li><li>• During this 3-year period a control is established to check if the family members continue to fulfil the conditions for family reunification</li><li>• Afterwards, they will benefit from an unlimited right to reside in Belgium</li></ul>	<ul style="list-style-type: none"><li>• 9 months, but can be extended</li></ul>

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Bulgaria	Third-country nationals holding a: <ul style="list-style-type: none"><li>• Continuous residence permit</li><li>• Permanent residence permit, or</li><li>• EC long-term residence permit in another EU Member State</li></ul>	<ul style="list-style-type: none"><li>• Spouses</li><li>• Unmarried children under 18 years of age</li></ul>	Under 18 years	None	None	<ul style="list-style-type: none"><li>• Proof of family link</li><li>• General conditions apply</li></ul>	<ul style="list-style-type: none"><li>• Specific regulations apply in relation to the type of permit granted according to the sponsor and category of family member</li></ul>	<ul style="list-style-type: none"><li>• 2 months if the application is submitted in Bulgaria</li><li>• 6 months if the application is submitted abroad</li></ul>

Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
	Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Cyprus	<ul style="list-style-type: none"><li>• Third-country nationals who have held a temporary residence permit for a period of one year or more and who have a reasonable prospect of obtaining the right of permanent residence</li></ul>	Minor	None	<ul style="list-style-type: none"><li>• Marriage must have taken place at least one year prior to submitting the application</li></ul>	<p>The sponsor must:</p> <ul style="list-style-type: none"><li>• Have lawfully resided in Cyprus for a period of at least two years</li><li>• Possess accommodation that meets general health and safety standards</li><li>• Possess medical insurance covering himself and his family members</li><li>• Have a stable and regular income in order to maintain himself and his family members without recourse to the social assistance system</li></ul>	<ul style="list-style-type: none"><li>• Residence permit valid for one year and subject to renewal</li><li>• In any event, no longer than the validity of the sponsor's residence permit</li></ul>	<ul style="list-style-type: none"><li>• 9 months, but in exceptional circumstances the time limit may be extended</li></ul>
Cyprus	<ul style="list-style-type: none"><li>• Third-country nationals enjoying rights as a long term or permanent resident</li></ul>	<ul style="list-style-type: none"><li>• Spouses</li><li>• Minor children of the sponsor and/ or of his spouse</li><li>• Parents, if they are directly and completely dependent on the sponsor</li></ul> <p>No right of entry and residence is afforded to:</p> <ul style="list-style-type: none"><li>• Unmarried partner</li><li>• Registered partner</li><li>• Adult children unable to provide for themselves</li></ul>					

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Czech Republic	Third-country nationals holding a: <ul style="list-style-type: none"><li>• Long-term residence permit</li><li>• Permanent residence permit</li></ul>	<ul style="list-style-type: none"><li>• Spouses</li><li>• Minor children or dependent adult children of the sponsor or his spouse</li><li>• Minor children placed in the care of the sponsor</li><li>• Solitary parent of the sponsor (older than 65 years, or without regard to age if he cannot care for himself for health reasons)</li></ul>	Minor	None	None	<ul style="list-style-type: none"><li>• The sponsor must have been lawfully residing in the Czech Republic for at least 15 months</li></ul>	<ul style="list-style-type: none"><li>• If the sponsor holds a long-term residence permit, family members are granted a long-term residence permit valid for at least one year and renewable</li><li>• If the sponsor has been granted a permanent residence permit, family members are granted a residence permit valid for 2 years and that can be renewed in periods of 5 years</li></ul>	270 days

Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
	Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Family reunification with spouses and partners: <ul style="list-style-type: none"> <li>Third-country nationals who have held a permanent residence permit for at least three years</li> </ul>	<ul style="list-style-type: none"> <li>Spouses or registered or cohabiting partners, if the marriage or registered partnership is recognized according to Danish law</li> <li>There are no possibilities for reunification with family members of the ascending line</li> </ul>	N/A	Both spouses or partners must be 24 and above	For cohabitantes: <ul style="list-style-type: none"> <li>Relationship must be of a permanent and lasting nature</li> <li>Usually, 12-18 months in a shared dwelling will be required</li> </ul>	Reunification with spouse or partner is conditioned by a series of requirements, including: <ul style="list-style-type: none"> <li>24-year requirement</li> <li>Attachment requirement</li> <li>Financial support must be guaranteed</li> <li>Housing must be guaranteed</li> <li>Applicants may not have received certain types of public financial support within the past 12 months</li> </ul> Exemptions to the 24-year requirement and the attachment requirement are given if the sponsor is employed in a field covered by the job-card programme	<ul style="list-style-type: none"> <li>Residence permits are initially issued for a limited period of time with a possibility of extension</li> </ul>	<ul style="list-style-type: none"> <li>80% of applications for family reunification were decided upon within 137 days (as of December 2006)</li> </ul>

Denmark

Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
	Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Denmark	<p>Family reunification with children:</p> <ul style="list-style-type: none"><li>• Third-country nationals holding a residence permit with a view to permanent residence</li></ul>	<p>Under 15 years</p>	<p>N/A</p>	<p>N/A</p>	<ul style="list-style-type: none"><li>• After the family reunification, the child must live together with his or her parent(s)</li><li>• The parent living in Denmark, or his spouse or partner, must not have been convicted of abuse of a child under the age of 15 years in the previous 10 years</li><li>• Provision of appropriate housing by the parent may be considered</li><li>• Whether the parent can support the child financially may be considered</li><li>• The child's potential for integration in Denmark may be considered</li></ul>	<ul style="list-style-type: none"><li>• Permits are granted until the children turn 18 years old</li><li>• In any case, no longer than the validity of the sponsor's residence permit</li></ul>	<ul style="list-style-type: none"><li>• 80% of applications for family reunification were decided upon within 137 days (as of Dec 2006)</li></ul>

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Estonia	Family reunification with spouses: <ul style="list-style-type: none"><li>• Third-country nationals who have resided in Estonia for at least two years</li><li>• In principle, not applicable to students, the exception being PhD students</li></ul>	<ul style="list-style-type: none"><li>• Spouses</li><li>• No other form of cohabitation than marriage is recognized and therefore family reunification on these grounds is not possible</li></ul>	N/A	None	None	<ul style="list-style-type: none"><li>• The sponsor must have resided in Estonia for at least 2 years</li><li>• The spouse and sponsor must share close economic ties and a psychological relationship</li><li>• The sponsor's family must be stable and the marriage must not be fictitious</li><li>• Spouses must not be able to move to the third-country</li><li>• The sponsor must have sufficient financial means</li><li>• The sponsor must have medical insurance</li><li>• The sponsor's family must have a registered residence and an actual dwelling in Estonia</li><li>• Most categories of family reunification are exempt from the general Estonian immigration quota requirement</li></ul>	<ul style="list-style-type: none"><li>• Temporary residence permit that is usually valid for 2 years</li></ul>	3 months

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
<b>Estonia</b>	<p>Family reunification with close relatives:</p> <ul style="list-style-type: none"> <li>• Third-country nationals holding a permanent residence permit (all categories)</li> <li>• Third-country nationals holding a temporary residence permit; however, for these sponsors family reunification with parents and grandparents is excluded.</li> </ul>	<ul style="list-style-type: none"> <li>• Minor children</li> <li>• Adult children if unable to live independently due to health reasons or a disability</li> <li>• Parents or grandparents if they require care and it is not possible for them to stay in the country of their origin</li> <li>• Persons under the guardianship of the sponsor if income of the sponsor ensures that the person will be maintained in Estonia</li> </ul>	<ul style="list-style-type: none"> <li>• Minor</li> <li>• Adult child that is unable to live independently due to health reasons or a disability</li> </ul>	N/A	N/A	<ul style="list-style-type: none"> <li>• The sponsor must have sufficient financial means</li> <li>• The sponsor must have medical insurance</li> <li>• The sponsor's family must have a registered residence and an actual dwelling in Estonia</li> <li>• Most categories of family reunification are exempt from the general Estonian immigration quota requirement</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary stay permit</li> </ul>	No information
<b>Finland</b>	<ul style="list-style-type: none"> <li>• Third-country nationals holding a residence permit</li> <li>• However, students must be able to secure sufficient funds to support their family</li> </ul>	<ul style="list-style-type: none"> <li>• Spouses, registered partners and cohabitantes</li> <li>• Children under 18 years of age, including adopted children</li> <li>• Legal guardians of the sponsor, if the sponsor is a minor</li> <li>• Parents are not entitled to come under the family reunification scheme</li> </ul>	Under 18 years	None	For cohabitantes: <ul style="list-style-type: none"> <li>• Cohabitation has lasted for at least two years before arriving in Finland</li> </ul>	<ul style="list-style-type: none"> <li>• Directorate of Immigration and District Police may obtain opinions on applications from social welfare and healthcare authorities</li> <li>• The social situation may be requested if the sponsor is an unaccompanied minor</li> <li>• Biological kinship may be required to be proved through DNA-tests</li> </ul>	<ul style="list-style-type: none"> <li>• Family members are generally issued the same residence permits as their sponsor</li> </ul>	9 months



	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
France	<ul style="list-style-type: none"><li>• Third-country nationals holding a stay permit valid for at least one year</li></ul>	<ul style="list-style-type: none"><li>• Spouses</li><li>• Children of the sponsor and his spouse who are under 18 years of age, including adopted children</li><li>• Under certain conditions, minor children of the sponsor or his spouse, including adopted children</li></ul>	Under 18 years	18 years	None	<p>The sponsor must:</p> <ul style="list-style-type: none"><li>• Have regularly stayed in France for at least 18 months</li><li>• Adequate accommodation</li><li>• Have stable and sufficient financial means</li><li>• Respect the fundamental principles recognized by the laws of France</li></ul>	<ul style="list-style-type: none"><li>• Temporary stay permit</li></ul>	6 months

	Eligible Sponsor	Eligible Family Members			Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws		
Germany	<ul style="list-style-type: none"><li>• Third-country nationals holding a permanent residence permit</li><li>• Third-country nationals who have held a temporary residence permit for at least two years</li><li>• Third-country nationals already holding a temporary residence permit at the time of the marriage, whose duration of stay is expected to be longer than one year</li></ul>	<ul style="list-style-type: none"><li>• Spouses</li><li>• Children under 16 years of age</li><li>• Under certain conditions, children up to 18 years of age</li><li>• Children over 18 years of age in cases of extraordinary hardship</li></ul>	<ul style="list-style-type: none"><li>• Up to 16 years</li><li>• Up to 18 years under certain conditions</li><li>• Over 18 years in cases of extraordinary hardship</li></ul>	<ul style="list-style-type: none"><li>• Both spouses must be 18 years</li></ul>	None	<ul style="list-style-type: none"><li>• The residence permit is most often assigned for the duration of 1 year</li><li>• Children receive a permanent residence permit at the age of 16 if they have been in possession of a residence permit for at least 5 years</li></ul>	4 months

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Greece	<ul style="list-style-type: none"> <li>Third-country nationals</li> </ul>	<ul style="list-style-type: none"> <li>Spouses</li> <li>Unmarried children of the sponsor and/ or his spouse who are under 18 years of age</li> </ul> <p>Legislation does not envisage family reunification with:</p> <ul style="list-style-type: none"> <li>Ascending line relatives</li> <li>Common law partners</li> </ul>	Under 18 years	18 years	None	<p>The sponsor must:</p> <ul style="list-style-type: none"> <li>Have resided lawfully in Greece for at least 2 years</li> <li>Prove the existence of the family relationship</li> <li>Prove that the members of his family will reside with him</li> <li>Prove that he possesses a stable and regular annual income, which is adequate to cover his family's needs</li> <li>Prove he possesses adequate accommodation</li> <li>Possess full medical insurance that also covers his family members</li> </ul>	<ul style="list-style-type: none"> <li>Family members are issued personal residence permits, which are valid for 1 year and may be renewed every 2 years</li> </ul>	9 months
Hungary	<ul style="list-style-type: none"> <li>Third-country nationals holding a long-term visa</li> <li>Third-country nationals holding a temporary residence permit</li> <li>Third-country nationals holding a national or interim permanent residence permit</li> <li>Third-country nationals holding an EC long-term residence permit</li> </ul>	<ul style="list-style-type: none"> <li>Spouses</li> <li>Minor children of the sponsor and his spouse</li> <li>Dependant minor children of the sponsor or his spouse if he or she has parental custody</li> <li>Dependent parents of the sponsor or his spouse, and siblings of sponsor or spouse if unable to provide for themselves due to health reasons</li> </ul>	Minor	None	None	None	<ul style="list-style-type: none"> <li>Residence permits may not exceed the period of validity of the sponsor's long-term visa or residence permit</li> <li>Residence permits are usually issued for 3 years and are renewable</li> </ul>	<ul style="list-style-type: none"> <li>In practice, about 1 year is needed</li> </ul>

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Ireland	<ul style="list-style-type: none"><li>• Non EEA nationals</li><li>• There is no published information as to the policy applicable to non-visa nationals</li></ul>	<ul style="list-style-type: none"><li>• Admission of the family members of non-EEA nationals is not addressed by published public policy</li><li>• There are only guidelines concerning only two categories - family members of workers and of refugees</li><li>• The following family members (visa nationals) of workers may be admitted:<ul style="list-style-type: none"><li>• Spouses</li><li>• Dependent children under 18 years of age</li></ul></li></ul>	Under 18 years	None	None	<p>For sponsors that are workers under the guidelines:</p> <ul style="list-style-type: none"><li>• The sponsor must have a valid work permit</li><li>• Must have been in full-time employment for at least 12 months (exempt if a Green Card holder)</li><li>• The sponsor's income must exceed the amount that would qualify for payments under social welfare law</li><li>• The sponsor must provide evidence of the family relationship</li><li>• In the case of minor children, if both parents will not be resident in the host country, the consent of the overseas parent is required</li><li>• The sponsor must provide a tax statement</li></ul>	<ul style="list-style-type: none"><li>• Family members are usually granted a residence permit that coincides with the duration of the sponsors residence permit</li></ul>	<ul style="list-style-type: none"><li>• Not defined in the law, can take up to 20 months</li></ul>

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Italy	<ul style="list-style-type: none"><li>• Third-country nationals holding a residence card or an EC long-term residence permit</li><li>• Third-country nationals holding a permit with a duration of at least one year (for employment, self-employment, asylum, study or religious purposes)</li></ul>	<ul style="list-style-type: none"><li>• Spouses</li><li>• Minor children, but if born out of wedlock only once the other parent has consented</li><li>• Adult children who depend on their parents due to health reasons</li><li>• Parents dependent upon the sponsor who do not have adequate support in the country of origin</li></ul>	<ul style="list-style-type: none"><li>• Under 18 years</li><li>• Over 18 years if dependent</li></ul>	None	None	<ul style="list-style-type: none"><li>• The sponsor must have an adequate income</li><li>• The sponsor must possess adequate accommodation</li><li>• Immigration office will take into consideration the actual family ties, the length of stay in Italy and the links with the country of origin</li></ul>	<ul style="list-style-type: none"><li>• Residence permit valid for a period of two years</li></ul>	<ul style="list-style-type: none"><li>• Immigration Office should reply within 90 days</li></ul>

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Latvia	<ul style="list-style-type: none"><li>Latvian citizens, non-citizens of Latvia and third-country nationals holding a permanent residence permit</li><li>Third-country nationals holding a temporary residence permit are not granted the right to family reunification</li></ul>	<ul style="list-style-type: none"><li>Spouses</li><li>Minor children of the sponsor</li><li>Unmarried minor children of the sponsor's spouse</li><li>Parents of the sponsor or his spouse who have reached pensionable age</li><li>Relatives up to the third degree in direct ascent or lateral line, or also affinity to the third degree</li><li>No right for unmarried partners to benefit from family reunification</li></ul>	Minor	None	None	<ul style="list-style-type: none"><li>The sponsor must submit a marriage certificate (if applicable) and documents proving the existence of the family relationship and that he intends to reside with the family member</li><li>There are a number of documents to be submitted in addition to the usually required documents</li></ul>	<ul style="list-style-type: none"><li>Family members are granted different residence permits depending on the existing family ties with the sponsor</li><li>These range from 6 months to the issuance of a permanent residence permit</li></ul>	No information

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Lithuania	<ul style="list-style-type: none"><li>• Third-country nationals holding a residence permit and residing in Lithuania</li></ul>	<ul style="list-style-type: none"><li>• Spouses or registered partners who are over 21 years of age</li><li>• Minor children of the sponsor and/ or his spouse</li><li>• Parents</li></ul>	Minor	21 years	None	<ul style="list-style-type: none"><li>• The sponsor must provide evidence of the existence of the family relationship</li><li>• The sponsor must present an invitation, approved by the migration service</li><li>• In some cases, it is required that the sponsor has resided in Lithuania for at least 2 years, is in possession of a temporary residence permit valid for at least one year and has a reasonable prospect of obtaining a permanent residence permit</li></ul>	<ul style="list-style-type: none"><li>• Temporary residence permit</li></ul>	6 months
	<ul style="list-style-type: none"><li>• Third-country nationals holding a permanent residence permit and who are incapable of working due to disability or being of a pensionable age</li></ul>	Children	None	N/A	N/A			

