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Subject: Commission Staff Working Document

Accompanying document to the Proposal for a Council Directive on a single application procedure for a single permit for third country nationals to reside and work in the territory of a Member State and on a common set of rights for third country workers legally residing in a Member State

Impact assessment

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Delegations will find attached Commission document SEC(2007) 1408.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.10.2007  
SEC(2007) 1408

**COMMISSION STAFF WORKING DOCUMENT**

*Accompanying document to the*

Proposal for a

**COUNCIL DIRECTIVE**

**on a single application procedure for a single permit for third country nationals to  
reside and work in the territory of a Member State  
and**

**on a common set of rights for third country workers legally residing in a Member State**

**IMPACT ASSESSMENT**

**Volume I**

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## 1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

### Lead Directorates-General

Directorate-General for Justice Liberty and Security

Other involved services

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

### Agenda planning or Work Programme reference

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

#### 1.1. Organisation and timing

The Commission Legislative and Work Programme 2007 includes this proposal as a strategic initiative under the priority "*a better management of migration flows*" stating that "*The pressures of demography have added to the need for the European labour market to attract economic immigrants. A European regime for economic immigrants would give them a secure legal status making clear the rules attached and the rights they should enjoy*". A road map was prepared for this strategic initiative<sup>1</sup>. This proposal is included under the following title and reference number:

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

The chronology of this Impact Assessment was as follows:

- March 2006 – July 2007: data gathering and discussion with Member States in the context of the Commission's Committee on Immigration and Asylum (hereinafter "CIA");
- January 2006 – July 2007: consultation and exchange of views with relevant stakeholders (including NGOs, social partners, countries of origin, etc) in a number of meetings and conferences;
- 18 December 2006 – 15 July 2007: external study<sup>2</sup> (hereinafter "the external study") ordered by the Commission in December 2006;
- 7 May 2007 and 25 June 2007: meetings of the Inter-service Steering Group accompanying the Impact Assessment.

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<sup>1</sup> [http://ec.europa.eu/atwork/programmes/docs/clwp2007\\_roadmap\\_strategic\\_initiatives.pdf](http://ec.europa.eu/atwork/programmes/docs/clwp2007_roadmap_strategic_initiatives.pdf)

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

## **1.2. Consultation and expertise**

### *1.2.1. Consultation with the services within the Commission*

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

### *1.2.2. Impact Assessment Board*

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

### *1.2.3. External expertise*

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

### *1.2.4. Consultation of stakeholders*

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

Further consultations were held by means of seminars and workshops (eg.: the workshop organised by the European Policy Centre gathering NGO-s, social partners, academics and other stakeholders on the 8 of June 2007), while the Member States were consulted within the framework of the Commission's Committee on Immigration and Asylum. Through the external study commissioned to support the impact assessment, further consultations of the main stakeholders (including social partners such as ETUC<sup>4</sup>, Caritas Europe, the International Organisation for Migration, and also an organisation representing SME's (UEAPME<sup>5</sup>)) were undertaken by means of questionnaires and interviews. The results of such consultations are reflected in this report where relevant. In addition the summary of the answers by the Stakeholders are presented in Annex 12.

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<sup>3</sup>

[http://ec.europa.eu/justice\\_home/news/consulting\\_public/economic\\_migration/news\\_contributions\\_economic\\_migration\\_en.htm](http://ec.europa.eu/justice_home/news/consulting_public/economic_migration/news_contributions_economic_migration_en.htm)

<sup>4</sup> European Trade Union Confederation.

<sup>5</sup> European Association of Craft, Small and Medium-Sized Enterprises.

### **1.3. Main results and follow-up to the consultations**

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

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

## **2. PROBLEM DEFINITION**

### **2.1. The context**

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

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

- Directive 2003/86/EC on the right to family reunification.
- Directive 2004/109/EC on a long-term resident status for third-country nationals.
- Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.
- Directive 2005/71/EC for the facilitation of the admission of researchers into the EU.

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

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

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

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

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<sup>6</sup> COM(2005) 389, 1.9.2005.

<sup>7</sup> COM(2004) 811.

<sup>8</sup> SEC(2005) 1680.



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

## **2.2. Scope of the problem**

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

#### 2.2.1.1. The rights gap

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

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

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

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

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

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

#### International agreements

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

The above shows that at present, the principle of equal treatment with regard to working conditions and rights to social (security) provisions is granted to third-country workers only by national laws and for specific third-country workers through different multilateral agreement concluded by the EC (i.e. Europe agreements, Mediterranean agreement, Association agreement with Turkey). Some categories of third-country workers, either defined by their status (i.e. long-term) or by their nationality (i.e. those from countries that have signed multilateral agreements with the EU and its Member States, such as the EFTA-countries and Turkey) may claim a more privileged position on the basis of Community law. This is not the case, however, for most other third-country workers. The latter third-country workers are granted a number of fundamental rights as long as they are legally employed, but with regard to various social and economic conditions they are treated differently from EU nationals and long-term third-country residents<sup>9</sup>. These conditions are still subject to national legal and administrative arrangements.

#### National legislation of the Member States

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

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

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

The survey has investigated the following issues:

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

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

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

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

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

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

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

### Conclusions

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

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

#### 2.2.1.2. Complex and inefficient admission procedures

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

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

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

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

On the whole it seems that the presence of a combined title and a unique procedure for residence and work permit represents a notable simplification in terms of admission regimes for third country workers. It has been found that the interdependence of the two titles could lead the applicants to a vicious circle, as there is no residence permit without a work permit and vice versa<sup>10</sup>.