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
<b>Luxembourg</b>	<ul style="list-style-type: none"> <li>There are no provisions regarding family reunification in current legislation</li> <li>Legal basis for family reunification is to be found in Art. 8 of the ECHR</li> <li>Sponsors are usually required to hold a work permit B</li> </ul>	<ul style="list-style-type: none"> <li>There are no provisions regarding family reunification in the current legislation</li> </ul>	<ul style="list-style-type: none"> <li>There are no provisions regarding family reunification in the current legislation</li> </ul>	<ul style="list-style-type: none"> <li>There are no provisions regarding family reunification in the current legislation</li> </ul>	<ul style="list-style-type: none"> <li>There are no provisions regarding family reunification in the current legislation</li> </ul>	<ul style="list-style-type: none"> <li>There are no provisions regarding family reunification in the current legislation</li> </ul>	<ul style="list-style-type: none"> <li>There are no provisions regarding family reunification in the current legislation</li> </ul>	<ul style="list-style-type: none"> <li>There are no provisions regarding family reunification in the current legislation</li> </ul>
<b>Malta</b>	<ul style="list-style-type: none"> <li>Third-country nationals:</li> <li>Holding a residence permit valid for at least one year</li> <li>Who have a reasonable prospect of obtaining the right of permanent residence, and</li> <li>Who have resided lawfully in Malta for two years</li> </ul>	<ul style="list-style-type: none"> <li>Spouses</li> <li>Unmarried minor children of the sponsor and his spouse, including adopted children</li> <li>Unmarried minor children of the sponsor or his spouse if he or she has custody over them</li> </ul>	Minor	21 years	None	<p>The sponsor must:</p> <ul style="list-style-type: none"> <li>Prove the existence of the family relationship</li> <li>Have sufficient accommodation</li> <li>Possess medical insurance covering himself and his family members</li> <li>Provide proof of stable and regular financial means</li> <li>Attend and complete, along with the family member, courses in Maltese language (if required)</li> </ul>	<ul style="list-style-type: none"> <li>Residence permit valid for a period of 1 year</li> </ul>	<ul style="list-style-type: none"> <li>9 months, but in exceptional circumstances the time limit may be extended</li> </ul>



	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Netherlands	<p>Family reunification:</p> <ul style="list-style-type: none"> <li>• Several categories can be sponsors for family reunification, e.g. holder of temporary residence permit</li> </ul> <p>Family formation:</p> <ul style="list-style-type: none"> <li>• Several categories can be sponsors for family reunification, e.g. holder of temporary residence permit</li> <li>• Sponsors must be at least 21 years of age</li> <li>• Sponsors must have a net income that is at least 120% of the minimum wage (which differs per age group)</li> </ul>	<ul style="list-style-type: none"> <li>• Spouses and partners (registered or non-registered)</li> <li>• Children under 18 years of age</li> <li>• Adult children, if they can prove that they always have been and still are dependents, e.g. disabled children</li> <li>• Single parents over 65 years old, if all (or most) of his or her children live in the Netherlands and there are no children in the country of origin to provide care</li> </ul>	<ul style="list-style-type: none"> <li>• Under 18 years</li> <li>• Over 18 years if dependant</li> </ul>	<ul style="list-style-type: none"> <li>• Both spouses or partners must be 18 years</li> </ul>	None	<ul style="list-style-type: none"> <li>• Rules on family reunification only apply if the family ties already existed abroad</li> <li>• The sponsor must have sufficient financial means</li> <li>• Family members should share a household in the Netherlands</li> </ul> <p>The migrant family member must provide:</p> <ul style="list-style-type: none"> <li>• Proof that the civic integration examination abroad was passed (if over 16 years)</li> <li>• A clean criminal record</li> <li>• Proof that he does not suffer from tuberculosis</li> <li>• Health insurance coverage</li> <li>• There is no waiting period (a period of legal residence of the migrant in the country) before the application can be filed</li> </ul>	<ul style="list-style-type: none"> <li>• Residence permit valid for one year</li> <li>• After the first year, the permit can be extended if the income requirements are still met and the relationship still exists</li> <li>• This permit may be valid for 5 years</li> </ul>	6 months
				<ul style="list-style-type: none"> <li>• Both partners must be 21 and above</li> </ul>	None			

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Poland	<ul style="list-style-type: none"><li>• Third-country nationals holding a settlement permit</li><li>• Third-country nationals holding an EC long-term residence permit</li><li>• Third-country nationals holding a residence permit; if the residence permit is for a specified time, sponsors must have lived in Poland for at least two years</li></ul>	<ul style="list-style-type: none"><li>• Spouses, where the marriage is recognized under Polish law</li><li>• Minor children, including adopted children if the sponsor exercises parental control over him or her</li></ul>	Minor	None	None	<ul style="list-style-type: none"><li>• If holding a residence permit for a specified time, the sponsor must have lived in Poland for at least two years</li><li>• General requirements regarding housing and financial means (Except for:: third-country nationals holding a settlement permit or an EC long-term residence permit and third-country nationals who have been granted refugee status)</li></ul>	<ul style="list-style-type: none"><li>• As a general principle, family members are granted a residence permit for a specified period</li><li>• In any case, no longer than the validity of the sponsor's residence permit</li><li>• In some cases, family members are granted a settlement permit</li></ul>	2 months

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Portugal	<ul style="list-style-type: none"> <li>Third-country nationals holding a residence permit</li> </ul>	<ul style="list-style-type: none"> <li>Spouses and de facto partners</li> <li>Minor children of the sponsor or his spouse, including adopted children</li> <li>Unmarried minor children of the sponsor's de facto partner</li> <li>Adult children who are dependent on the sponsor, his spouse or his de facto partner</li> <li>Dependent parents of the sponsor or his spouse</li> <li>Children whom the sponsor or his spouse are in charge of and who studies in Portugal</li> <li>Minor siblings if under the tutelage of the sponsor</li> </ul>	<ul style="list-style-type: none"> <li>Minor</li> <li>Adult if dependent</li> </ul>	None	None	<p>The sponsor must provide:</p> <ul style="list-style-type: none"> <li>Evidence of the existence of the family relationship or of the de facto union</li> <li>Copies of the family member's travelling documents</li> </ul>	<ul style="list-style-type: none"> <li>If the sponsor holds a temporary residence permit, family members will receive a residence permit with a similar validity to that of the resident</li> <li>If the sponsor holds a permanent residence permit, family members will receive a residence authorization valid for 2 years</li> <li>In both cases, after 2 years under the initial residence authorization and if the family ties persist, the family members shall have their own, independent right to residence authorization</li> <li>A spouse may be issued an independent residence authorization upon initial application if the marriage has existed for 5 years or more</li> </ul>	3 months

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Romania	<ul style="list-style-type: none"> <li>Third-country nationals holding a temporary or permanent residence permit</li> </ul>	<ul style="list-style-type: none"> <li>Spouses</li> <li>Unmarried minor children</li> <li>Dependent relatives of the sponsor or his spouse of first degree kinship in the ascending line</li> <li>Unmarried adult children of the sponsor or his spouse, if unable to care for themselves due to medical reasons</li> </ul>	<ul style="list-style-type: none"> <li>Minor</li> <li>Adult if dependent</li> </ul>	None	None	<p>The sponsor must provide:</p> <ul style="list-style-type: none"> <li>A marriage certificate or other evidence of the existence of the family relationship</li> <li>A statement attesting that he will live together with the family member</li> <li>Proof of adequate dwelling space (currently, 12 m<sup>2</sup> for each family member)</li> <li>Proof of means of support, amounting to the minimum net salary</li> <li>Proof of medical insurance</li> </ul>	<ul style="list-style-type: none"> <li>First, a visa for 90 days is issued, then a prolongation of residence</li> <li>Residence is granted for the duration of the sponsor's residence stay right</li> </ul>	3 months
	<ul style="list-style-type: none"> <li>Third-country nationals residing for the purpose of study</li> </ul>	<ul style="list-style-type: none"> <li>Spouses, provided that the marriage was concluded before the stay right was obtained</li> <li>Minor children</li> </ul>	Minor	None	None	<p>The sponsor must provide:</p> <ul style="list-style-type: none"> <li>A marriage certificate or other evidence of the existence of the family relationship</li> <li>A statement attesting that he will live together with the family member</li> <li>Proof of adequate dwelling space (currently, 12 m<sup>2</sup> for each family member)</li> <li>Proof of means of support, amounting to the minimum net salary</li> <li>Proof of medical insurance</li> </ul>	<ul style="list-style-type: none"> <li>First, a visa for 90 days is issued, then a prolongation of residence</li> <li>Residence is granted for the duration of the sponsor's residence stay right</li> </ul>	3 months

Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
	Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Slovakia	<ul style="list-style-type: none"> <li>Third-country nationals holding a temporary or permanent residence permit</li> </ul>	<ul style="list-style-type: none"> <li>Spouses</li> <li>Unmarried children who are under 18 years of age</li> <li>Children under 18 years of age who are in the custody of the sponsor</li> <li>Unprovided-for adult children</li> </ul>	<ul style="list-style-type: none"> <li>Under 18 years</li> <li>Over 18 years if unprovided for</li> </ul>	18 years	None	<ul style="list-style-type: none"> <li>Permanent residence permit</li> </ul>	No information
	<ul style="list-style-type: none"> <li>Third-country nationals holding a temporary residence permit for the purpose of business or employment</li> <li>Third-country nationals holding a permanent residence permit</li> </ul>	<ul style="list-style-type: none"> <li>Single parents dependent on the care of the sponsor</li> </ul>	N/A	N/A	<ul style="list-style-type: none"> <li>General conditions</li> <li>The sponsor must provide evidence of the existence of the family relationship</li> </ul>		
	<ul style="list-style-type: none"> <li>Slovak citizens residing in Slovakia (latter not required in case of spouses of Slovak citizens)</li> </ul>	<ul style="list-style-type: none"> <li>Spouses</li> <li>Dependent direct relatives</li> <li>Minor children placed in the custody of the sponsor or his spouse</li> </ul>	Under 18 years	None	<ul style="list-style-type: none"> <li>General conditions</li> <li>The sponsor must provide evidence of the existence of the family relationship</li> <li>Application for renewal of residence permit will be dismissed if spouses do not lead a common family life</li> </ul>		

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Slovenia	<ul style="list-style-type: none"> <li>Third-country nationals who have permission for temporary or permanent residence for a period of at least one year</li> </ul>	<ul style="list-style-type: none"> <li>Spouses</li> <li>Unmarried children of the sponsor or his spouse who are under 18 years of age</li> <li>Parents, if the sponsor is a minor</li> <li>Unmarried adult children or parents who are legally dependent on the sponsor or his spouse</li> <li>Other members of the sponsor's family can be considered only exceptionally</li> </ul>	<ul style="list-style-type: none"> <li>Under 18 years</li> <li>Over 18 years if dependent</li> </ul>	None	None	<ul style="list-style-type: none"> <li>The sponsor must have sufficient financial means to support the family members</li> </ul>	<ul style="list-style-type: none"> <li>Residence permits issued to family members depend upon the sponsor's residence permit</li> <li>Temporal validity of the first temporary residence permit of family members is in principle the same as the one issued to the sponsor, but it cannot exceed one year</li> </ul>	2 months
Spain	<ul style="list-style-type: none"> <li>Third-country nationals who have lawfully resided in Spain for one year and who have authorization to stay for at least another year</li> </ul>	<ul style="list-style-type: none"> <li>Spouses</li> <li>Unmarried children of the sponsor or his spouse who are under 18 years of age, including adopted children</li> <li>Dependent adult children of the sponsor or his spouse</li> <li>Dependent ancestors of the sponsor or his spouse</li> </ul>	<ul style="list-style-type: none"> <li>Under 18 years</li> <li>Over 18 years if dependent</li> </ul>	None	None	<p>The sponsor must:</p> <ul style="list-style-type: none"> <li>Provide proof that he has lived in Spain for at least one year and has authorization to stay for at least another year</li> <li>Provide evidence of the existence of the family relationship</li> <li>Provide proof of employment and/or of sufficient financial means to support the family members</li> <li>Possess adequate housing</li> <li>In case of family reunification with a spouse, he must establish that he does not reside in Spain with another spouse</li> </ul>	<ul style="list-style-type: none"> <li>If the sponsor has a temporary residence authorization, the right of residence of family members ends on the same date as that of the sponsor</li> <li>If the sponsor has a permanent residence authorization, the first resident title granted ends upon the expiration of the sponsor's identity card for foreigners; the subsequent residence authorization shall be permanent</li> </ul>	45 days

Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
	Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
<ul style="list-style-type: none"> <li>Third-country nationals holding a temporary or permanent residence permit</li> </ul>	<ul style="list-style-type: none"> <li>Spouses, registered partners or co-habitees</li> <li>Prospective spouses, registered partners or co-habitees</li> <li>Children under 18 years of age</li> <li>Close relatives over the age of 18 in exceptional cases</li> </ul>	<ul style="list-style-type: none"> <li>Under 18 years</li> <li>Over 18 years in exceptional cases</li> </ul>	None	None	<ul style="list-style-type: none"> <li>No requirement of accommodation or means of subsistence during the stay in Sweden</li> <li>Risk of criminal activities is taken into account</li> <li>Presentation of marriage certificate, registered partnership certificate or civic registration certificate is required (if applicable)</li> </ul>	<ul style="list-style-type: none"> <li>Residence permit valid for the same period as the sponsor's permit</li> </ul> <p>Exception:</p> <ul style="list-style-type: none"> <li>When the spouses, registered partners or co-habitees have not lived together for two years in the country of origin, a temporary residence permit is granted (for a maximum of 2 years)</li> <li>After a two year period, a permanent residence permit shall be issued</li> </ul>	<ul style="list-style-type: none"> <li>Migration Board aims to process applications within 6 months (not always reached)</li> </ul>

Sweden

	Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
		Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
UK	<p>Sponsors who are settled or eligible for settlement:</p> <ul style="list-style-type: none"><li>• Third-country nationals who are present and settled (meaning British citizens or persons with indefinite leave to stay) in the UK</li><li>• Third-country nationals who are being admitted for settlement at the same time as the family member</li></ul>	<ul style="list-style-type: none"><li>• Spouses, civil partners or cohabitants</li><li>• Fiancé(e)s and proposed civil partners</li><li>• Dependent, unmarried children of the sponsor or his spouse, partner or cohabitee who are under 18 years of age</li><li>• Parents and grandparents over 65 years of age who are a widow or widower, or who are remarried but who cannot look to his or her spouse or children in the second marriage for financial support</li><li>• Other relatives (e.g. children admitted when the sponsor is not a parent and certain adult relatives sponsored by a person who is settled) may be admitted in exceptional cases</li></ul>	Under 18 years	<ul style="list-style-type: none"><li>• Both partners must be 18 years</li></ul>	<p>For Cohabitees:</p> <ul style="list-style-type: none"><li>• The relationship must have lasted for 2 years prior to the submission of the application</li></ul>	No information	<ul style="list-style-type: none"><li>• Spouses and partners are entitled to a leave for a probationary period of 2 years, with the possibility of indefinite leave thereafter</li><li>• Children are eligible for indefinite leave to enter when all relevant parents are themselves settled in the UK, or coming for the purpose of settlement</li></ul>	No provisions in law



Eligible Sponsor	Eligible Family Members				Other Conditions and Procedures	Type of Residence Permit Granted	Length of Procedure
	Eligible Family Members	Age Requirement for Children under Immigration Laws	Age Requirement for Spouses or Partners under Immigration Laws	Min. Duration of Marriage or Partnership under Immigration Laws			
Limited leave sponsors: <ul style="list-style-type: none"><li>Different rights regarding family reunification for persons with limited leave</li><li>Not all limited leave categories may sponsor family reunification</li></ul>	With regard to students, trainees, temporary workers, third-country nationals resident for employment or business purposes, and other miscellaneous: <ul style="list-style-type: none"><li>Spouses</li><li>Civil partners</li><li>Children</li><li>Such persons are not permitted to bring cohabitants or other relatives</li></ul>	Under 18 years	<ul style="list-style-type: none"><li>Both partners must be 18 years</li></ul>	For Cohabitants: <ul style="list-style-type: none"><li>The relationship must have lasted for 2 years prior to the submission of the application</li></ul>	No information	No information	No provisions in law

UK

Table E: Employment

This table provides an overview of conditions regarding the legal immigration of third-country nationals to EU Member States for the purpose of employment.