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

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

#### Total numbers

The origins of the European population are well documented. There are detailed migration and population statistics for almost every EU Member State. Table 1 (annex 7) provides a summary of the structure of the population of the EU25 in 2005.<sup>11</sup> These data show that in 2005 the EU25 had more than 19 million inhabitants with a third-country nationality. The vast majority of third-country nationals (almost 14 million) lives in five Member States, i.e. Germany, Spain, France, the UK, and Italy. A further 3 million live in Poland, Austria, Greece, Latvia, and the Netherlands.

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

#### Duration of stay

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

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<sup>10</sup> EC, DG Justice and Home Affairs, "Admission of third country nationals for paid employment or self-employed activity", 2001.

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

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

## Origins

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

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

## Employment and education of third country workers

The Labour Force Survey<sup>14</sup> - compared with the aggregated data from the Annual Report on Asylum and Migration which than includes almost two-thirds of the population of third-country nationals in the European Union – shows the following (Tables 5-10 of Annex 7):

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

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

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

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

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

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

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

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

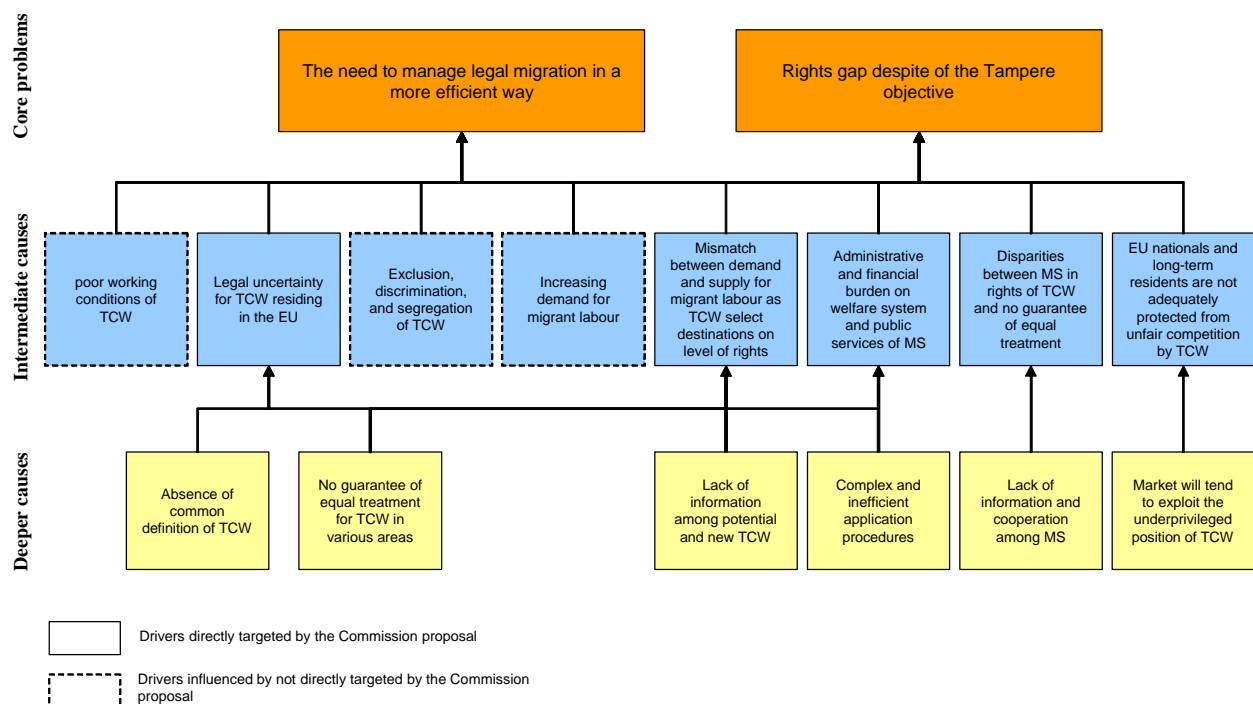


### 2.3. Underlying drivers/causes of the problem (problem tree)

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

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

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



## **2.4. Possible evolution of the problem all things being equal**

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

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

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

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

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

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

### *2.5.1. Legal base*

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

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

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

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

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

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

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

- *third-country workers are not without rights.* Certain rights, especially fundamental human rights, are already guaranteed to all third-country workers.
- *third-country workers are not a homogeneous group.* They include groups with more or fewer rights. The rights of third-country workers from EFTA countries are closest to those of EU nationals; Turkey has secured a fairly high level of rights for Turkish workers in the EU; other countries (mainly Mediterranean countries) have reached bilateral agreements with the EU that establish equal treatment in a number of areas; and, finally, a large group of workers from other third countries find themselves in less privileged position.
- *there is a difference in treatment as regards their access to the labour market.* The EC Treaty provides for free movement of workers for EC citizens and their family members<sup>16</sup> which entail free access to the labour market. This is not the case for third country nationals whose access to the labour market is not guaranteed by the Treaty. Further Community preference as recalled in the latest Accession Treaties (EU 8 and EU 2)<sup>17</sup> refer to the access to the labour market of new Member States citizens as opposed to third country nationals. This means that if an EU instrument is to touch upon access of third country nationals to the labour market - community preference would have to be taken into account, which means that rights of EC citizens prevail over the rights of third country nationals in this regard.
- *level of rights differ form Member State to Member State.* As social security systems are defined by national law the level of benefits (e.g. unemployment benefits, duration of maternity leave) may differ from one country to the other.