	Conditions and Procedures	Further Regulation	Work Authorization			Provisions for Highly Skilled Workers
			Additional Work Authorization Required?	Limitations of Work Authorization	Duration of Work Authorization	
Austria	<ul style="list-style-type: none"><li>• Only "key employees" have the right to apply for a residence title (for conditions see provisions for highly skilled workers)</li><li>• Third-country nationals already in the country may apply for a work permit</li></ul>	<ul style="list-style-type: none"><li>• A quota requirement applies to both residence permits and work permits</li><li>• The quota is determined annually</li><li>• The number of employed and unemployed third-country nationals must not, in principle, exceed 8% of the number of employed and unemployed Austrian citizens</li></ul>	<ul style="list-style-type: none"><li>• Two permits are required: a specific kind of residence title (settlement permit "unrestricted") and work permit</li></ul>	<ul style="list-style-type: none"><li>• After a certain period of legal work in Austria, the third-country national has the right to apply for a working allowance or an exception card, which give free access to the labour market within a province or within the whole of the federal territory</li></ul>	<ul style="list-style-type: none"><li>• Work permit: maximum of 1 year</li><li>• Working allowance: maximum of 2 years</li><li>• Exception card: maximum of 5 years</li><li>• Both a working allowance and an exception card can be prolonged</li></ul>	<ul style="list-style-type: none"><li>• Key employees can apply for a residence title</li><li>• Special qualifications are necessary, which are checked by the Labour Market Service</li><li>• A minimum monthly income is necessary: € 2.304 or € 1.536 in the sector of elderly and patient care</li><li>• Quota space must be available</li></ul>
Belgium	<ul style="list-style-type: none"><li>• Third-country nationals must submit an application for a residence permit in their country of origin or residence</li><li>• Beforehand, their employer must apply for an "occupation authorization," which will only be delivered if the market test is positive</li><li>• Authorizations are only delivered to third-country nationals from countries bound, with Belgium, by an international agreement related to the occupation of workers</li></ul>	<ul style="list-style-type: none"><li>• It must not be possible to find a worker for the position from within the domestic labour market</li><li>• There are exceptions for certain highly qualified workers and family members of a sponsor having a limited right to stay</li></ul>	<ul style="list-style-type: none"><li>• Two permits are required: a work authorization and a residence permit</li></ul>	<ul style="list-style-type: none"><li>• Third-country nationals entering as workers are issued with a permit B (restricted to a specific employer for 1 year)</li><li>• After a certain number of years under a permit B, the third-country national has the right to be issued a permit A (valid for every profession and without a time limit)</li></ul>	<ul style="list-style-type: none"><li>• Permit B: 1 year (renewable)</li><li>• Permit A: unlimited</li></ul>	<ul style="list-style-type: none"><li>• No labour market test is required for highly skilled workers</li></ul>

	Conditions and Procedures	Further Regulation	Work Authorization			Provisions for Highly Skilled Workers
			Additional Work Authorization Required?	Limitations of Work Authorization	Duration of Work Authorization	
<b>Bulgaria</b>	<ul style="list-style-type: none"> <li>• An application for a work permit is submitted by the employer while the third-country national is still abroad</li> <li>• At least secondary professional education, specific professional qualifications or experience corresponding to a specific activity is required</li> <li>• A work permit is a precondition to the acquisition of residence permit</li> <li>• Work permits are issued by the National Employment Agency</li> </ul>	<p>The employer must prove:</p> <ul style="list-style-type: none"> <li>• He has undertaken a domestic search for a suitable candidate for the position for a period of at least 15 days</li> <li>• There are no Bulgarian citizens, permanently resident foreigners or other foreigners with similar rights are available who possess the required professional qualifications</li> <li>• There is no possibility of training the necessary personnel</li> <li>• There is an exemption from the labour market test for certain groups of workers</li> </ul>	<ul style="list-style-type: none"> <li>• Two permits are required: a work permit and a visa or residence permit</li> </ul>	<ul style="list-style-type: none"> <li>• The work permit is restricted to a specific employer and a particular place, position, type of work and duration</li> </ul>	<ul style="list-style-type: none"> <li>• 1 year (renewable)</li> <li>• In principle, the total period of employment cannot exceed 3 years</li> </ul>	<p>Alleviation of permit-issuing conditions applies for:</p> <ul style="list-style-type: none"> <li>• Renowned scholars or intellectuals</li> <li>• High managerial personnel of companies established by foreign legal entities on Bulgarian territory</li> <li>• Third-country national company specialists engaged in assembly, repair and operation of imported equipment</li> <li>• Specialists in production quality assessment</li> </ul>

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Cyprus	<p>An application for a permit is submitted by the employer while the third-country national is still abroad</p> <ul style="list-style-type: none"> <li>A work contract stamped by the Ministry of Labour and Social Insurance, which is competent to carry out the labour market test, is required</li> <li>The Civil Registry and Migration Department issues Entry and Work Permits</li> <li>Family members of EU nationals and long-term residents can exercise a profession without a work permit</li> </ul>	<ul style="list-style-type: none"> <li>Only when there are no adequately qualified Cypriots or EU citizens available for the specific job in the relevant region will the permit be granted</li> </ul>	<ul style="list-style-type: none"> <li>One permit is required</li> </ul>	<ul style="list-style-type: none"> <li>The work permit is restricted to a specific employer and a particular position</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 4 years</li> </ul>	<p>None</p>
Czech Republic	<p>Three permissions are required:</p> <ul style="list-style-type: none"> <li>The employer must obtain a permit to recruit employees abroad from the Labour Office</li> <li>The third-country national must then obtain an individual work permit</li> <li>A permission to stay must then be obtained</li> </ul>	<ul style="list-style-type: none"> <li>The main condition for the issuance of a permit is the situation of the labour market and the fact that the position is a vacant one, which cannot be filled otherwise due to the qualifications required or a temporary shortage of workforce</li> <li>No concrete form of labour market test is foreseen, the labour market test may vary from region to region and across job types</li> </ul>	<ul style="list-style-type: none"> <li>Two permits are required: a work permit and permission to stay</li> </ul>	<ul style="list-style-type: none"> <li>The work permit is restricted to a specific employer and a particular type and place of work</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 1 year (renewable)</li> </ul>	<p><u>Pilot project for Qualified Foreign Workers</u></p> <ul style="list-style-type: none"> <li>The Program is directed at nationals of 9 selected third countries with at least secondary education; applicants with the highest score in a computerized selection procedure will be selected, participants must find a job themselves</li> <li>Participants of the project enjoy special support and can apply for permanent residency after 2.5 years</li> </ul>

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Denmark	<ul style="list-style-type: none"> <li>Third-country nationals submit an application in their country of origin or residence, including a written offer or contract for a specific position containing job information, as well as a description of educational and professional qualifications</li> <li>Immigration authorities might request a statement from a branch organization</li> <li>Regardless of the scheme chosen, salary and employment conditions must correspond to Danish standards</li> </ul>	<ul style="list-style-type: none"> <li>The Immigration Service grants work and residence permits only if professional or labour-market demand exists</li> <li>It may be requested that the appropriate professional credentials be confirmed (i.e. in the case of doctors)</li> </ul>	<ul style="list-style-type: none"> <li>Two permits are required: a work and a residence permit; however, they are interlinked, as it is generally impossible to obtain a residence permit (for employment purposes) without having been granted a work permit</li> </ul>	<ul style="list-style-type: none"> <li>The work permit is restricted to a specific employer and a particular position</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 1 year (renewable)</li> </ul>	<p><u>Job card Scheme</u></p> <ul style="list-style-type: none"> <li>Special rules apply for certain fields included in the "positive list" (fields determined annually by the government to be in shortage of specially qualified professionals) or positions with an annual salary of € 60 340, irrespective of the field or nature of the job</li> <li>Permits under this scheme are granted for up to 3 years</li> <li>Applications are processed within 30 days</li> <li>The Immigration Service will immediately grant a residence and work permit to successful applicants, without requesting a statement from a branch organization, assuming that a written offer for a specific position has been made</li> </ul>

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Estonia	<p>A residence permit for the purpose of work is granted if:</p> <ul style="list-style-type: none"><li>• The employer obtains permission from the Labour Market Board</li><li>• The third-country national's qualifications match the relevant professional standards</li><li>• The third-country national possesses the required level of knowledge of the host language</li><li>• The employer has provided some details about the agreement (e.g. duration, wage etc.); although no contract has to be provided</li></ul>	<p>The Labour Market Board delivers permission if:</p> <ul style="list-style-type: none"><li>• The employer has searched for 2 months for a qualified Estonian national or resident</li><li>• An advertisement has been published in a nation-wide newspaper or internet job portal</li><li>• A quota space must be available</li></ul>	<ul style="list-style-type: none"><li>• One permit is required: a residence permit for employment</li></ul>	<ul style="list-style-type: none"><li>• The residence permit is restricted to a specific employer</li></ul>	<ul style="list-style-type: none"><li>• Maximum of 2 years (renewable for periods of 5 years at a time)</li></ul>	<p>None</p>

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Finland	<ul style="list-style-type: none"> <li>Third-country nationals must obtain a "residence permit for an employed person"</li> <li>An application may be filed by either the third-country national or his employer on his behalf, in the Finnish Mission, Employment Office or District Police</li> <li>The employer must provide information on the principal terms of work to the Employment Office</li> <li>The Employment Office estimates both the labour policy and the sufficiency of the third-country national's means of support; if the preliminary decision of the Employment Office is positive, the Directorate of Immigration can supply the worker with a worker's residence permit</li> <li>The workers' residence permit can be granted on the basis of either temporary or continuous work</li> </ul>	<ul style="list-style-type: none"> <li>The Employment Office estimates the labour policy requirements; it's objective is to support the availability of labour and protect labour already in the labour market</li> </ul>	<ul style="list-style-type: none"> <li>One permit is required; a residence permit for an employed person</li> </ul>	<ul style="list-style-type: none"> <li>In principle, the third-country national can change his place of employment within the professional field for which the permit was issued</li> <li>Under special circumstances, the permit can be restricted to a specific employer</li> </ul>	<ul style="list-style-type: none"> <li>1 year (renewable for periods of 1 - 3 years at a time)</li> </ul>	None

France	Conditions and Procedures	Further Regulation	Work Authorization			Provisions for Highly Skilled Workers
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	<p>The employer must present a dossier to the National Employment Agency: based on a labour market test, the Prefect authorizes work and issues a residence permit for employment, taking into account:</p> <ul style="list-style-type: none"><li>• A work contract between the third-country national and an employer is required to start the process</li><li>• The employment situation in the considered profession and geographical area</li><li>• Previous respect for labour regulations by the employer</li><li>• Equal treatment with national workers regarding conditions of employment and remuneration</li><li>• Housing measures taken by the employer in favour of the third-country national</li></ul>	<ul style="list-style-type: none"><li>• The National Employment Agency publishes a similar job offer to ensure that there is no suitable candidate in the local labour market</li><li>• There is an exception for professional activities or geographical areas having difficulty recruiting</li><li>• Applications submitted by highly skilled workers will be examined with benevolence</li></ul>	<ul style="list-style-type: none"><li>• One permit is required: a residence permit for employment</li></ul>	<ul style="list-style-type: none"><li>• The temporary stay permit is not restricted to a specific employer</li><li>• As a general rule, only one professional activity is authorized, which is specified on the temporary stay permit</li></ul>	<ul style="list-style-type: none"><li>• Maximum of 1 year</li></ul>	<p><u>Competence and Talent Card</u></p> <ul style="list-style-type: none"><li>• Such cards are granted to third-country nationals who participate in a significant and durable way to the economic development of France and their country of origin (through intellectual, cultural, scientific, humanitarian or athletic pursuits)</li><li>• This specific permit is issued with a validity of 3 years and can be renewed</li><li>• It authorizes the exercise of any professional activity linked to the project for which the permit was granted</li></ul>



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Germany	<ul style="list-style-type: none"><li>• Admission of third-country national workers depends on the situation of the labour market</li><li>• In principle, a residence permit for employment may only be granted with the approval of the Federal Employment Agency</li><li>• The Federal Employment Agency shall establish that the filling of a vacancy with a third-country national applicant is justifiable in terms of labour market policy and integration</li></ul>	<ul style="list-style-type: none"><li>• A labour market test is carried out by the Employment Office to ensure that there will be no negative impact on the labour market</li><li>• No suitably qualified German workers or third-country nationals residing in Germany may be available to fill the vacancy in order for an authorization to be granted</li></ul>	<ul style="list-style-type: none"><li>• One permit is required: a residence permit for employment</li></ul>	<ul style="list-style-type: none"><li>• The residence permit can be restricted to specific employers or regions</li></ul>	<ul style="list-style-type: none"><li>• 1 year (regardless of the length of the employment contract)</li></ul>	<p>Only highly qualified applicants are issued a permanent residence permit immediately after entry. Highly qualified applicants include:</p> <ul style="list-style-type: none"><li>• Scientists with special technical knowledge</li><li>• Teaching persons or scientific employees in an outstanding position</li><li>• Specialists and executives with special professional experience and with a salary that exceeds an established limit</li></ul>

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Greece	<p>For the initial issuance of a residence permit for the purpose of employment, a foreign national must submit:</p> <ul style="list-style-type: none"><li>• A copy of the employment contract showing that the salary is at least equal to that of an unskilled labourer</li><li>• Proof of health insurance</li><li>• Special conditions apply to the issuance and renewal of residence permits to third-country nationals who belong to specific professional groups</li><li>• An employment contract is not required when the third-country national will be employed in the agricultural sector, the construction sector, as domestic help or as a hospital nurse</li></ul>	<p>An annual quota determines the number of work permits to be issued (seasonal and self-employment included), the decision is based on:</p> <ul style="list-style-type: none"><li>• The annual report of a Committee at the regional level on the existing needs in the labour market</li><li>• The interests of the Greek economy</li><li>• The availability of qualified Greek nationals or permanent residents in Greece</li></ul>	<ul style="list-style-type: none"><li>• One permit is required: a residence permit for the purpose of employment</li></ul>	<ul style="list-style-type: none"><li>• During the validity of the residence permit, the third-country national may enter into a labour contract with another employer, if this does not result in any change in their specialty and the social security entity under which he has been insured</li><li>• After 1 year and subject to certain conditions, the third-country national may be employed in a different prefecture of the same or a different Region</li></ul>	<ul style="list-style-type: none"><li>• 1 year (renewable)</li></ul>	None

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Hungary	<p>The employer shall request a work permit, for the issuance of which the following conditions must be fulfilled:</p> <ul style="list-style-type: none"><li>• Health requirements and qualifications shall be met by the third-country national</li><li>• Remuneration stated in the labour contract shall not be below 80% of the national average in the given branch (and it must be over the legal minimal wage)</li><li>• The employer may not be under a labour inspection procedure or have had a fine imposed within the past year, if it has been paid, or within the past 3 years otherwise</li><li>• No strike may be on-going and no significant lay-offs may have occurred within the past year</li></ul> <p>After being granted a work permit, the third-country national must apply for a long-term visa for the purpose of gainful employment</p>	<ul style="list-style-type: none"><li>• A work permit will be granted if no Hungarian worker or EEA nationals are available for the position in question</li><li>• The Minister of Employment Policy and Labour may specify the maximum number of third-country nationals to be employed in individual occupations in any county, the capital city, and in Hungary as a whole at any one time, as well as the occupations in which no third-country nationals may be employed</li></ul>	<ul style="list-style-type: none"><li>• Two permits are required: a work permit and a long-term visa for the purpose of gainful employment</li></ul>	<ul style="list-style-type: none"><li>• The work permit is restricted to a specific employer</li></ul>	<ul style="list-style-type: none"><li>• Maximum of 3 years (renewable)</li></ul>	None

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Ireland	<p>Either the third-country national or his employer can apply for a work permit, for the issuance of which the following conditions must be fulfilled:</p> <ul style="list-style-type: none"> <li>• At least a € 30 000 salary must be paid</li> <li>• The third-country national must possess the relevant qualifications required for the position</li> <li>• The company must be registered and trading in Ireland</li> <li>• The third-country national must be employed and paid directly by the employer</li> <li>• The labour market test must show evidence of a need for third-country national workers</li> <li>• A work permit cannot be issued where, as a consequence, more than 50% of the employees in a firm would be non-EEA nationals</li> </ul> <p>If a work permit is issued, where necessary, an entry visa must be obtained from the Irish Embassy or Consulate in the third-country nationals place of origin or residence</p>	<ul style="list-style-type: none"> <li>• A vacancy must be advertised in order to ensure that, in the first instance, a national of the EEA or Switzerland, or, in the second instance, a national of Bulgaria or Romania, cannot be found to fill the vacancy</li> </ul>	<ul style="list-style-type: none"> <li>• Two permits are required: an employment permit and a visa or other residency status</li> </ul>	<ul style="list-style-type: none"> <li>• The third-country national is normally expected to be employed by the initial employer for the first 12 months</li> <li>• Thereafter, a work permit may be sought with respect to a different employer</li> </ul>	<ul style="list-style-type: none"> <li>• From 6 months to 2 years (renewable for a period of up to 3 years)</li> </ul>	<p>Green Card Scheme:</p> <ul style="list-style-type: none"> <li>• The job offer must have an annual salary of more than € 60 000, or an annual salary between € 30 000 and € 59 999 in a strategically important occupation</li> <li>• The job offer must be for at least 2 years</li> <li>• The employer must be registered with the Irish company's office and tax authorities, and be operating in Ireland</li> <li>• The third-country national must possess the qualifications required for the position</li> <li>• Green Card permits are issued for 2 years and can be renewed for an indefinite period</li> <li>• After the 2-year period, Green Card holders are eligible for permanent residence</li> </ul>