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

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

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

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

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

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

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

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

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

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

### **3. OBJECTIVES**

#### **3.1. General (global) policy objectives**

In accordance with the Policy Plan on Legal Migration<sup>18</sup> and the Commission Legislative and Work Programme 2007<sup>19</sup> the Commission is to present a proposal for a general framework directive covering the basic rights of all third-country workers already admitted in a Member State but not yet entitled to long-term resident status. In addition this proposal should create a single application procedure and a single residence/work permit.

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

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<sup>18</sup> COM(2005) 669.

<sup>19</sup> 2007/JLS/003.

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

The general (global) policy objectives therefore should be:

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

### **3.2. Specific and operational objectives**

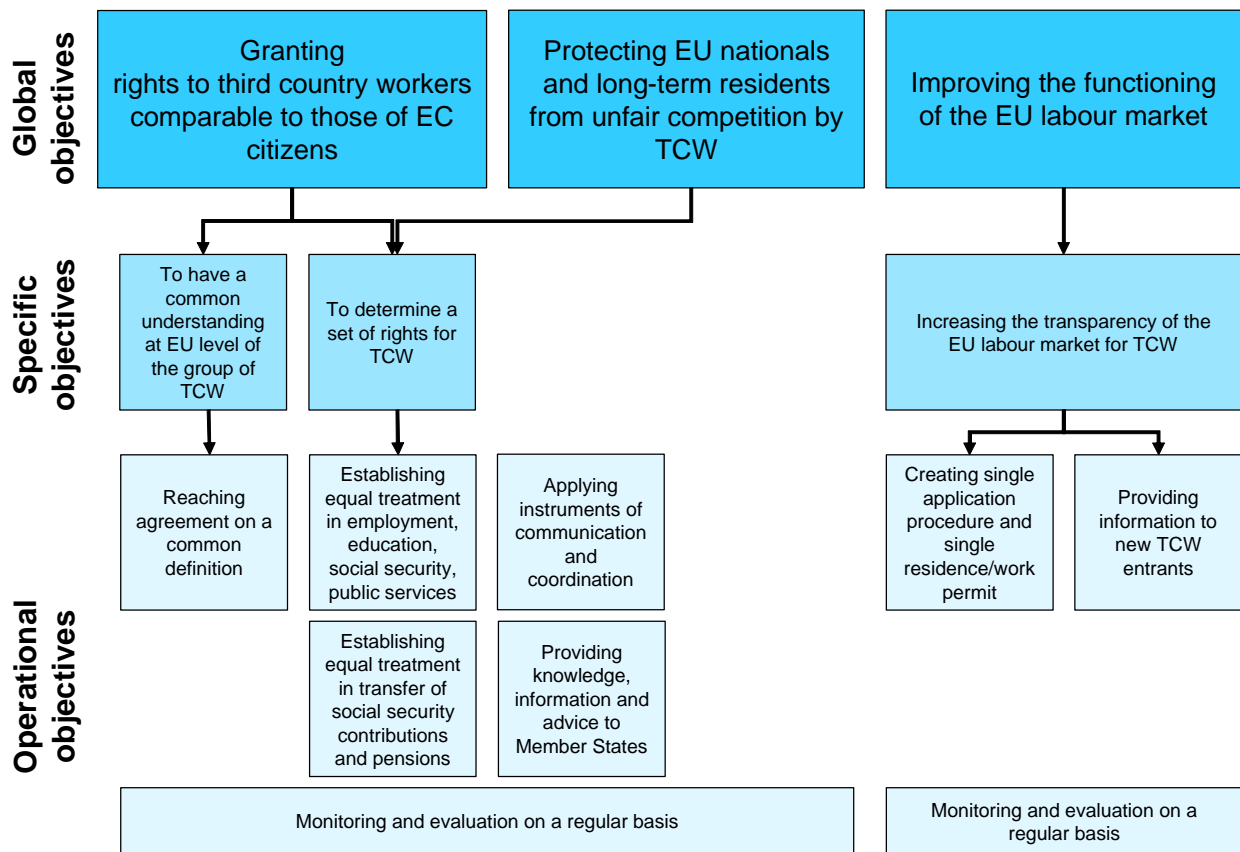
The specific objectives should be:

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

Related operational objectives following the intervention logic should be:

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

Figure 1. Objective tree



### 3.3. Consistency with the problems identified

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

The following connections have been identified:

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

### **3.4. Consistency and complementarity with other EU policies**

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

#### **Lisbon Strategy<sup>20</sup>:**

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

#### **Integrated Guidelines for Growth and Jobs 2005–08<sup>21</sup>:**

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

#### **European Sustainable Development Strategy<sup>22</sup>:**

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

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

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

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<sup>20</sup> COM(2005) 24.

<sup>21</sup> COM(2005) 141.

<sup>22</sup> COM(2005) 658.



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

#### 4. POLICY OPTIONS

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

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

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

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

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

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

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

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

**Table Describing the options: how they will work in practice**

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

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

<sup>23</sup>

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

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

## 5. ANALYSIS OF IMPACTS

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

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

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

-- (very negative),

- (negative),

0 (neutral),

+ (positive), and

++ (very positive).