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Italy	<p>The employer applies for a permit at the Immigration Office and must submit:</p> <ul style="list-style-type: none"> <li>• A proposed "residence contract" with specification of conditions, including salary</li> <li>• Documentation concerning the third-country national's housing</li> <li>• Proof of financial coverage for the return journey</li> <li>• A declaration of the obligation to report every possible variation regarding the terms of employment</li> <li>• Visas will be issued to third-country nationals in their countries of origin; within 8 days of entry the third-country national must then apply for a residence permit</li> </ul>	<p>An annual decree determines the admitted number of third-country nationals</p> <ul style="list-style-type: none"> <li>• Restrictions are applied to nationals of states that do not participate in the fight against irregular migration</li> <li>• Preference is given to third-country nationals of Italian origin</li> <li>• Quotas establish preference for nationals from states with which Italy has signed accords to regulate entry flows and procedures for re-entry</li> </ul>	<ul style="list-style-type: none"> <li>• One permit is required: a residence permit for work (based on a "residence contract")</li> </ul>	<ul style="list-style-type: none"> <li>• The residence permit is based on a "residence contract," hence it is issued for a specific employer and a particular job</li> </ul>	<ul style="list-style-type: none"> <li>• Permits issued on the basis of time-limited contracts of employment are limited to a period of 1 year</li> <li>• For a person with an unlimited contract, the permit is issued for 2 years</li> </ul>	<ul style="list-style-type: none"> <li>• Need for highly qualified workers is taken into consideration when establishing the quota</li> <li>• Quota spaces for the admission of highly skilled workers may be allocated</li> </ul>

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Latvia	<p>The employer shall request a work permit by submitting:</p> <ul style="list-style-type: none"> <li>• An application justifying the need to employ a third-country national</li> <li>• A notification confirming that the employer does not owe any taxes</li> <li>• Proof of the education or qualification of the third-country national</li> <li>• An employment contract</li> <li>• Documentation certifying the employer's legal status</li> </ul> <p>The State Employment Agency can authorize or decline the offer of employment based on the current labour market conditions; if approved, the third-country national can apply for a residence permit based on employment</p> <ul style="list-style-type: none"> <li>• For some employment no work permit is required (mostly short term employment)</li> </ul>	<ul style="list-style-type: none"> <li>• A Labour Market Test is carried out by the State Employment Agency</li> <li>• Authorization will be given if a vacancy has been registered with the Employment Agency for at least a month but has not been filled (although for some professions this authorization is not required)</li> <li>• Knowledge of the Latvian language is required if the intended job involves social aspects or public activities</li> </ul>	<ul style="list-style-type: none"> <li>• Two permits are required: a work permit and a residence permit or visa</li> </ul>	<ul style="list-style-type: none"> <li>• The work permit is restricted to a specific employer and a particular position</li> </ul>	<ul style="list-style-type: none"> <li>• The work permit will be issued for the duration of the visa or the temporary residence permit</li> <li>• Temporary residence permits for the purpose of employment are issued for a maximum of 5 years</li> </ul>	None

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Lithuania	<ul style="list-style-type: none"><li>• A work permit must be obtained before the third-country national enters Lithuania</li><li>• The employer submits the application for a work permit to the territorial Labour Exchange, which submits it to the Lithuanian Labour Exchange together with an opinion on the issuance of a work permit</li><li>• A temporary residence permit may be issued if the third-country national is in possession of a work permit or belongs to a group that is exempt from the obligation to obtain a work permit</li><li>• Specific procedures apply to jobs that are in demand</li></ul>	<ul style="list-style-type: none"><li>• A quota is established annually in accordance with the needs of the labour market</li><li>• A work permit is issued to a third-country national only if there are no candidates in Lithuania that meet the requirements of the employer</li></ul>	<ul style="list-style-type: none"><li>• Two permits are required: a work permit and a temporary residence permit</li></ul>	<ul style="list-style-type: none"><li>• The work permit is restricted to the employment indicated in the permit</li></ul>	<ul style="list-style-type: none"><li>• Maximum of 2 years</li></ul>	None
Luxembourg	<ul style="list-style-type: none"><li>• The employer submits the application for a work permit, along with a declaration of intention, to the Department of Employment, which will ensure that no Luxembourg citizen or foreign resident might fill the position</li><li>• After being granted a work permit, the third-country national worker must obtain a residence permit, which, as a general rule, shall not be granted for a longer period than the work permit</li></ul>	<ul style="list-style-type: none"><li>• At present, 2 separate permits are required, but draft immigration law foresees simplification of this procedure</li></ul>	<ul style="list-style-type: none"><li>• Two permits are required: a work permit and residence permit</li></ul>	<ul style="list-style-type: none"><li>• The work permit is restricted to a specific employer and a particular profession</li></ul>	<ul style="list-style-type: none"><li>• Maximum of 1 year</li></ul>	None

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<b>Malta</b>	<ul style="list-style-type: none"> <li>• Employment licenses are granted only in exceptional circumstances</li> </ul>	<ul style="list-style-type: none"> <li>• Work permits are issued to employers after ascertaining that every effort has been made to engage a suitable Maltese citizen</li> </ul>	<ul style="list-style-type: none"> <li>• A residence permit is automatically granted with the approval of a work permit</li> </ul>	<ul style="list-style-type: none"> <li>• The work permit is issued for a determined period and for a specific purpose</li> </ul>	<ul style="list-style-type: none"> <li>• 1 year (renewable)</li> </ul>	None
<b>Netherlands</b>	<ul style="list-style-type: none"> <li>• The employer is responsible for obtaining a work permit, an application for which must be approved by the Centre for Work and Income</li> <li>• Permits will only be granted if 'priority labour supply' for a specific job is not available and other conditions are met, including terms of employment, working conditions and a possible test regarding housing</li> <li>• Every application for a work permit relates to a specific job and requires an individualized labour market test</li> </ul>	<ul style="list-style-type: none"> <li>• The employer shall report the vacancy to the authorities at least 5 weeks prior to submitting the application for a work permit</li> <li>• The employer must have conducted extensive recruitment activities</li> <li>• Remuneration shall be at least equal to the national minimum wage and employment conditions shall be in compliance with the relevant industry's standards</li> </ul>	<ul style="list-style-type: none"> <li>• Two permits are required: a work permit and a residence permit</li> </ul>	<ul style="list-style-type: none"> <li>• The work permit is restricted to a specific employer and a particular position; in the case of a change of job, a new permit must be applied for</li> <li>• A work permit is obligatory during the first 3 consecutive years of residence; after that period, the migrant worker can obtain free access to the Dutch labour market</li> </ul>	<ul style="list-style-type: none"> <li>• Maximum of 3 years</li> </ul>	<p><u>Knowledge migrant workers' scheme</u></p> <ul style="list-style-type: none"> <li>• Applicable to third-country national workers with an annual income of at least € 46 541, or € 34 130 if under 30 years of age (with exceptions for certain research and educational functions)</li> <li>• The residence permit is valid for 5 years if the employment contract is indefinite; otherwise, it is valid for the duration of the contract</li> <li>• The application is processed within 2 weeks</li> <li>• The employer is not required to be in possession of a work permit with respect to the third-country national</li> <li>• Only companies that have signed a standard statement and fulfil certain conditions can participate in the scheme</li> </ul>



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Poland	<p>The third-country national must obtain a promise to grant a work permit, which is issued by the Voivodship Marshal at the request of the employer, when the following conditions are fulfilled:</p> <ul style="list-style-type: none"> <li>• The employer must prove sufficient income</li> <li>• The employer must also have employed, for a period of at least 1 year prior to the application being submitted, at least 2 persons enjoying a full-time job employed for an indefinite period of time who are not subject to the obligation to hold a work permit</li> <li>• Equal remuneration with Polish employees</li> <li>• The employer must not have breached any employment regulations during the last year</li> <li>• The employer must not conduct any activity that does not comply with the position or the type of work offered to the third-country national</li> </ul> <p>The final decision to grant a visa is made by the Polish Consul in the third country national's place of residence</p>	<ul style="list-style-type: none"> <li>• The employer must notify the Labour Office about a job vacancy, who places an advertisement for the position for 30 days</li> <li>• The procedure regarding the issuance of a work permit includes, in particular, the informing of the starosta (the chief official of a district) competent in the location of the employment with respect to the local labour market situation</li> </ul>	<ul style="list-style-type: none"> <li>• Two permits are required: a work permit and a residence permit or a visa</li> </ul>	<ul style="list-style-type: none"> <li>• The work permit is restricted to a specific employer and a particular position</li> </ul>	<ul style="list-style-type: none"> <li>• Maximum of 2 years</li> </ul>	None

	Conditions and Procedures	Further Regulation	Work Authorization			Provisions for Highly Skilled Workers
			Additional Work Authorization Required?	Limitations of Work Authorization	Duration of Work Authorization	
Portugal	<ul style="list-style-type: none"><li>• A residence permit for dependent professional activity may be issued provided that the third-country national has signed a work contract, possesses the promise of a work contract, or possesses the necessary qualifications, competence and expertise</li><li>• New legislation allows legal entry to third-country nationals for jobs that are not filled by national or communitarian preference if they possess the suitable professional qualifications to fill the existing job opportunities and the employer manifests an interest in employing them</li><li>• The third-country national will then be issued a temporary residence permit on the Portuguese territory</li></ul>	<ul style="list-style-type: none"><li>• The Government annually adopts a general quota that indicates the availability of job offers and that may exclude specific sectors or activities that do not require additional workers</li></ul>	<ul style="list-style-type: none"><li>• One permit is needed: a residence permit for dependent professional activity</li></ul>	<ul style="list-style-type: none"><li>• There are no specific provisions in the law</li></ul>	<ul style="list-style-type: none"><li>• 1 year (renewable for successive periods of 2 years)</li></ul>	<ul style="list-style-type: none"><li>• Under new legislation, scientific researchers and highly qualified professionals may obtain entry and stay in Portugal with a residence permit, and in some cases without a permit if the individual meets the conditions for exemption.</li></ul>

	Conditions and Procedures	Further Regulation	Work Authorization			Provisions for Highly Skilled Workers
			Additional Work Authorization Required?	Limitations of Work Authorization	Duration of Work Authorization	
Romania	<p>Work authorization is issued by the Immigration Office upon the request of the employer, if the following conditions are met:</p> <ul style="list-style-type: none"> <li>• The employer must conduct a legal activity in Romania</li> <li>• The selection of the third-country national must have been legal</li> <li>• The third-country national must have the necessary professional qualifications and experience</li> <li>• The third-country national must possess a minimal knowledge of the Romanian language</li> <li>• There must be an available quota space</li> </ul> <p>A long-stay visa for employment is granted to a third-country national on the basis of a work authorization; the application for such a long-stay visa must include:</p> <ul style="list-style-type: none"> <li>• Proof of financial means during the stay</li> <li>• A criminal record certificate</li> <li>• Proof of medical insurance cover</li> </ul>	<ul style="list-style-type: none"> <li>• An annual quota is approved by the Government for work authorizations</li> <li>• The employer must advertise the vacancy in a large circulation newspaper prior to submitting an application for a work authorization</li> </ul>	<ul style="list-style-type: none"> <li>• Two permits are required: a long stay visa and a work authorization</li> </ul>	<ul style="list-style-type: none"> <li>• The work authorization is not restricted to a specific employer, region or a particular type of work</li> </ul>	1 year	None

	Conditions and Procedures	Further Regulation	Work Authorization			Provisions for Highly Skilled Workers
			Additional Work Authorization Required?	Limitations of Work Authorization	Duration of Work Authorization	
Slovakia	<p>A work permit can be applied for by the third-country national or his employer to the Office of Labour prior to third-country national's arrival, an application must include:</p> <ul style="list-style-type: none"><li>• A copy of the employment contract</li><li>• A statement of the Office of Labour confirming that the position cannot be taken by a Slovak or EU or EEA national</li><li>• A statement explaining the reasons for employing a third-country national</li><li>• Proof of the education of the third-country national</li><li>• A copy of the third-country national criminal record</li></ul> <p>Once granted the work permit, the third-country national worker submits an application for a temporary residence permit for the purpose of employment</p>	<ul style="list-style-type: none"><li>• In principle, the Office of Labour, Social Affairs and Family has to consider the situation in the labour market</li><li>• Work permit to an alien may be granted only if the vacancy may not be filled by an applicant in the Register of unemployed job seekers</li></ul>	<ul style="list-style-type: none"><li>• Two permits are required: a work permit and a residence permit</li></ul>	<ul style="list-style-type: none"><li>• The work permit is restricted to a specific employer and a particular position</li></ul>	<ul style="list-style-type: none"><li>• Maximum of 1 year</li></ul>	None

	Conditions and Procedures	Further Regulation	Work Authorization			Provisions for Highly Skilled Workers
			Additional Work Authorization Required?	Limitations of Work Authorization	Duration of Work Authorization	
Slovenia	<ul style="list-style-type: none"> <li>A work permit is, in principle, to be applied for by the employer; however, there are differences according to the type of the permit (see limitations of work authorization)</li> <li>The third-country national worker may be granted a temporary residence permit for the purpose of employment if he is in possession of a work permit</li> <li>The validity of the residence permit corresponds with that of the work permit, but it cannot be issued for more than 1 year</li> </ul>	<ul style="list-style-type: none"> <li>A quota decree is determined annually, including sub-quotas for employed workers, directed workers, workers in vocational and other training, seasonal workers and workers performing individual services</li> <li>The quota cannot exceed 5% of the working age population</li> <li>The Government may also limit or prohibit employment of third-country nationals in certain areas or third-country nationals coming from certain regions, if it is in the public interest</li> </ul>	<ul style="list-style-type: none"> <li>Two permits are required: a residence permit and a work permit</li> </ul>	<ul style="list-style-type: none"> <li>The work permit is restricted to a specific employer</li> <li>There are also Personal Work Permits and Permits for Work</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 1 year</li> </ul>	None

	Conditions and Procedures	Further Regulation	Work Authorization			Provisions for Highly Skilled Workers
			Additional Work Authorization Required?	Limitations of Work Authorization	Duration of Work Authorization	
Spain	<ul style="list-style-type: none"><li>• Residence and work authorizations are granted at the employer's request by the Ministry of Work and Social Affairs</li><li>• Foreign workers are to be selected in their country of origin on the basis of blanket offers made by the employers, with priority given to nationals from countries with which Spain has signed agreements</li><li>• There must be a guarantee of continuous employment during the authorization period; the employer must have registered the employee within the social security system; and the conditions of the job offer must correspond to the norms within the professional activity and the region</li></ul>	<ul style="list-style-type: none"><li>• A quota is determined annually by the Spanish Government (taking into account proposals submitted by the Autonomous Communities and the most representative trade union and employer's organizations)</li><li>• The number of job offers may be reviewed over the course of the year in order to respond to any changes in the labour market</li></ul>	<ul style="list-style-type: none"><li>• Two permits are required: a temporary residence permit and a work authorization</li></ul>	<ul style="list-style-type: none"><li>• The initial work authorization can be restricted to a specific region or professional sector</li></ul>	<ul style="list-style-type: none"><li>• 1 year (renewable)</li></ul>	None

	Conditions and Procedures	Further Regulation	Work Authorization			Provisions for Highly Skilled Workers
			Additional Work Authorization Required?	Limitations of Work Authorization	Duration of Work Authorization	
Sweden	<ul style="list-style-type: none"> <li>There are no regulations for the granting of work permits in the current legislation</li> <li>The Migration Board consults the National Labour Board, which applies a labour market test; only if this decision is positive may third-country nationals initiate an application procedure</li> <li>A residence permit must be applied for from the third-country national country or origin or residence</li> <li>A written offer of employment in Sweden must be submitted to the Migration Board</li> <li>The employer must guarantee salary, insurance coverage and other terms of employment at least equal to the collective agreement or practice in the particular trade</li> <li>Accommodation must be arranged for the third-country national worker</li> <li>The third-country national must show that he is fully prepared to return after the contract expires</li> </ul>	<ul style="list-style-type: none"> <li>The employer must report an available position to the County Labour Board, along with the intent to hire a third-country national and the opinion of the employee union on the matter</li> <li>On this basis, the County Labour Board makes a decision on the need for the employment of third-country nationals coming from outside Sweden, Scandinavia and the EU Member States.</li> </ul>	<ul style="list-style-type: none"> <li>Two permits are required: a residence permit and a work permit</li> </ul>	<ul style="list-style-type: none"> <li>The work permit is normally restricted to a certain trade or profession</li> </ul>	<ul style="list-style-type: none"> <li>1 year (renewable); unless the work is of a shorter duration</li> <li>If the permit is issued for the purpose of filling a temporary labour shortage, the permit is for up to 18 months</li> </ul>	None

	Conditions and Procedures	Further Regulation	Work Authorization			Provisions for Highly Skilled Workers
			Additional Work Authorization Required?	Limitations of Work Authorization	Duration of Work Authorization	
UK	<p><b>Work Permit Scheme</b></p> <p>The first stage of admission in the "work permit" category is for the employer to obtain a "business and commercial" category work permit from Work Permits UK, the main requirements for such a work permit are:</p> <ul style="list-style-type: none"> <li>• The employer is based in Britain</li> <li>• The third-country national is to work as an employee,</li> <li>• The qualification for the position is at least a university degree, a Higher National Diploma or 3 years' experience of working at National Vocational Qualification Level 3 or above,</li> <li>• The pay and other conditions of employment are at least equal to those for a resident worker doing similar work</li> <li>• There is a genuine vacancy that cannot be met from among the resident labour force</li> </ul> <p>Besides the Work Permit Scheme, there are the International Graduates Scheme and the Sectors-Based Scheme</p>	<ul style="list-style-type: none"> <li>• The employer must demonstrate through a recruitment search that no suitably qualified or experienced resident worker is available</li> <li>• Certain groups are exempted from the labour market test</li> </ul>	<ul style="list-style-type: none"> <li>• Two permits are required: a work permit and immigration permission</li> </ul>	<ul style="list-style-type: none"> <li>• In principle, the work permit is restricted to the type of work specified in the permit</li> <li>• Changes of employer within that profession are permitted</li> </ul>	<ul style="list-style-type: none"> <li>• Maximum of 5 years</li> </ul>	<p><u>Highly Skilled Migrants Programme</u></p> <ul style="list-style-type: none"> <li>• The Programme concerns both employment and self-employment</li> <li>• Applicants must obtain 75 points across 4 areas: education, earnings, UK links and age</li> <li>• Or, alternatively, they must have an MBA from 1 of 35 designated institutions</li> <li>• An English language requirement applies</li> <li>• Applicants must intend to make the UK their primary home</li> <li>• Residence permits are granted for a maximum of 2 years, with a possibility of extension for a further 3 years</li> <li>• Thereafter, in principle, the third-country national is eligible for settlement</li> </ul>



Table F: Self-Employment

This table provides an overview of the conditions regarding the legal immigration of third-country nationals to EU Member States for the purpose of self-employment.<sup>504</sup>

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
Austria	<ul style="list-style-type: none"><li>A third-country national may be granted a residence permit for the purpose of self-employment if:<ul style="list-style-type: none"><li>He has committed contractually to one particular activity that shall exceed a period of 6 months</li><li>A statement has been provided by the competent provincial office of the Labour Market Service affirming his qualifications</li><li>Quota space is available</li></ul></li></ul>	<p>Labour Market Service delivers a statement about, <i>inter alia</i>:</p> <ul style="list-style-type: none"><li>The existence of an Austrian interest in the concerned business relating to labour market policy</li></ul>	<ul style="list-style-type: none"><li>Only a residence permit for self-employment is required; no work permit is issued</li></ul>	<ul style="list-style-type: none"><li>The third-country national is not restricted to the specific business</li></ul>
Belgium	<ul style="list-style-type: none"><li>The system for authorization of self-employed third-country nationals is similar to the one for third-country workers<ul style="list-style-type: none"><li>Instead of a work permit, the third-country national must apply to the federal authorities for a professional card; authorities have discretion in issuing such a card</li><li>Certain categories of third-country nationals benefit from a waiver</li></ul></li></ul>	<p>A professional card is issued if:</p> <ul style="list-style-type: none"><li>The project is interesting for Belgium from an economic perspective because it creates a certain number of new jobs, answers an economic need, promotes innovative activity, etc., or for social, cultural, artistic or athletic reasons</li></ul>	<ul style="list-style-type: none"><li>A professional card and a residence permit are required</li></ul>	<ul style="list-style-type: none"><li>A professional card is only valid for the profession (not the sector) for which it has been requested</li><li>Any change of activity requires a new card</li><li>A professional card is valid for the entire territory of Belgium</li></ul>

<sup>504</sup> Amounts where converted into Euros at the exchange rate of October 17 of 2007.

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
<b>Bulgaria</b>	<p>The permission for self-employment is issued by the National Employment Agency, the application for which must include:</p> <ul style="list-style-type: none"> <li>• Submission of a business plan assessing the economic and social effects granting the permit would have</li> <li>• Information regarding the education and qualifications of the applicant</li> <li>• Proof of sufficient financial resources to conduct the self-employed activity</li> </ul> <p>A residence application for business and investment may be applied for if:</p> <ul style="list-style-type: none"> <li>• The third-country national carries out a commercial activity that creates 10 positions for Bulgarian citizens</li> <li>• The third-country national is a representative of a foreign commercial company registered with the Bulgarian commercial-industrial chamber</li> <li>• Or the third-country national implements an activity under the Law for Encouragement of Investments</li> </ul>	<ul style="list-style-type: none"> <li>• Economic and social effects are proven on the basis of the business plan</li> </ul> <ul style="list-style-type: none"> <li>• The third-country national must invest at least € 351 950 in the country</li> </ul>	<ul style="list-style-type: none"> <li>• Permission for self-employment and a residence permit are required</li> </ul> <ul style="list-style-type: none"> <li>• Only a residence permit for business and investment is required; no special permit is issued</li> </ul>	<ul style="list-style-type: none"> <li>• Depending on the conditions of the labour market or the general economic conditions in the country, temporary limitations on self-employed activities or for self-employed activities in a specific region can be imposed</li> </ul> <ul style="list-style-type: none"> <li>• A third-country national making an investment under "Law for encouragement of investments" has equal rights as local citizens</li> </ul>
<b>Cyprus</b>	<ul style="list-style-type: none"> <li>• An application for residence permit shall state full identity information, the type, extent and duration of the third-country national's professional or artistic activity, the place of business, need for staff, as well as a description of the premise, which must be suitable for this purpose</li> <li>• A business plan shall be provided</li> <li>• A clean criminal record is required</li> <li>• A professional license shall be obtained, if required by law</li> </ul>	<ul style="list-style-type: none"> <li>• A determined level of financial resources are required for the category of self-employment</li> </ul>	<ul style="list-style-type: none"> <li>• Only a residence permit is required</li> </ul>	<p>None</p>

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
Czech Republic	<p>A business license application must be submitted to the local Trades Licensing Office and the applicant must present the following documents:</p> <ul style="list-style-type: none"> <li>• A certification of impeccable character (a copy of his criminal record and an equivalent document issued by his state of origin)</li> <li>• A certificate of the legal operation of the place of business</li> <li>• A certificate of the professional competence of the third-country national (if needed)</li> <li>• If the criteria are met the Trade Licensing Office will issue a statement verifying that the third-country national meets the conditions for operating the business</li> <li>• With this statement, the third-country national can apply for a residence permit for the purpose of business</li> <li>• The actual license will be issued to the third-country national when he is in Czech Republic</li> </ul>	None	<ul style="list-style-type: none"> <li>• A trade license and a residence permit are required</li> </ul>	None
Denmark	<p>A third-country national must have a residence and work permit in order to be self-employed or to operate an independent business, he must submit:</p> <ul style="list-style-type: none"> <li>• An annual statement of accounts and/or a budget signed by an accountant</li> <li>• Documentation of any shared ownership of the business</li> <li>• A business plan, including an anticipated number of workplaces and bookkeeping structure</li> <li>• Information on cooperation with Danish businesses</li> <li>• Personal information, including documentation evidencing his education and work experience, personal capital and language skills</li> <li>• The third-country national's presence and involvement must be vital to the establishment of the business and he must participate actively in its day-to-day operation (not only economic and financial interests)</li> <li>• As a rule, a third-country national is not eligible for a residence and work permit for the purpose of opening a restaurant or retail shop in Denmark</li> </ul>	<ul style="list-style-type: none"> <li>• The Danish Immigration Service will pay particular attention to Danish business interests with regard to the establishment of the business in Denmark</li> </ul>	<ul style="list-style-type: none"> <li>• A residence permit and a work permit are required</li> </ul>	<ul style="list-style-type: none"> <li>• In principle, a work permit may be issued subject to conditions</li> </ul>

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
<b>Estonia</b>	<p>A residence permit for enterprise may be issued to a third-country national who has a holding in a company or who operates as a sole proprietor if:</p> <ul style="list-style-type: none"> <li>• The company or the sole proprietorship is entered into the commercial register of Estonia</li> <li>• The applicant has certain monetary resources for engaging in the enterprise</li> <li>• A business plan is provided, which describes the nature and extent of the intended business activities, as well as setting out the number of staff members required for such activities</li> <li>• The applicant has the requisite qualifications and skills</li> <li>• The applicant is not employed by another person in Estonia</li> <li>• Quota space is available</li> <li>• The application is not refused on the ground that the applicant, their business plan, sources of financing and/or business partners are unreliable</li> </ul>	<ul style="list-style-type: none"> <li>• It will be checked whether, based on the interests of the state, the intended enterprise is necessary for the development of the Estonian economy and whether the third-country national's settlement in Estonia is of essential importance to the enterprise</li> </ul>	<ul style="list-style-type: none"> <li>• Only a residence permit for self-employment is required</li> </ul>	<ul style="list-style-type: none"> <li>• The residence permit indicates the sector of activity and geographical area that it is restricted to</li> </ul>
<b>Finland</b>	<p>Third-country nationals may obtain a residence permit as a self-employed person if:</p> <ul style="list-style-type: none"> <li>• The business is profitable; profitability is assessed by the Employment and Economic Development Centre on the basis of various reports, obtained in advance, such as the business plan or binding preliminary contracts and funding agreements</li> <li>• The third-country national's means of support are guaranteed and he has a regular income from the operations of the business, a salary, personal funding withdrawals, etc., in an amount above the threshold for basic income</li> </ul>	None	<ul style="list-style-type: none"> <li>• Only a residence permit for self-employment is required</li> </ul>	None

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
France	<p>The granting of a Foreign Tradesman Identity Card to a third-country national is subject to the following conditions:</p> <ul style="list-style-type: none"> <li>• The applicant is a third-country national over 18 years of age</li> <li>• The applicant must not have a criminal record or be under a special prohibition pronounced by a court</li> <li>• The applicant must not exercise a profession incompatible with the quality of tradesman and may not have been declared bankrupt</li> <li>• The applicant must justify the economical viability of the activity</li> <li>• The applicant must prove the legality of his stay in France, as well as producing banking documents related to his fiscal situation</li> <li>• The applicant must also fulfil the specific conditions related to the particular profession</li> </ul>	None	<ul style="list-style-type: none"> <li>• A Foreign Tradesman Identity Card and a temporary stay permit are required</li> </ul>	N/A
Germany	<p>A third-country national may be granted a residence permit for the exercise of a self-employed occupation, including free-lancing, if:</p> <ul style="list-style-type: none"> <li>• No superior economic interest exists; the funding must be assured through equity or a credit approval; this criteria is met if the investment is at least € 500 000 and at least 5 new jobs are created</li> <li>• The local authorities responsible for trade have been consulted with respect to the application</li> <li>• In the case of freelancers, the institution responsible for the profession of the freelancer must have assured permission for that purpose</li> </ul>	<ul style="list-style-type: none"> <li>• There must be a superior economic interest or a special regional need with respect to the occupation, or positive effects in the economy must be expected from the occupation</li> </ul>	<ul style="list-style-type: none"> <li>• A residence permit for self-employment is required</li> </ul>	None

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
Greece	<p>For independent economic activities, a third-country national must present the following documentation in order to be issued a residence permit:</p> <ul style="list-style-type: none"> <li>• A business plan</li> <li>• A certificate that the applicant has applied to the competent state insurance entity to be covered for hospitalization and medical treatment</li> </ul> <p>For investment activities, a third-country national shall fulfill the following conditions:</p> <ul style="list-style-type: none"> <li>• His investment will have positive effects on the Greek economy</li> <li>• Submission of a business plan, which details the number of jobs that will be created, the projected cash flow, the time table for the completion of the investment, etc.</li> </ul> <p>Individual entrepreneurs may pursue activities if the possess an <b>entrepreneurs' licence</b>; <b>the licence is granted to applicants if:</b></p> <ul style="list-style-type: none"> <li>• A statement is provided declaring that no disqualifying reasons exist (e.g. the applicant is not forbidden from the nominated activity, tax reasons exist, or other public liabilities)</li> <li>• A certificate is provided from the authorities stating that the applicant has not been sentenced to a term of imprisonment</li> <li>• A document is provided attesting the existence of the qualification required by the relevant laws</li> </ul>	<ul style="list-style-type: none"> <li>• € 60 000 must have been deposited in a Greek bank account</li> <li>• Activities must contribute to the development of the Greek economy</li> </ul> <ul style="list-style-type: none"> <li>• The investment must be worth at least € 300 000</li> <li>• The investment must have positive effects on the Greek economy</li> </ul> <ul style="list-style-type: none"> <li>• The third-country national must declare that the planned activity is useful for the Hungarian economy</li> <li>• No assessment is undertaken by the authorities</li> </ul>	<ul style="list-style-type: none"> <li>• A work permit incorporated into a residence permit is required</li> </ul> <ul style="list-style-type: none"> <li>• A work permit incorporated into a residence permit is required</li> </ul> <ul style="list-style-type: none"> <li>• A long-term visa for the purpose of gainful employment and a temporary residence permit are required</li> </ul>	<p>None</p> <p>None</p> <p>None</p>
Hungary				

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
Ireland	<ul style="list-style-type: none"> <li>The proposed business must result in the transfer of € 300 000 to Ireland</li> <li>If a new project, the proposed business must create employment for at least 2 EEA nationals; alternatively, it must maintain the level of employment in an existing business</li> <li>The proposed business must be viable</li> <li>The business must provide the applicant with sufficient income to maintain and accommodate themselves and any dependents without resorting to social assistance or paid employment</li> </ul>	<ul style="list-style-type: none"> <li>The proposed business must add to the commercial activity and competitiveness of the State</li> </ul>	<ul style="list-style-type: none"> <li>A business permit and a residence permit are required</li> </ul>	None
Italy	<ul style="list-style-type: none"> <li>Performance of such activities is not reserved under the law for Italian or EU citizens</li> <li>Proof of adequate resources for performance of the activities that the third-country national plans to undertake in Italy must be provided</li> <li>The third-country national must meet the prerequisites established under Italian law for the performance of the activity in question, including entry into professional roles and registers</li> <li>A certification from the relevant authorities, dated no more than 3 months earlier, declaring that there are no motives preventing the issue of the authorizations or licenses must be provided</li> <li>Registration in the Commercial Chamber is required</li> <li>Third-country nationals not belonging to the EU must always demonstrate that they possess proper lodging and a certain annual income generated by legitimate sources</li> <li>Quota space must be available</li> </ul>	<ul style="list-style-type: none"> <li>A certification from the relevant authorities, dated no more than 3 months earlier, declaring that there are no motives preventing the issue of the authorization or licenses contemplated for performance of the activity that the third-country national intends to carry out must be provided</li> </ul>	<ul style="list-style-type: none"> <li>Only a residence permit for self-employment is required</li> </ul>	None