Impact assessment: policy option 1 – No change

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

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

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

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

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

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

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

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

To protect the EU labour force from unfair competition	+	<p>Establishing the principle of equal treatment and including all third-country workers in legislation will reduce unfair competition for EU nationals and long-term residents on the European labour market. third-country workers will be less likely to work below accepted or regulated minimum wage levels.</p> <p>There are, however, limits to what can be achieved as a result of the boundaries of EU competence and the principle of Community preference.</p>
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#### Option 4 – Single application procedure and single residence/work permit

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

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

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

## 5.2. Impact assessment of each policy option

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

### Policy option 1 – No change

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

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

Mobility and the use of energy	0	No significant impact expected.
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## Option 2 – The non-legislative option: Communication, coordination, and cooperation

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

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

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

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

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

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

Impacts	Rating	Explanation of the rating
<b>Economic impacts</b>		

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



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

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

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

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

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

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

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

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

### 5.3. Likely unintended impacts

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

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

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

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

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

To conclude given that the options would not change national legislation on the conditions of admission (as option 4 would only touch the procedural aspect and even there would only simplify it with a one-stop-shop concept and as option 5 although regulating labour market access but can not regulate volumes of admission) they would unlikely attract more third country migrants and may actually exert downward pressure on their number in the EU lowering demand for their labour without prejudice to the exogenous<sup>24</sup> trend in third country immigration.

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

#### 5.4. Financial and administrative costs of policy options

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

## 6. COMPARING OF OPTIONS

### 6.1. Summary assessment of the options

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

**Table The advantages and disadvantages of the policy options**

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

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

## 6.2. Multi-criteria assessment

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

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

This comparison serves to identify the preferred option.

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

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

**Table - Will the policy options achieve the global objectives?**

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

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

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

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

**Table Comparison of economic and social impacts per policy option**

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



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

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

**Table Ranking of policy options**

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

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

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

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

### **6.3. The political feasibility of option 5**

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

The fully fledged legislative option in a form of a Directive regulating access to labour market and also granting equal treatment for third-country workers scored well when ranking the options however its political feasibility raises concerns. As it has been demonstrated throughout the report in order to grant comparable treatment as regards access to the labour market for third country nationals conditions for admission to work (economic needs test etc.) need to be harmonised. This option includes access to the labour market and it seems highly unlikely that a directive that regulates the conditions for the access to the labour market and grants third-country workers rights in this respect would gain political support, especially in a proposal requiring unanimous decision of the Member States. Even the directive on long-term residents (Article 14 of Directive EC/2003/109/EC) allows Member States to impose restrictions on the right of long-term residents seeking to reside and work in another Member State. Another aspect concerns the transitional arrangements for workers from the new EU Member States that limit their first access to the labour market of other EU Member States and that can be maintained until the end of 2013 for Romania and Bulgaria and until the end of April 2011 for the EU-8 Member States. To mitigate the effects of these restrictions, the transitional arrangements oblige EU Member States to give preference to workers from the EU-8 Member States as regards access to the labour market. As primary EC law it would require any instrument of secondary EC law to comply with it as long as the transitional arrangements are applied. This would e.g. exclude secondary legislation that grants third country nationals an automatic access to the labour market of Member States. All the above makes it politically unlikely that similar rights can be granted to third-country workers. The Policy Plan on Legal Migration<sup>25</sup> also states that the general framework directive “*will not address admission conditions for economic immigrants*” and that the Community preference principle will continue to be applied. Finally it is to be noted that in 2001 the Commission adopted a proposal for a Directive dealing with “*the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic*

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<sup>25</sup> COM (2005) 669.

activities”<sup>26</sup>. Whilst the other European Institutions gave positive opinions<sup>27</sup>, discussion in Council was limited to a first reading of the text and the proposal was officially withdrawn in 2006. In view of the above Option 5 is not considered as one of the preferred options.

#### 6.4. The preferred option

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

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

*combined with*

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

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

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

##### 6.4.1. The European added value

The preferred option combines option 3b with option 4.

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

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<sup>26</sup> COM(2001) 386.

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

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

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

#### 6.4.2. *The principle of proportionality*

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

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

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

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

#### 6.4.3. *Advantages and disadvantages of the preferred option*

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

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

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

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

##### Complementarity

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

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

##### Synergies in their impacts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 6.4.5. *The scope of the preferred option*

##### The specific case of reimbursement of pension contributions

**Option 3b** foresees the possibility to request and obtain the reimbursement of pension contributions upon return to the country of origin. Such provisions however would go against the spirit of the Community social security coordination<sup>28</sup> rules. The principle of aggregation of insurance periods entitles - if equal treatment is provided - the third country worker to benefits. The foundation of this principle of aggregation of periods is solidarity between the newly arrived person persons and those who work and pay contributions already some time in the Member State concerned. On the other hand solidarity however also means that a third country worker upon leaving the Member State concerned can not request the reimbursement of the social security contributions he/she paid throughout his/her stay. More specifically, as far as pension contributions are concerned, the application of the principles of export of pensions and aggregation of insurance periods has the consequence that a person will always get a pension from the Member State where he/she paid contributions, even if he/she no longer resides in the territory of that Member State. Moreover, a number of Association Agreements with third countries contain Articles on a limited coordination of the social security systems of the Member States and the associated country concerned. These Articles include provisions on the aggregation of insurance periods acquired in Member States for entitlement to certain benefits, the export of certain benefits (e.g. pensions) to the associated

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



countries members as well as a reciprocity clause with regard to EU-workers employed in the associated country. All agreements require a Decision of the respective Association Council, in order that these provisions take effect. DG EMPL is currently drafting proposals for such Association Council<sup>29</sup> Decisions. Therefore apart from these specific bilateral (and fully reciprocal) provisions in the framework of EU Association Agreements – to be dealt with in a form of Association Council Decisions, this proposal should therefore not encompass the possibility of reimbursement of pension contributions as a general rule.

#### Policy fields where equal treatment should be provided

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

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

#### *6.4.6. Consequences of the preferred option for individual Member States*

##### Equal treatment as expressed in Option 3b

A table below summarises the policy areas which are to be covered by the preferred option but where some Member States have not yet granted equal treatment for third country workers. It is to be noted that such a summary is based exclusively on a questionnaire carried out by the contractor (recalled under 2.2.1 analysing this rights gap and presented in detail in Annex 2) therefore it is neither complete nor validated, nevertheless as such can serve as a useful basis for an overview as to the main changes that each Member State would have to make if the preferred option is followed.<sup>30</sup> Working conditions are not put into the table as equal treatment is already granted in that area, except for a couple exceptions for treatment in case of dismissal and termination of a job<sup>31</sup>.

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<sup>29</sup> Encompassing the Community, the Member States and the third country concerned by the Association agreement.

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

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

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

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

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

##### Quantitative analysis

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

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

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

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

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

##### **Summary of the costs and benefits (€million)**

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

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

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

<sup>a)</sup> Assuming a 15-day reduction in the legal deadline for a decision on an application.

<sup>b)</sup> Includes employer's taxes and social security contributions.

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

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

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

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

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

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

### Qualitative analysis

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

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

Consequences

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

The improved socio-economic performance of migrants

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

Will the number of third country workers increase?

Will they pay additional taxes and contributions?

## The number of third country workers

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

## Additional taxes and contributions

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

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

In a study on the fiscal effects of migration in the UK, Gott and Johnston summarise the findings of several international studies.<sup>35</sup> Their own study shows a net positive contribution of migrants in the UK of £2.5 billion in 2002 (payment of tax revenues and social security contributions minus receipt of benefits). In Germany this net contribution was estimated at c. €20 billion and in Spain at 5€billion<sup>36</sup>. The Spanish report on Immigration and the Spanish Economy recalled that immigration has helped to reduce mismatch and structural unemployment in the labour market. As indirect effect of immigration the report further noted that expectations of migrants in higher income lead to higher consumption expenditure and

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

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

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

indebtedness in the short term. In Sweden and in the Netherlands<sup>37</sup> the balance was negative. In Sweden the socio-economic performance of immigrants was affected by the high proportion of asylum seekers and refugees. The Dutch report attributed the negative balance not only to a lagging performance but also to the fact that the Dutch system is too generous due to collective arrangements.<sup>38</sup>

## 7. MONITORING AND EVALUATION

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

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

Main objectives	Potential Indicators	Sources of Information
<b>I) Responding to the request first expressed in Tampere to grant comparable rights, establishing the principle of equal treatment for third-country workers across the EU, particularly to protect them from abuse and inadequate working conditions and to grant them basic benefits.</b>	<p>Number by MS of successful prosecutions against employers for abuses on third-country workers or inadequate working conditions suffered by third-country workers</p> <p>Estimates of the numbers of illegally-employed third-country workers<sup>39</sup></p>	<p>Member States authorities involved in the administration of justice, home affairs and migration policy at national level</p> <p>National statistics Bureau</p> <p>Surveys at international, EU and national level (i.e. European Migration Network)</p>
<b>II) Improving the functioning of the EU labour market.</b>	<p>Number by MS of third-country workers admitted to EU compared to the situation before the EU intervention.</p> <p>Estimated extent of the sector shortages at EU level (job vacancies rate in specific sector occupations according to employers' requests)</p> <p>Employment and unemployment rate of medium/low educated thirdcountry workers</p> <p>Mobility rate of third-country workers for employment reasons (at NUTTS 1 level)<sup>40</sup></p>	<p>EUROSTAT (if adequately adapted according to the proposed Regulation on Community statistics on migration and international protection)</p> <p>Surveys at EU and national level (i.e. European Migration Network)</p> <p>LFS</p>

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

<sup>38</sup> p. 79 and p. 80 of the report.

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

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

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

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

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

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



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

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

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*Accompanying document to the*

Proposal for a

**COUNCIL DIRECTIVE**

**on a single application procedure for a single permit for third country nationals to  
reside and work in the territory of a Member State  
and  
on a common set of rights for third country workers legally residing in a Member State**

**IMPACT ASSESSMENT**

**Volume II – Annexes**

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## ANNEX 1 - EU ACQUIS - RIGHTS OF THIRD-COUNTRY NATIONALS IN THE EU