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
Latvia	<ul style="list-style-type: none"> <li>The third-country national must prove he possesses sufficient financial means</li> <li>An audited business plan, signed by a sworn auditor, for the anticipated period of operation must be provided</li> <li>The necessary licenses or certificate must be provided, if required</li> <li>A statement from the State Revenue Service that the third-country national has registered as a tax payer must also be provided</li> </ul>	<ul style="list-style-type: none"> <li>No labour market test is applied for self-employed third-country nationals</li> <li>No condition concerning benefit to the national economy is applied</li> </ul>	<ul style="list-style-type: none"> <li>A residence permit for a self-employed person and work permit are required</li> </ul>	None
Lithuania	<p>Residence permit for the purpose of self-employment will be granted to third-country nationals if:</p> <ul style="list-style-type: none"> <li>The applicant registers an enterprise, agency or organization in the Republic of Lithuania as the owner, or co-owner who owns at least 10% of the statutory capital or voting rights, and his stay in the Republic of Lithuania is necessary to achieve the aims of the enterprise, agency or organization and to carry out its other activities</li> <li>The applicant is the head or the authorized representative of the enterprise, agency or organization registered in the Republic of Lithuania, if the principal goal of his residence is to work in the enterprise, agency or organization</li> <li>Or the applicant intends to engage in lawful activities in the Republic of Lithuania, for which no work permit or permit to engage in certain activities is required</li> </ul>	<ul style="list-style-type: none"> <li>No further inquiry into the business or its relevance to Lithuania is undertaken</li> </ul>	<ul style="list-style-type: none"> <li>Only a residence permit for self-employment is required</li> </ul>	None
Luxembourg	<ul style="list-style-type: none"> <li>Current legislation does not include specific provisions regarding self-employment: In administrative practice, the third-country national must fulfill the same professional requirements as citizens of Luxembourg and must be granted an authorization of establishment by the Department of Middle Classes</li> </ul>	<ul style="list-style-type: none"> <li>There are no provisions regarding self-employment in the current legislation</li> </ul>	<ul style="list-style-type: none"> <li>Authorization of the establishment and a residence permit are required</li> </ul>	<ul style="list-style-type: none"> <li>There are no provisions regarding self-employment in the current legislation</li> </ul>



	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
Malta	<ul style="list-style-type: none"> <li>• Employment licenses are granted in exceptional circumstances</li> <li>• A work permit is usually granted to any third-country national who incorporates a limited liability company under the Laws of Malta</li> <li>• The company must have its centre of business in Malta and must export at least 95% of its products</li> </ul>	<ul style="list-style-type: none"> <li>• Companies may employ third-country nationals who have technical or managerial experience that will contribute towards the industrial development of Malta</li> </ul>	<ul style="list-style-type: none"> <li>• A work permit or a trading license is required</li> </ul>	<ul style="list-style-type: none"> <li>• There are no specific provisions in the law</li> </ul>
Netherlands	<ul style="list-style-type: none"> <li>• Policy for the admission of self-employed third-country nationals is evolving and at the moment it is not clear which policy is in place to judge applications for residence permits</li> <li>• In essence, activities envisaged must be innovative and beneficial to the Dutch economy</li> <li>• A business plan must be provided showing that the third-country national will at least be able to earn sufficient financial means to support himself</li> <li>• The Immigration Office has the discretion to decide which activities are deemed innovative</li> <li>• A point system is planned for the future</li> </ul>	<ul style="list-style-type: none"> <li>• The activities must be innovative and beneficial to the Dutch economy</li> </ul>	<ul style="list-style-type: none"> <li>• Only a residence permit for self-employment is required; no additional work permit is required</li> </ul>	<ul style="list-style-type: none"> <li>• The third-country national is supposed to exercise the business for which the permit was granted</li> </ul>
Poland	<ul style="list-style-type: none"> <li>• As a general principle, a permit for self-employment is obtained on the same conditions and under the same procedure as in the case of employment</li> <li>• A third-country national can apply for a residence permit for conducting an economic activity for a specified period of time</li> <li>• Depending on the type of residence permit the third-country national is holding, there may be restrictions regarding the form of commercial companies and partnerships he can undertake</li> </ul>	<ul style="list-style-type: none"> <li>• The third-country national must prove that the activity is beneficial to the national economy and, in particular, contributes to growth in investment, transfer of technologies, introduction of favourable innovations or creation of new jobs</li> </ul>	<ul style="list-style-type: none"> <li>• A work permit similar to that for employment is required</li> </ul>	<ul style="list-style-type: none"> <li>• The work permit is restricted to a specific business</li> </ul>

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
Portugal	<ul style="list-style-type: none"> <li>The third-country national must meet general conditions for entry and stay as well as applying for a permit to carry out an independent profession</li> <li>The third-country national must produce evidence of an established partnership, a service rendering contract, or show plans for the start of a new enterprise</li> <li>In addition, he must prove an adequate investment in the enterprise to be pursued</li> <li>In exceptional circumstances, a self-employed third-country national may enter with another type of permit or without a permit</li> </ul>	<ul style="list-style-type: none"> <li>An application shall be considered with regard primarily to the economic, social, scientific, technologic or cultural relevance of the investment</li> </ul>	<ul style="list-style-type: none"> <li>A residence permit and a permit to carry out an independent profession are required</li> </ul>	None
Romania	<p>A residence permit for individual professional activities requires the submission of:</p> <ul style="list-style-type: none"> <li>Proof of compliance with the conditions related to the respective profession</li> <li>Proof that the applicant carries out a similar profession in the country of origin</li> <li>Proof of medical insurance for the visa validity period</li> <li>A criminal record certificate</li> </ul>	None	<ul style="list-style-type: none"> <li>A long-stay visa for individual professional activities is required</li> </ul>	None
	<p>A residence permit for commercial activities may be granted to third-country nationals who are or will become shareholders or associates in Romanian commercial companies if:</p> <ul style="list-style-type: none"> <li>The applicant has responsibilities in the running and administering of the company</li> <li>The approval of the Romanian Agency for Foreign Investment is given, which will be granted on the submission of a business plan containing data regarding the nature of the activity, the provision of data regarding financial activity during the amortization of the investment and whether 10 to 15 jobs have been created (depending on the type of activity)</li> <li>A criminal record certificate is provided</li> <li>Proof of medical insurance is provided</li> </ul>	<ul style="list-style-type: none"> <li>A certain fixed amount must be invested into the commercial activity, ranging from € 70 000 to € 100 000 depending on the type of activity</li> <li>The activity should be beneficial to the national economy and, in the case of companies, it should consist of significant capital, technology and employment contributions</li> </ul>	<ul style="list-style-type: none"> <li>A long-stay visa for commercial activities is required</li> </ul>	<ul style="list-style-type: none"> <li>Those third-country nationals who have previously obtained an approval for a certain activity may apply for another approval only after they proved that the previous plan could not be realized due to objective reasons</li> </ul>

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
<b>Romania</b>	<p>A residence permit for economic activities may be granted to third-country nationals that are to carry out independent economic activities or economic activities within family associations, under the following conditions:</p> <ul style="list-style-type: none"> <li>• Compliance with the conditions for carrying out the activity provided for by law is verified</li> <li>• Proof of medical insurance is provided</li> <li>• A criminal record certificate is provided</li> </ul>	None	<ul style="list-style-type: none"> <li>• A long-stay visa for economic activities is required</li> </ul>	None
<b>Slovakia</b>	<p>A third-country national must fulfill the following conditions and procedures:</p> <ul style="list-style-type: none"> <li>• Temporary residence permit application shall be submitted from outside of the Slovak Republic's territory</li> <li>• The certificate proving authorization for a temporary residence in Slovakia is a valid residence permit</li> <li>• Document on discontinuation of the procedure for issuing a Trade License from a Trade Licensing Office (document indicating that the missing long term stay permit is the only reason for the interruption of the procedure) has to be submitted</li> <li>• A trade license is issued after presenting a temporary residence permit</li> <li>• Foreign national, may not enter into labour relations or any other similar employment relations</li> <li>• Specific requirements include professional or other competencies according to the Trade License Act</li> </ul>	None	<ul style="list-style-type: none"> <li>• A trade license is required</li> </ul>	<ul style="list-style-type: none"> <li>• The trade license is restricted to a specific business</li> </ul>
<b>Slovenia</b>	<p>A third-country national must fulfil the general conditions for a residence permit</p> <ul style="list-style-type: none"> <li>• Business plans are not specifically examined, third-country nationals must fulfill the conditions set out by the Companies Act and they are subject to insolvency law</li> <li>• Self-employment of third-country nationals is not, in general, limited by annual quotas</li> </ul>	None	<ul style="list-style-type: none"> <li>• A personal work permit is required</li> </ul>	<ul style="list-style-type: none"> <li>• A personal work permit is not restricted</li> </ul>

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
Spain	<p>To be self-employed in Spain, a third-country national must:</p> <ul style="list-style-type: none"><li>• Fulfill all of the requirements that the relevant legislation demands of Spanish nationals for the opening and development of the activity</li><li>• Provide a sufficient level of investment</li><li>• Possess the potential to create employment</li></ul> <p>A residence permit for the purpose of self-employment will be granted if:</p> <ul style="list-style-type: none"><li>• A commercial evaluation is positive (i.e. the business is expected to achieve satisfactory profitability); to undertake the evaluation, a realistic business plan, market forecast, a profit and liquidity budget and a budget may be requested</li><li>• The third-country national submits details of customer references, banking connections, experience in the field concerned and any training or education he may have received</li><li>• The third-country national proves that he has access to the capital needed to establish or purchase a company</li><li>• The third-country national proves that he will be able to support himself and his family for at least 1 year</li><li>• If purchasing a company, a report on the company that is prepared by an accountant authorized in Sweden shall be submitted</li></ul>	None	<ul style="list-style-type: none"><li>• A work permit and a residence permit are granted together by the consular office abroad</li></ul>	<ul style="list-style-type: none"><li>• The work authorization may be limited to a certain territory, sector or activity</li></ul>
Sweden		None	<ul style="list-style-type: none"><li>• Only a residence permit for self-employment is required; a work permit is not necessary</li></ul>	<ul style="list-style-type: none"><li>• Family members are eligible for residence permits if they can show that their upkeep is assured, but they cannot obtain a work permit</li></ul>

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
UK	<p>Residence for the purpose of business covers the establishment of new businesses and participation in existing ones; the core qualifications are:</p> <ul style="list-style-type: none"> <li>• The third-country national must have an interest in the business proportionate to their investment and, in any event, a controlling or equal interest</li> <li>• There must be a genuine need for the third-country national's investment</li> <li>• At least 2 full-time jobs must be created</li> </ul>	<ul style="list-style-type: none"> <li>• A genuine need for the third-country national's investment is a pre-condition</li> <li>• The third-country national must have at least € 287 599 to invest in the business, which must be his own and under his control</li> </ul>	<ul style="list-style-type: none"> <li>• A stay permit for business is required</li> </ul>	<ul style="list-style-type: none"> <li>• The third-country national must not intend to engage in employment, either for the business, or otherwise</li> <li>• Business permissions are given for a specific business: a separate application would have to be made with regard to a new business</li> </ul>
	<p>Residence for the purpose of investment is for third-country nationals who intend to invest in Britain without necessarily being involved in a business and without necessarily creating employment; the core requirements are:</p> <ul style="list-style-type: none"> <li>• The third-country national must control funds available for investment of at least € 1 400 423, which must be his own (if his personal wealth exceeds € 2 800 846, the funds can be borrowed from a financial institution)</li> <li>• The third-country national must intend to make the UK his main home</li> </ul>	<ul style="list-style-type: none"> <li>• The third-country national must intend to invest at least € 1 078 498 in the UK</li> </ul>	<ul style="list-style-type: none"> <li>• A stay permit for investment is required</li> </ul>	<ul style="list-style-type: none"> <li>• Restrictions on the type of investment are designed to channel funds into areas that will stimulate economic growth and productivity in the UK</li> </ul>

	Conditions and Procedures	Conditions related to benefit for the national economy from the business	Specific permit that authorizes a foreign national to become self-employed	Limitations of self-employment authorization (sector, geographical area, etc.)
UK	<p>For a residence permit for the purpose of <u>innovation</u>, approval by Work Permits UK is required:</p> <ul style="list-style-type: none"> <li>• Work Permits UK will verify the entrepreneurial experience of the third-country national; there is a preference for applications in scientific and technological fields</li> <li>• The third-country national must intend to set up a business that will create 2 full-time jobs in the UK</li> <li>• The third-country national must intend to maintain at least a 5% shareholding in the business</li> <li>• The third-country national must be able to finance the business for the first 6 months</li> </ul> <p>A residence permit for the purpose of self-employment as a <u>writer, composer or artist</u> may be granted if:</p> <ul style="list-style-type: none"> <li>• The third-country national has established himself outside the UK as a writer, composer or artist primarily engaged in producing original work which has been published (other than exclusively in newspapers or magazines), performed or exhibited for its literary, musical or artistic merit</li> <li>• The third-country national has maintained himself and any dependents in the previous year without working other than as a writer, composer or artist</li> <li>• The third-country national does not intend to work other than in self-employment as a writer, composer or artist</li> </ul>	<ul style="list-style-type: none"> <li>• An applicant should score on one or more indicators relating to the economic benefit of the investment for the UK in order to qualify, e.g. number, roles, responsibilities and qualification levels of the jobs to be created, proposed training investment and activity, description of the nature and purpose of the new technology, contribution to the development of e-commerce and advancement of digital network technologies and capabilities</li> </ul> <p>None</p>	<ul style="list-style-type: none"> <li>• A stay permit for innovation is required</li> </ul>	<ul style="list-style-type: none"> <li>• There is no limit on the number of businesses a third-country national may establish, providing they comply with all the relevant UK legislation</li> </ul>
			<ul style="list-style-type: none"> <li>• A stay permit for a writer, composer or artist is required</li> </ul>	<ul style="list-style-type: none"> <li>• The third-country national must be able to maintain and accommodate himself and any dependants from his own resources without working except as a writer, composer or artist and without recourse to public funds</li> </ul>

**Table G: Seasonal Employment**

This table presents the conditions and procedures regarding immigration for third-country nationals to EU Member States for the purpose of seasonal employment.

	Conditions and Procedures	Time Limits on Seasonal Employment	Regulations regarding Access to the Labour Market	Bilateral Agreements with Third Countries on Seasonal Work
<b>Austria</b>	<ul style="list-style-type: none"> <li>Special procedure for short-term employment of third-country national workers (seasonal employees) according to the Aliens Employment Act</li> <li>An annual quota for seasonal workers applies</li> <li>Seasonal workers have no possibility of obtaining permanent residence status</li> <li>There are no specific provisions concerning seasonal work</li> <li>General rules and procedures for employment apply</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 12 months within a 14-month period</li> </ul>	<ul style="list-style-type: none"> <li>Specific quota for seasonal workers (included in an annual quota) applies</li> </ul>	None
<b>Belgium</b>	<ul style="list-style-type: none"> <li>There are no specific provisions concerning seasonal work</li> <li>General rules and procedures for employment apply</li> </ul>	<ul style="list-style-type: none"> <li>No specific legal provisions concerning seasonal work</li> </ul>	<ul style="list-style-type: none"> <li>No specific legal provisions concerning seasonal work</li> </ul>	<ul style="list-style-type: none"> <li>No specific legal provisions concerning seasonal work</li> </ul>
<b>Bulgaria</b>	<ul style="list-style-type: none"> <li>A work permit is required for seasonal work</li> <li>In principle, in-country applications to "switch" to another type of residence permit are not permitted</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 6 months within 1 year</li> </ul>	<ul style="list-style-type: none"> <li>General provisions concerning employment permits apply</li> </ul>	None
<b>Cyprus</b>	<ul style="list-style-type: none"> <li>The Aliens and Immigration Law makes reference to seasonal work, but does not specify any terms and conditions for such work</li> </ul>	<ul style="list-style-type: none"> <li>Generally, foreigners may be employed for a period of less than 3 months without a permit</li> </ul>	<ul style="list-style-type: none"> <li>The provisions for temporary employment permits will apply</li> </ul>	None
<b>Czech Republic</b>	<ul style="list-style-type: none"> <li>There are no specific provisions concerning seasonal work</li> <li>General rules and procedures for employment apply (thus a work permit and a residence permit are required)</li> </ul>	<ul style="list-style-type: none"> <li>The work permit has a maximum validity 1 year</li> </ul>	<ul style="list-style-type: none"> <li>Labour market test, as in general procedure</li> </ul>	<ul style="list-style-type: none"> <li>Bilateral agreements have been concluded with Mongolia, Russia, Ukraine and Vietnam</li> </ul>
<b>Denmark</b>	<ul style="list-style-type: none"> <li>There are no specific provisions concerning seasonal work</li> <li>General rules and procedures for employment apply</li> </ul>	<ul style="list-style-type: none"> <li>General employment rules apply</li> </ul>	<ul style="list-style-type: none"> <li>General employment rules apply</li> </ul>	None
<b>Estonia</b>	<ul style="list-style-type: none"> <li>Seasonal or short-term employees can be admitted under short-term and long-term visa regulations</li> <li>To pursue seasonal work under a long-term visa, previous registration with the Citizenship and Migration Board is required before the employment commences</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 6 months within 1 year</li> </ul>	<ul style="list-style-type: none"> <li>General immigration quota applies</li> </ul>	None

	Conditions and Procedures	Time Limits on Seasonal Employment	Regulations regarding Access to the Labour Market	Bilateral Agreements with Third Countries on Seasonal Work
<b>Finland</b>	<ul style="list-style-type: none"> <li>Third-country nationals who arrive in the country in order to pick or harvest berries, fruit, specialty crops, root vegetables or other vegetables, or to work on a fur farm, for a maximum of 3 months are exempt from the residence permit requirement</li> <li>Specific temporary stay permits are required for seasonal workers</li> <li>Work is permitted for a period not exceeding 6 months within a year</li> <li>General rules apply for "switching" of immigration category</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 12 weeks</li> </ul>	None	None
<b>France</b>	<ul style="list-style-type: none"> <li>Specific temporary stay permits are required for seasonal workers</li> <li>Work is permitted for a period not exceeding 6 months within a year</li> <li>General rules apply for "switching" of immigration category</li> </ul>	<ul style="list-style-type: none"> <li>Permit is issued for a maximum of 6 months within 1 year (delivered for 3 years maximum and is renewable)</li> </ul>	<ul style="list-style-type: none"> <li>Procedural requirements are similar to the general procedures for employment</li> <li>Labour market test system applies</li> </ul>	None
<b>Germany</b>	Seasonal workers must be employed: <ul style="list-style-type: none"> <li>For at least 30 hours a week</li> <li>With a daily average labour time of at least 6 hours</li> <li>For not more than 4 months in the calendar year</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 4 months within 1 year</li> </ul>	<ul style="list-style-type: none"> <li>A work permit is required</li> </ul>	<ul style="list-style-type: none"> <li>For seasonal work in the service and construction industries, bilateral agreements are in place with Bosnia and Herzegovina, Croatia, Macedonia, Serbia and Turkey</li> </ul>
<b>Greece</b>	<ul style="list-style-type: none"> <li>Seasonal work is for a maximum period of 6 months in any calendar year</li> <li>Seasonal work must be in an employment sector that is characterized by its seasonal nature</li> <li>Seasonal workers must have a contract with a specific employer</li> <li>The employer must have secured the permission of the Secretary General of the competent Region</li> <li>The employer's application must be accompanied by a security deposit (equal to an unskilled labourer's monthly salary)</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 6 months within 1 year</li> <li>It is not possible to renew a residence permit for a seasonal work during the same calendar year of the expiration of the first permit</li> <li>The same conditions apply for renewal as for first permit</li> </ul>	<ul style="list-style-type: none"> <li>Permission of the Secretary General of the competent Region of the employer is only obtained if quota space is available for the specific employment</li> </ul>	<ul style="list-style-type: none"> <li>Bilateral agreements have been concluded with various third countries, e.g. Albania and Egypt</li> <li>Agreements include provisions concerning the entry, stay and employment of seasonal workers</li> </ul>
<b>Hungary</b>	<ul style="list-style-type: none"> <li>Seasonal workers must meet the visa and labour authorization requirements</li> <li>General procedures for employment apply</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 6 months</li> </ul>	<ul style="list-style-type: none"> <li>Labour authorization requirements apply</li> </ul>	<ul style="list-style-type: none"> <li>Bilateral agreements have been concluded with Canada for the seasonal employment of youngsters</li> </ul>
<b>Ireland</b>	<ul style="list-style-type: none"> <li>There are no specific provisions concerning seasonal work</li> <li>General rules and procedures for employment apply</li> </ul>	<ul style="list-style-type: none"> <li>General employment rules apply</li> </ul>	<ul style="list-style-type: none"> <li>General work permit scheme applies</li> </ul>	None



	Conditions and Procedures	Time Limits on Seasonal Employment	Regulations regarding Access to the Labour Market	Bilateral Agreements with Third Countries on Seasonal Work
<b>Italy</b>	<p>Seasonal workers have facilitated procedures:</p> <ul style="list-style-type: none"> <li>• Employers must apply to the local immigration office, which issues the authorization in accordance with any right of priority</li> <li>• Seasonal workers who have respected the conditions indicated by their residence permits and who have returned to their countries of origin upon expiration of the permit, are given priority</li> <li>• There is a possibility to convert the residence permit for seasonal employment into a residence permit for salaried employment for a set or indeterminate period, if conditions for salaried employment are met</li> </ul>	<ul style="list-style-type: none"> <li>• Corresponding to duration of work contract, with a maximum of 9 months</li> <li>• Possibility of multiple year permits (with a maximum of 3 years) for seasonal workers under certain conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Quota space must be available (although only agricultural work and activities in the tourism sector are subject to quotas)</li> </ul>	<ul style="list-style-type: none"> <li>• In bilateral agreements designed to regulate entry flows and procedures for re-entry, special provisions can be outlined governing the flow of seasonal labourers</li> </ul>
<b>Latvia</b>	<p>A quota is set for agricultural work and activities in the tourism sector</p> <ul style="list-style-type: none"> <li>• There are no specific provisions concerning seasonal work</li> <li>• General rules and procedures for employment apply</li> </ul>	<ul style="list-style-type: none"> <li>• General employment rules apply</li> </ul>	<ul style="list-style-type: none"> <li>• General employment rules apply</li> </ul>	<p>None</p>
<b>Lithuania</b>	<ul style="list-style-type: none"> <li>• There are no specific provisions concerning seasonal work</li> <li>• General rules and procedures for employment apply</li> </ul>	<ul style="list-style-type: none"> <li>• Work permit can be issued for 6 months per year under the general employment requirements</li> </ul>	<ul style="list-style-type: none"> <li>• General work permit scheme applies</li> </ul>	<p>None</p>
<b>Luxembourg</b>	<ul style="list-style-type: none"> <li>• There are no specific provisions concerning seasonal work</li> <li>• The general rules and procedures for employment apply (i.e. a work permit scheme)</li> <li>• Employment of seasonal workers relies on administrative practices, notably on simplified procedures of employment that are without a legal basis</li> </ul>	<ul style="list-style-type: none"> <li>• No specific legal provisions concerning seasonal work</li> </ul>	<ul style="list-style-type: none"> <li>• No specific legal provisions concerning seasonal work</li> </ul>	<ul style="list-style-type: none"> <li>• No specific legal provisions concerning seasonal work</li> </ul>
<b>Malta</b>	<ul style="list-style-type: none"> <li>• There are no specific provisions concerning seasonal work</li> <li>• The general rules and procedures for employment apply</li> </ul>	<ul style="list-style-type: none"> <li>• No specific legal provisions concerning seasonal work</li> </ul>	<ul style="list-style-type: none"> <li>• No specific legal provisions concerning seasonal work</li> </ul>	<ul style="list-style-type: none"> <li>• No specific legal provisions concerning seasonal work</li> </ul>

	Conditions and Procedures	Time Limits on Seasonal Employment	Regulations regarding Access to the Labour Market	Bilateral Agreements with Third Countries on Seasonal Work
<b>Netherlands</b>	<ul style="list-style-type: none"> <li>A residence permit is only required if the seasonal worker stays for more than 3 months</li> <li>A work permit is required</li> <li>In principle, it is possible to "switch" residence status in-country; however, if as a result, the stay would extend to longer than 3 months, the third-country national would need an entry clearance visa first, which must be applied for from the country of origin</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 24 consecutive weeks, with no possibility of extension</li> <li>A new work permit for seasonal work may only be granted if the third-country national did not hold a valid residence permit that allowed him to work during the previous 28 weeks</li> </ul>	<ul style="list-style-type: none"> <li>A labour market test by labour authorities is required</li> </ul>	None
<b>Poland</b>	<ul style="list-style-type: none"> <li>Seasonal workers may be granted a visa for the period corresponding to the period indicated on the undertaking to issue a work permit</li> <li>Specific conditions apply to citizens of neighbouring countries (Germany, Russia, Belarus and Ukraine); these nationals do not require work permits, provided that for a period not exceeding 3 months within 6 consecutive months they perform work connected with agriculture, horticulture (with the exception of vegetable growing), farming or the breeding of animals</li> <li>In-country applications to "switch" to another type of residence permit are not permitted</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 6 months within a 12-month period</li> </ul>	<ul style="list-style-type: none"> <li>In principle, a work permit and hence a labour market test is required</li> </ul>	<ul style="list-style-type: none"> <li>None, but preferential treatment is given to workers from neighbouring countries (see conditions column)</li> </ul>
<b>Portugal</b>	<p>Under new legislation, seasonal workers may be employed under a temporary stay visa, if:</p> <ul style="list-style-type: none"> <li>The third-country national has a labour contract</li> <li>A labour market test is passed</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 6 months</li> </ul>	<ul style="list-style-type: none"> <li>A work permit is required</li> <li>The Employment and Vocational training Institute publishes the vacancies which have not been taken by European Union nationals, EEA nationals or third-country nationals who reside legally in Portugal</li> </ul>	None
<b>Romania</b>	<ul style="list-style-type: none"> <li>Seasonal work has to be for a determined period, with a maximum of 6 months within a 12-month period</li> <li>An individual labour contract must be entered into</li> <li>The work has to be in a seasonal sector</li> <li>A work authorization is required, which will be issued by the Romanian Immigration Office on the request of the employer</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 6 months within a 12-month period</li> <li>Work authorization cannot be prolonged in order to pursue another type of work</li> </ul>	<ul style="list-style-type: none"> <li>Employers must request a certificate from the Working Force Occupation Agency on the available working force in their database</li> </ul>	None

	Conditions and Procedures	Time Limits on Seasonal Employment	Regulations regarding Access to the Labour Market	Bilateral Agreements with Third Countries on Seasonal Work
<b>Slovakia</b>	<ul style="list-style-type: none"> <li>A temporary residence permit for the purpose of seasonal employment may be granted to a third-country national, if:               <ul style="list-style-type: none"> <li>The third-country national holds a work permit</li> <li>The general conditions and procedures for employment are met</li> <li>In-country applications to "switch" to another type of residence permit are not permitted</li> </ul> </li> <li>Annual quotas determine the number of permits issued for seasonal work</li> <li>An application for a temporary residence permit for the purpose of seasonal work may be filed by the third-country national or the employer</li> <li>A "permit for work" is issued for a limited period of time for seasonal workers</li> <li>In-country applications to "switch" to another type of residence permit are only permitted if it is a change to the category of temporary residence for employment</li> </ul>	<ul style="list-style-type: none"> <li>Maximum of 180 days per calendar year</li> <li>The permit can be renewed up to the maximum 180 days if it was granted for less than this and the completion of the work requires further stay</li> </ul> <p>Maximum 6 months, although exceptionally for 9 months if the type of work requires it</p>	<ul style="list-style-type: none"> <li>A labour market test is required, as for general employment</li> </ul>	None
<b>Slovenia</b>	<ul style="list-style-type: none"> <li>Annual quotas determine the number of permits issued for seasonal work</li> <li>An application for a temporary residence permit for the purpose of seasonal work may be filed by the third-country national or the employer</li> <li>A "permit for work" is issued for a limited period of time for seasonal workers</li> <li>In-country applications to "switch" to another type of residence permit are only permitted if it is a change to the category of temporary residence for employment</li> </ul>	<p>Maximum 6 months, although exceptionally for 9 months if the type of work requires it</p>	<ul style="list-style-type: none"> <li>Quota space must be available</li> </ul>	None
<b>Spain</b>	<ul style="list-style-type: none"> <li>Quotas set by the government (in coordination with stakeholders) determine the number of permits issued for seasonal work and harvesting</li> <li>In designing the quota, preference is given to workers from countries with which Spain has signed bilateral agreements on the regulation of migratory flows</li> </ul>	<ul style="list-style-type: none"> <li>Permit for the duration of the work contract, but for a maximum of 9 months within a 12-month period</li> </ul>	<ul style="list-style-type: none"> <li>Quota space must be available</li> <li>No labour market test is applied</li> </ul>	None
<b>Sweden</b>	<ul style="list-style-type: none"> <li>Swedish authorities may grant work permits for seasonal work in relation to work in forestry, gardening or in other related sectors only</li> <li>Applications for a work permit for seasonal work are submitted to the Migration Board</li> <li>The County Labour Board in the county where the work will be performed makes the decision to grant a permit (taking into account quota availability)</li> </ul>	<ul style="list-style-type: none"> <li>Only a short stay permit (for up to 1 year) is possible</li> </ul>	<ul style="list-style-type: none"> <li>Quota space must be available (determined annually by the County Labour Board, based on an assessment of the need for labour in the coming season)</li> </ul>	None

	Conditions and Procedures	Time Limits on Seasonal Employment	Regulations regarding Access to the Labour Market	Bilateral Agreements with Third Countries on Seasonal Work
UK	<p>Among the temporary work categories, the Seasonal Agricultural Workers Scheme (SAWS) provides that:</p> <ul style="list-style-type: none"><li>• Individuals must intend to leave the UK after their work period is over (main condition for all temporary work categories)</li><li>• Designated agricultural operators can recruit seasonal workers against a quota</li><li>• For this purpose, the operators issue work cards to the workers they recruit</li><li>• Places should be reserved for nationals of Bulgaria and Romania from 1 January 2008</li></ul> <p>In-country applications to "switch" to another type of residence permit are not permitted</p>	<ul style="list-style-type: none"><li>• Maximum of 6 months</li></ul>	<ul style="list-style-type: none"><li>• Quota space must be available for SAWS</li></ul>	None

Table H: Studies

This table presents the conditions established at national level for immigration of third-country nationals for the purpose of studies.<sup>505</sup>

	Conditions	Favourable Admission Policy	Employment Regulations	Change of Immigration Category	Duration of Permit	Length of Procedure
Austria	<ul style="list-style-type: none"><li>• Registration at a university</li><li>• General conditions apply (sufficient financial means, etc.)</li></ul>	None	<ul style="list-style-type: none"><li>• Student are permitted to work if they have obtained a work permit</li><li>• Permits are subject to a quota</li></ul>	<p>It is possible to change immigration category :</p> <ul style="list-style-type: none"><li>• By complying with the conditions of the new category</li><li>• Within the established quotas</li></ul>	<ul style="list-style-type: none"><li>• 1 year maximum</li></ul>	6 months
Belgium	<ul style="list-style-type: none"><li>• Registration at an educational establishment</li><li>• Sufficient financial means (€ 524)</li><li>• Health insurance</li><li>• Certificate proving the absence of sentences for infractions (if the person is older than 21)</li></ul>	None	<ul style="list-style-type: none"><li>• Students are permitted to work up to 20 hours per week</li></ul>	No information	1 year	3 months
Bulgaria	<ul style="list-style-type: none"><li>• Registration at an educational establishment in a full time programme for the respective academic year</li><li>• Documents confirming sufficient financial means for the period of stay in the country</li></ul>	<ul style="list-style-type: none"><li>• Third-country nationals of Bulgarian origin are not subject to the requirement of sufficient financial means</li></ul>	<p>Students are permitted to work:</p> <ul style="list-style-type: none"><li>• If they have been registered (instead of a obtaining a work permit)</li><li>• Up to 20 hours per week during the academic year, or up to 3 months during vacation per calendar year</li></ul>	<ul style="list-style-type: none"><li>• As a general principle, it is not possible to change immigration category</li></ul>	1 year	<ul style="list-style-type: none"><li>• Decision must be made within 7 working days from the submission of the application</li></ul>

<sup>505</sup> Amounts were converted into Euro at the exchange rate of 1 January 2007.