There is no EU legislative instrument covering the rights of all workers who are third-country nationals and legally employed in the EU territory, but who have not (yet) been granted the long-term residence status. However, a number of legal provisions provide for the protection and equal treatment of certain categories of third country workers. This section provides an overview of relevant provisions with regard to the legal position of these categories of third-country workers in the European Union. First, the two directives on discrimination (Council Directive 2000/43/EC and 2000/78/EC) will be referred to. These directives prescribe equal treatment on the basis of race, ethnic origin and religion. Second, the Charter of fundamental rights of the European Union will be explained in brief. This charter also includes a provision that prohibits discrimination on the basis of nationality.<sup>42</sup> Third, Council Regulation 859/2003 will be referred to. This regulation constitutes an application of Regulation 1408/71 to a well-defined category of third-country workers. Fourth, a short explanation will be given of Directive 2003/109/EC that deals with the legal position of long-term third-country workers in the EU. Fifth, a number of EU multilateral agreements will be discussed. These agreements provide certain minimal legal rights to migrant workers originating from a limited number of countries, including a number of other Mediterranean countries, the so-called ACP-countries and Switzerland. Last but not least, reference is made to a number of international treaties on the universal legal rights of migrant workers, which have been ratified by most of the EU Member States. These treaties may serve as a source of inspiration to establish a directive on the legal position of third-country workers in the EU.

### The directives on equal treatment

In 2000 the European Council adopted two directives on equal treatment: the Council Directive 2000/43/EC on equal treatment irrespective of race or ethnic origin, and the Council Directive 2000/78/EC on equal treatment in employment and occupation.

#### Council Directive 2000/43/EC

The purpose of this directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect the principle of equal treatment in the Member States. The directive shall apply to all persons, as regards both public and private sectors, including public bodies, in relation to (a) conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, (b) access to all types and all levels of vocational guidance, vocational training, retraining and practical work experience, (c) employment and working conditions, including dismissals and pay, (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, (e) social protection, including social security and healthcare, (f) social advantages, (g) education, and

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<sup>42</sup> This rule applies to the prohibition of discrimination based on nationality provided by Article 12 of the EC Treaty. It does, however, not apply to third-country nationals.

(h) access to and supply of goods and services which are available to the public, including housing.

#### Council Directive 2000/78/EC

The purpose of this directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment. The directive shall apply to all persons, as regards both public and private sectors, including public bodies, in relation to (a) conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, (b) access to all types and all levels of vocational guidance, vocational training, retraining and practical work experience, (c) employment and working conditions, including dismissals and pay, and (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession.

However, these two directives on discrimination do not cover difference of treatment based on nationality and they are without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals on the territory of Member States. They are also without prejudice to any treatment which arises from the legal status of the third-country nationals concerned.

#### Charter of Fundamental Rights of the European Union (2000/C 364/01)

The Union contributes to the preservation and the development of the common values of human dignity, freedom, equality and solidarity, while respecting the diversity of cultures and traditions of the peoples of Europe. Therefore, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. In addition, within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.<sup>43</sup>

With regard to employment, the charter prescribes that every worker has the right to working conditions which respect his or her health, safety and dignity. Every worker also has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.<sup>44</sup> In addition, the Charter states that “Nationals of third countries who are authorised to work in the territories of the member states are entitled to working conditions equivalent to those of citizens of the Union”<sup>45</sup>

The social security and social assistance section includes three provisions. First, the Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or

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<sup>43</sup> Charter of fundamental rights of the European Union (2000/ C 364/01), Article 21, paragraphs 1 and 2.

<sup>44</sup> Charter of fundamental rights of the European Union (2000/ C 364/01), Article 31, Paragraphs 1 and 2.

<sup>45</sup> Charter of fundamental rights of the European Union (2000/ C 364/01), Article 15.

old age, and in the case of loss of employment. Second, everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in the Member States concerned. Third, in order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources.

All these provisions apply in accordance with the rules laid down by the Community law and national law and practices.<sup>46</sup>

### Regulation (EEC) No 859/2003

At its special meeting in Tampere on 15 and 16 October 1999, the European Council proclaimed that the European Union should ensure fair treatment of third-country nationals who reside legally on the territory of its Member States, grant them rights and obligations comparable to those of EU citizens, enhance non-discrimination in economic, social and cultural life and approximate their legal status to that of Member States' nationals. The extension of provisions is considered particularly important with a view to the recent enlargement of the European Union.

As a consequence, the Council of the European Union considers it necessary to provide for the application of the coordination rules of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to third-country nationals legally resident in the Community, as well as to members of their families and to their survivors, who are not covered by the provisions of these regulations on grounds of their nationality and who satisfy the other conditions provided for in this regulation.<sup>47</sup> The categories of benefits specified in these regulations are: (a) sickness and maternity, (b) invalidity, (c) old age and death, (d) accidents at work and occupational diseases, (e) death grants, (f) unemployment benefits, (g) family benefits, and (h) benefits for dependent children of pensioners and for orphans.<sup>48</sup> Social assistance schemes are not included in these coordination rules.

The application of both regulations to third-country workers is laid down in Council Regulation No. 859/2003. It should be emphasised, however, that the application of both regulations to third-country nationals does not entitle them to enter or stay in a Member State or to have access to its labour market. Moreover, the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 are applicable only in so far as the person concerned is already legally resident in the territory of the European Union. Being legally resident is therefore a prerequisite for the application of these provisions. Last but not least, the provisions of Regulation (EEC) 1408/71 and Regulation (EEC) No 574/72 are not applicable in a situation which is confined in all respects within a single Member State. This concerns, *inter alia*, the situation of a third-country national who has links only with a third country and a Member State.

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<sup>46</sup> Charter of fundamental rights of the European Union (2000/ C 364/01), Article 34, Paragraphs 1-3.