	Conditions	Favourable Admission Policy	Employment Regulations	Change of Immigration Category	Duration of Permit	Length of Procedure
<b>Cyprus</b>	<ul style="list-style-type: none"> <li>• Admission to an establishment of higher education or a public or private institute or organization</li> <li>• Valid travel documents and visa where necessary</li> <li>• Sufficient financial means to cover fees for the first year of studies, as well as living expenses for the first 3 months of stay in the Republic</li> <li>• Clean criminal record</li> <li>• Medical certificate that he is not suffering from an infectious disease, as well as a chest x-ray</li> <li>• Proof of health insurance</li> <li>• Proof of accommodation</li> </ul>	None	<ul style="list-style-type: none"> <li>• Students are not permitted to work</li> </ul>	<ul style="list-style-type: none"> <li>• It is possible to change immigration category:               <ul style="list-style-type: none"> <li>• By filing the relevant application</li> <li>• By complying with the conditions of the new category</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• 1 year, renewable</li> </ul>	<ul style="list-style-type: none"> <li>• No provisions in the current legislation</li> </ul>
<b>Czech Republic</b>	<ul style="list-style-type: none"> <li>• Admission to a university or other educational establishment</li> <li>• Proof of sufficient financial means or a declaration by the third-country national's host organization</li> <li>• Proof of accommodation</li> <li>• Criminal register extract</li> <li>• Parental consent if the third-country national is a minor</li> <li>• Travel medical insurance certificate</li> <li>• Upon request: submission of a medical report</li> </ul>	None	<ul style="list-style-type: none"> <li>• Students are permitted to work if they have obtained a work permit</li> </ul>	<ul style="list-style-type: none"> <li>• It is possible to change immigration category without leaving the country</li> </ul>	<ul style="list-style-type: none"> <li>• 1 year, renewable</li> </ul>	60 days
<b>Denmark</b>	<ul style="list-style-type: none"> <li>• Proof of admission to a post-secondary educational establishment, public school attendance, youth education programme or folk high school</li> <li>• Sufficient financial means</li> <li>• Knowledge of Danish, Swedish, Norwegian, English or German language</li> <li>• Parental consent if the third-country national is under 18 years of age</li> </ul>	None	<ul style="list-style-type: none"> <li>• Students are permitted to work :               <ul style="list-style-type: none"> <li>• If they have obtained a work permit</li> <li>• Up to 15 hours per week (or full time during June, July and August)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• It is possible to change immigration category (e.g. from study to work or from self-employment to employment) by filing the relevant application for the new permits</li> </ul>	<ul style="list-style-type: none"> <li>• Temporary permit is granted for the duration of the study programme</li> <li>• Renewable for up to 12 additional months, and for up to 18 additional months for study at a folk high school</li> </ul>	<ul style="list-style-type: none"> <li>• 24 to 64 days</li> </ul>

	Conditions	Favourable Admission Policy	Employment Regulations	Change of Immigration Category	Duration of Permit	Length of Procedure
<b>Estonia</b>	<ul style="list-style-type: none"> <li>• Payment of a state legal income fee (€ 115 per month)</li> <li>• Health insurance</li> <li>• Proof of accommodation</li> <li>• Minimum language requirement in draft law</li> </ul>	None	<p>Students are permitted to work :</p> <ul style="list-style-type: none"> <li>• If they have obtained a work permit</li> <li>• Outside of study time</li> <li>• If it does not intervene with their studies</li> </ul>	No information	<ul style="list-style-type: none"> <li>• 1 year, renewable</li> </ul>	3 months
<b>Finland</b>	<ul style="list-style-type: none"> <li>• Admission to a university</li> <li>• Sufficient financial means</li> <li>• Health insurance</li> </ul>	None	<ul style="list-style-type: none"> <li>• Students are permitted to work up to 20 hrs a week or full-time during public holidays</li> </ul>	<ul style="list-style-type: none"> <li>• It is possible to change immigration category</li> </ul>	<ul style="list-style-type: none"> <li>• 1 year, renewable</li> <li>• In exceptional cases, permits are granted for two years (e.g. doctoral students)</li> </ul>	<ul style="list-style-type: none"> <li>• Approximately 23 days</li> </ul>
<b>France</b>	<ul style="list-style-type: none"> <li>• Registration at an educational establishment</li> <li>• Long-term visa</li> <li>• Sufficient financial means for living</li> </ul>	<ul style="list-style-type: none"> <li>• In order to recruit the best candidates, the 24 July 2006 Law on Immigration creates a more favourable regime applicable to third-country nationals selected in their country of origin</li> </ul>	<p>Students are permitted to work :</p> <ul style="list-style-type: none"> <li>• On a part-time basis</li> <li>• Up to 60% of the maximum full-time hours</li> </ul>	<ul style="list-style-type: none"> <li>• It is possible the change immigration category by complying with the conditions of the new category</li> <li>• A residence permit is granted after graduation for the purpose of job searching</li> </ul>	<ul style="list-style-type: none"> <li>• 1 year, renewable</li> </ul>	<ul style="list-style-type: none"> <li>• If there is no notification by the administration 4 months after the application has been filed, it has been rejected</li> </ul>
<b>Germany</b>	<ul style="list-style-type: none"> <li>• Registration at an educational establishment (conditional admission is sufficient)</li> <li>• Proof of knowledge of the language (shall not be required where it has already been taken into account in the decision on admission)</li> <li>• Health insurance</li> <li>• Sufficient financial means to cover living and study expenses</li> </ul>	No information	<ul style="list-style-type: none"> <li>• Students are permitted to work up to 90 full days or 180 half days</li> </ul>	<ul style="list-style-type: none"> <li>• It is possible to change immigration category by complying with the conditions of the new category</li> <li>• A residence permit is granted after graduation for the purpose of job searching</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum 1 year, maximum 2 years</li> <li>• May be extended if the purpose of the permit has not yet been achieved and is achievable within a reasonable period of time</li> </ul>	3 months

	Conditions	Favourable Admission Policy	Employment Regulations	Change of Immigration Category	Duration of Permit	Length of Procedure
<b>Greece</b>	<ul style="list-style-type: none"> <li>Registration at educational establishment</li> <li>Sufficient financial means to cover living and study expenses (€ 500)</li> <li>Health insurance</li> <li>Payment of the requisite fees to the educational establishment</li> </ul>	None	<ul style="list-style-type: none"> <li>Students are permitted to work:</li> <li>If they have obtained a work permit</li> <li>On a part-time basis</li> </ul>	<ul style="list-style-type: none"> <li>It is not possible to change immigration category</li> </ul>	<ul style="list-style-type: none"> <li>1 year, renewable for 1 year</li> <li>Maximum length of the permit is the duration of the study programme increased by half</li> </ul>	<ul style="list-style-type: none"> <li>No specific rules</li> </ul>
<b>Hungary</b>	<ul style="list-style-type: none"> <li>Admission to an establishment of secondary or higher education accredited in the Republic of Hungary</li> </ul>	<ul style="list-style-type: none"> <li>Special visa and residence permit for the purpose of education related to Hungarian culture on the basis of bilateral treaties</li> </ul>	<ul style="list-style-type: none"> <li>Students are permitted to work up to 24 hours per week during a school period and for a maximum of 90 days per year during a non-schooling period</li> </ul>	<ul style="list-style-type: none"> <li>It is possible to change immigration category by complying with the conditions of the new category</li> </ul>	<ul style="list-style-type: none"> <li>Maximum 2 years, but may be extended by 1 to 2 additional years at a time</li> </ul>	<ul style="list-style-type: none"> <li>General administrative procedure takes 30 days for a residence permit</li> </ul>
<b>Ireland</b>	<ul style="list-style-type: none"> <li>Enrolment in a privately funded course involving at least 15 hours of class per week</li> <li>Payment of the requisite fees to the educational establishment</li> <li>Sufficient academic ability for the particular course</li> <li>Sufficient proficiency in English language (except for English courses)</li> <li>Sufficient financial means</li> <li>Health insurance</li> <li>Adequate explanation for any gaps in educational history</li> <li>An intention to return to the country of permanent residence following completion of the studies in Ireland</li> </ul>	None	<ul style="list-style-type: none"> <li>Students are permitted to work up to 20 hours per week or full time during public holidays</li> </ul>	<ul style="list-style-type: none"> <li>In principle, it is possible to change immigration category</li> <li>A residence permit is granted after graduation for the purpose of job searching</li> </ul>	<ul style="list-style-type: none"> <li>Not usually granted for a period of more than a total of 18 months, unless the student is attending a full time course of at least 1 years duration</li> </ul>	<ul style="list-style-type: none"> <li>No specific rules</li> <li>Average is 2 months</li> </ul>
<b>Italy</b>	<ul style="list-style-type: none"> <li>The third-country national must be at least 18 years old (or 14 years old for secondary education)</li> <li>Study must be on a full-time basis and for a determined period</li> <li>The education programme must be coherent with the education received in the country of origin</li> </ul>	None	<ul style="list-style-type: none"> <li>Students are permitted to work up to 20 hours per week</li> </ul>	<ul style="list-style-type: none"> <li>It is possible to convert study permits into employment permits within the established quotas</li> </ul>	<ul style="list-style-type: none"> <li>1 year, renewable</li> </ul>	<ul style="list-style-type: none"> <li>No provisions in the current legislation</li> </ul>



	Conditions	Favourable Admission Policy	Employment Regulations	Change of Immigration Category	Duration of Permit	Length of Procedure
<b>Latvia</b>	<ul style="list-style-type: none"> <li>• No permanent residence permit required for admission of third-country nationals to universities</li> <li>• Documents of secondary education must meet Latvian standards and must have been verified through the procedure of academic recognition of diplomas</li> <li>• Knowledge corresponding to the entry requirements of the respective educational establishment</li> <li>• Knowledge of the language of instruction</li> <li>• Payment of study fees</li> </ul>	None	<p>Students are permitted to work:</p> <ul style="list-style-type: none"> <li>• If they have obtained a work permit</li> <li>• Up to 20 hours per week</li> </ul>	<ul style="list-style-type: none"> <li>• It is possible to change immigration category by complying with the conditions of the new category</li> </ul>	<ul style="list-style-type: none"> <li>• Depends on the length of studies, with a maximum of 2 years</li> </ul>	<ul style="list-style-type: none"> <li>• 3 months maximum</li> </ul>
<b>Lithuania</b>	<ul style="list-style-type: none"> <li>• Enrolment in an educational establishment or internship programme</li> <li>• Fulfilment of general conditions</li> </ul>	None	<p>Students are permitted to work:</p> <ul style="list-style-type: none"> <li>• If they have obtained a work permit</li> <li>• After the first year of study</li> <li>• Up to 20 hours per week</li> </ul>	<ul style="list-style-type: none"> <li>• It is possible to change immigration category by complying with the conditions of the new category</li> </ul>	<ul style="list-style-type: none"> <li>• 1 year, renewable</li> </ul>	<ul style="list-style-type: none"> <li>• 6 months</li> </ul>
<b>Luxembourg</b>	<p>Current legislation does not envisage the status of foreign students; in practice, a residence permit for the purpose of studies is granted by the Ministry of Foreign Affairs when following conditions are met:</p> <ul style="list-style-type: none"> <li>• Proof of admission in an educational establishment</li> <li>• Sufficient financial means</li> <li>• Health insurance</li> <li>• Bank deposit of €1200</li> <li>• Accommodation in Luxembourg</li> </ul>	<ul style="list-style-type: none"> <li>• No provisions in current legislation</li> </ul>	<ul style="list-style-type: none"> <li>• No provisions in current legislation</li> </ul>	<ul style="list-style-type: none"> <li>• No provisions in current legislation</li> </ul>	<ul style="list-style-type: none"> <li>• No provisions in current legislation</li> </ul>	<ul style="list-style-type: none"> <li>• No provisions in the current legislation</li> </ul>

	Conditions	Favourable Admission Policy	Employment Regulations	Change of Immigration Category	Duration of Permit	Length of Procedure
<b>Malta</b>	<ul style="list-style-type: none"> <li>Confirmation of enrolment at an educational establishment</li> <li>Sufficient financial means per year (i.e. 1 year's tuition plus € 6523, calculated to cover 1 academic year's accommodation and living expenses)</li> <li>Return ticket</li> <li>Possession of qualifications required for the respective studies</li> </ul>	No information	No information	<ul style="list-style-type: none"> <li>It is not possible to change immigration category whilst remaining in Malta</li> </ul>	1 year	No information
<b>Netherlands</b>	<ul style="list-style-type: none"> <li>Registration at or admission to an educational establishment (although this can be provisional)</li> <li>Health insurance</li> <li>Sufficient financial means</li> <li>Declaration of knowledge signed by the third-country national that admission is temporary in nature</li> </ul>	None	<p>Students are permitted to work:</p> <ul style="list-style-type: none"> <li>If they have obtained a work permit</li> <li>Up to 10 hours per week or full-time during summer</li> </ul>	<ul style="list-style-type: none"> <li>It is possible to change immigration category</li> <li>A residence permit is granted after graduation for the purpose of job searching</li> </ul>	1 year	6 months
<b>Poland</b>	<ul style="list-style-type: none"> <li>Proof of admission to an educational establishment</li> <li>A medical certificate attesting that there are no health reasons preventing the third-country national from starting his studies in a chosen faculty and in a chosen education programme</li> <li>Medical or accident insurance</li> <li>Sufficient financial means to cover living and study expenses</li> <li>Return travel costs</li> </ul>	None	<ul style="list-style-type: none"> <li>Students are permitted to work full time and without obtaining a work permit during holidays</li> </ul>	No information	1 year	2 months
<b>Portugal</b>	<ul style="list-style-type: none"> <li>To be of the minimum age and not exceeding the maximum age for that purpose, as established in the joint administrative rules by the Ministers of Internal Affairs and of Education</li> <li>General conditions apply</li> </ul>	None	<ul style="list-style-type: none"> <li>Students are permitted to work</li> </ul>	No information	<ul style="list-style-type: none"> <li>1 year, renewable</li> </ul>	<ul style="list-style-type: none"> <li>3 months, extendable for 3 months</li> <li>An application not decided upon 6 months after its delivery is considered tacitly granted</li> </ul>

	Conditions	Favourable Admission Policy	Employment Regulations	Change of Immigration Category	Duration of Permit	Length of Procedure
<b>Romania</b>	<ul style="list-style-type: none"> <li>Letter of acceptance for studies from the Ministry of Education and Research</li> <li>Proof of payment of the tuition fees</li> <li>Proof of financial means equal to the minimum monthly wage for the entire period of the visa</li> <li>Criminal record certificate</li> <li>Medical insurance</li> </ul>	None	<ul style="list-style-type: none"> <li>Students are permitted to work part-time and without obtaining a work permit</li> </ul>	<ul style="list-style-type: none"> <li>It is not possible to change immigration category</li> <li>It is prohibited to obtain a residence permit after the studies are completed</li> </ul>	<ul style="list-style-type: none"> <li>1 year, renewable</li> <li>Permit is accorded for the entire period of the studies if the student has a Romanian State scholarship</li> </ul>	No information
<b>Slovakia</b>	<ul style="list-style-type: none"> <li>Proof of admission to an educational establishment</li> <li>General conditions apply</li> </ul>	None	<ul style="list-style-type: none"> <li>Students are permitted to work up to 10 hours per week without obtaining a work permit</li> </ul>	<ul style="list-style-type: none"> <li>Students can apply for a temporary residence permit:</li> <li>After studies are completed</li> <li>For the purpose of employment within the profession for which their studies prepared them</li> </ul>	<ul style="list-style-type: none"> <li>1 year, renewable</li> </ul>	30 days
<b>Slovenia</b>	<ul style="list-style-type: none"> <li>Proof of admission to an educational establishment</li> <li>General conditions apply</li> </ul>	None	<ul style="list-style-type: none"> <li>Students are permitted to work if they have obtained a work permit</li> </ul>	<ul style="list-style-type: none"> <li>It is possible to change immigration category by complying with the conditions of the new category</li> </ul>	<ul style="list-style-type: none"> <li>1 year, renewable</li> </ul>	2 months
<b>Spain</b>	<ul style="list-style-type: none"> <li>Admission to an officially recognized, public or private teaching institution</li> <li>Submission of the content of the curriculum, formation or research to be carried out</li> <li>Health insurance</li> <li>Sufficient financial means and accommodation</li> <li>Medical and criminal records if the duration of the studies surpasses 6 months</li> </ul>	None	<ul style="list-style-type: none"> <li>Students are permitted to work:</li> <li>If they have obtained a work permit</li> <li>On a part-time basis, or full-time if it does not exceed 3 months</li> </ul>	<ul style="list-style-type: none"> <li>It is possible to change immigration category by complying with the conditions of the new category</li> </ul>	<ul style="list-style-type: none"> <li>1 year, renewable</li> </ul>	3 months
<b>Sweden</b>	<ul style="list-style-type: none"> <li>Enrolment in full-time study</li> <li>Sufficient financial means (€ 773 monthly)</li> <li>Health insurance</li> <li>Declaration that student will leave Sweden after finishing studies</li> </ul>	None	<ul style="list-style-type: none"> <li>Students are permitted to work without obtaining a work permit</li> </ul>	<ul style="list-style-type: none"> <li>It is possible to change immigration category by complying with the conditions of the new category</li> </ul>	<ul style="list-style-type: none"> <li>Duration of studies</li> </ul>	3 months

UK	Conditions	Favourable Admission Policy	Employment Regulations	Change of Immigration Category	Duration of Permit	Length of Procedure
	<ul style="list-style-type: none"><li>• Enrolment in full-time study</li><li>• The third-country national must intend to leave the UK at the end of his studies</li><li>• The third-country national must not intend to engage in business or undertake employment</li><li>• General conditions apply</li></ul>	None	<ul style="list-style-type: none"><li>• Students are permitted to work up to 20 hours per week, with no restriction during vacations</li></ul>	<ul style="list-style-type: none"><li>• It is possible to change immigration category by complying with the conditions of the new category</li><li>• A residence permit is granted after graduation for the purpose of job searching</li></ul>	<ul style="list-style-type: none"><li>• Duration of studies</li></ul>	<ul style="list-style-type: none"><li>• No provision in current legislation</li></ul>





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- N°1 Glossary on Migration (2004)
- N°2 Glossary on Migration (Russian, 2005)
- N°3 Migrations et protection des droits de l'homme (2005)
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IOM International Organization for Migration