<sup>47</sup> Regulation (EEC) No 1408/71 coordinates national social security legislation in order to protect the social security rights of persons moving within the European Union. Council Regulation (EEC) No 574/72 lays down practical rules for implementing Regulation (EEC) No 1408/71.

<sup>48</sup> Council Regulation (EEC) No 1408/71, Title III Special provisions relating to the various categories of benefits (Chapter 1 to 8).

## Council Directive 2003/109/EC

In 2003 the European Council indicated that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally and continuously in a Member State for five years and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union. To acquire long-term resident status, third-country nationals have to prove that they have stable and regular resources which are sufficient to maintain themselves and the dependent family members and that they have sickness insurance. In addition, Member States may require third-country nationals to comply with integration conditions, in accordance with national law.<sup>49</sup>

The directive incorporates a section on the treatment of long-term residents. It states that long-term residents shall enjoy equal treatment with nationals as regards: (a) access to employment and self-employment, (b) education and vocational training, (c) recognition of professional diplomas, certificates and other qualifications, (d) social security, social assistance and social protection, (e) tax benefits, (f) access to goods and services, (g) freedom of association and affiliation, and membership of an organisation representing workers or employers, and (h) free access to the entire territory of the Member State concerned.<sup>50</sup>

Moreover, a long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that certain conditions are met.<sup>51</sup> A long-term resident may reside in a second Member State on the following grounds: (a) exercise of an economic activity in an employed or self-employed capacity, (b) pursuit of studies or vocational training, (c) other purposes (i.e. no economic activity). However, in cases of an economic activity in an employed or self-employed capacity as referred to in (a) Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for, respectively, filling a vacancy, or for exercising such activities.<sup>52</sup>

There are a number of notable limitations to the equal treatment of long-term residents. Member States may retain restrictions to access to employment or self-employment in cases where, in accordance with national or Community legislation, these activities are reserved to nationals or EU citizens. Member States may also require proof of appropriate language proficiency for access to education and training. Furthermore, Member States may limit equal treatment in respect of social assistance and social protection to core benefits. Such provisions (including minimal income support or support in case of sickness or pregnancy) will be laid down in national law.<sup>53</sup>

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<sup>49</sup> Council Directive 2003/109/EC, Article 5(1) and (2).

<sup>50</sup> Council Directive 2003/109/EC, Article 11(1).

<sup>51</sup> The conditions are equal to those for obtaining a long-term resident status and refer to stable and regular resources, sickness insurance and integration requirements (Council Directive 2003/109/EC, Article 15).

<sup>52</sup> Council Directive 2003/109/EC, Article 14.

<sup>53</sup> Council Directive 2003/109/EC, Article 11(3).

## The European Economic Area

The Agreement creating the European Economic Area was negotiated between the Community, the then Member States, and seven member countries of the EFTA and was signed in 1992. Subsequently, Switzerland decided not to participate following a referendum, and three other EFTA countries (Finland, Sweden and Austria) joined the EU. The EEA was maintained because of the wish of the three remaining countries – Norway, Iceland and Liechtenstein – to participate in the Internal Market, while not assuming the full responsibilities of EU membership. The EEA Agreement entered into force on 1 January 2004.

The Agreement includes a section on the freedom of movement between the so-called EFTA countries and the EC Member States, in which the Contracting Parties are encouraged to abolish any discrimination based on nationality between workers of EC Member States and EFTA States as regards employment, remuneration and other conditions of work and employment. Migrant workers from EFTA countries have therefore the right:

- to accept offers of employment,
- to move freely within the territory of EC Member States for this purpose,
- to stay in an EC Member State for the purpose of employment in accordance with the legal provisions governing the employment of nationals of that state, and
- to remain in the territory after having been employed there.

These provisions are, however, only partly applicable to employment in public service.<sup>54</sup> The Court of Justice has interpreted Art. 28 EEA in line with the EC Treaty, Article 39, paragraph 4, which implies that equal treatment also applies to the public sector except for jobs that involve the exercise of public powers.

In order to provide freedom of movement for workers and self-employed persons, the Contracting Parties shall, in the field of social security, secure for both (self-employed) workers and their dependents:

- a) aggregation of all periods taken into account under the national laws of several countries, and
- b) payment of benefits to persons resident in the territories of the Contracting Parties.<sup>55</sup>

All the rights specified are subject to limitations justified on grounds of public policy, public security or public health.

## Agreement between the EC and the Swiss Confederation

In 2002 the European Community and its Member States and the Swiss Confederation agreed on the free movement of persons. This agreement had to be adapted, however, to allow for the accession of new Member States to the EU. The agreement on Schengen/Dublin and the

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<sup>54</sup> EEA Article 28, Paragraphs 2-4. Also see Annex V that refers to the respective community legislation (Regulation 1612/68).

<sup>55</sup> EEA Article 29. Also see Annex VI that refers to the respective community legislation (Regulation (EEC) No 1408/71).

protocol on the enlargement of the agreement on free movement of persons were put to public referendum in Switzerland in 2005. Both referenda had a positive outcome.

The objective of the agreement between the EC and the Swiss Confederation on the free movement of persons is to accord a right of entry, residence, access to work as employed persons, establishment on a self-employed basis and the right to stay in the territory of the Contracting Parties. Another objective of the agreement is to accord a right of entry into, and residence in, the territory of the Contracting Parties to persons without an economic activity in the host country. In addition, the objective is to accord the same living, employment and working conditions as those accorded to nationals.

Therefore, nationals of one Contracting Party who are lawfully resident in the territory of another Contracting Party shall not, in application of and in accordance with the provisions of Annexes I, II and III to this agreement, be subject to any discrimination on grounds of nationality.<sup>56</sup>

Furthermore, an employed person who is a national of a Contracting Party may not, by reason of his nationality, be treated differently in the territory of the other Contracting Party from national employed persons as regards:

- conditions of employment and working conditions, especially as regards pay, dismissal, or reinstatement or re-employment if he becomes unemployed,
- tax concessions and welfare benefits,
- entitlement to education in vocational training establishments and in vocational retraining and occupational rehabilitation centres,
- membership of trade union organisations and exercise of union rights,
- all the rights and all the advantages accorded to national employed persons in terms of housing, including housing ownership.<sup>57</sup>

Apart from these rights regarding equal treatment in employment, education and welfare benefits, the agreement requests that the Contracting Parties make provisions for a number of rights, which are related to the free movement of persons, i.e. (a) access to economic activities, (b) the right to occupational and geographical mobility, (c) the right to stay in the territory of a Contracting party after the end of an economic activity, (d) the right of residence for members of the family, irrespective of their nationality, (e) the right of family members to pursue an economic activity, (f) the right to return to the territory of a Contracting Party for the purposes of pursuing an economic activity, and (g) the right to have a temporary permit converted into a permanent one.<sup>58</sup>

### EU-Turkey Decisions of the Association Council (1980)

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<sup>56</sup> Agreement between the European Community and the Swiss Confederation on the free movement of persons, Art. 2. See also Annex II, adaptations of Regulation (EEC) No 1408/71.

<sup>57</sup> Agreement between the European Community and the Swiss Confederation on the free movement of persons, Annex I, Article 9.

<sup>58</sup> Agreement between the European community and the Swiss Confederation on the free movement of persons, Article 7.

Two decisions of the Association Council directly refer to the legal status of Turkish workers in the European Union. These are Decision No 1/80 of the Association Council of 19 September 1980 on the development of the association, and Decision No 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families. The decisions do not grant any rights with regard to the conditions of entry of Turkish migrant workers to EU Member States.

A Turkish worker duly registered as belonging to the labour force of a Member State shall be entitled in that Member State, after one year's legal employment, to the renewal of his permit to work for the same employer, if a job is available. He shall also be entitled in that Member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation. The migrant worker shall also enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.<sup>59</sup>

The Member States of the Community shall as regards remuneration and other conditions of work grant Turkish workers duly registered as belonging to their labour forces treatment involving no discrimination on the basis of nationality between them and Community workers. The Turkish workers referred to in the above and members of their families shall be entitled, on the same footing as Community workers, to assistance from the employment services in their search for employment.<sup>60</sup>

Subject to the special provisions of this Decision, persons resident in the territory of one of the Member States to whom this Decision applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State. These provisions shall apply to the right to elect members of the organs of social security institutions or to participate in their nomination, but shall not affect the legislative provisions of any Member State relating to eligibility or methods of nomination of persons concerned to those organs.<sup>61</sup>

### EC Partnership Agreement with ACP-countries

The ACP-EC Partnership Agreement, signed in 2000 and revised in 2005, marks the beginning of a new era in the relationship between the ACP States and the European Union.<sup>62</sup> Nowadays, the EU is engaged in an important development agenda which, through better alignment of development policies to the 'Millennium Development Goals' challenges,

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<sup>59</sup> Decision No 1/80 of the Association Council of 19 September 1980 on the development of the association, Article 6.

<sup>60</sup> Decision No 1/80 of the Association Council of 19 September 1980 on the development of the association, Article 10.

<sup>61</sup> Decision No 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families (Article 3).

<sup>62</sup> Partnership Agreements between the members of the African, Caribbean and Pacific Group of States on the one part, and the European Community and its Member States on the other part, signed in Cotonou on 23 June 2000.

includes important growth in development assistance, substantial trade policy contributions and a continued commitment to promoting effective multilateralism.

Within the political dimension of the general provisions, agreed upon in the Partnership Agreement, explicit reference is made to the migration issue, notably in three relevant paragraphs regarding the legal position of immigrants from ACP-countries residing in the Member States of the EU:

- The Parties reaffirm their existing obligations and commitments in international law to ensure respect for human rights and to eliminate all forms of discrimination based particularly on national origin, sex, race, language and religion.<sup>63</sup>
- The Parties agree to consider that a partnership implies, with relation to migration, fair treatment of third-country nationals who reside legally on their territories, integration policy aiming at granting them rights and obligations comparable to those of their citizens, enhancing non-discrimination in economic, social and cultural life and developing measures against racism and xenophobia.<sup>64</sup>
- The treatment accorded by each Member State to workers of ACP countries legally employed in its territory, shall be free from any discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals.<sup>65</sup>

The EC Partnership Agreement with ACP-countries does not refer to any conditions regarding possibilities for obtaining of a resident permit in one of the EU Member States. Neither does it grant any rights with regard to entering the national EU labour markets.

#### Partnership and Cooperation agreement with Russia

The Agreement on Partnership and Cooperation between the European Communities and their Member States, and the Russian Federation, was signed in 1994. The aim of this Partnership is to encourage political, commercial, economic and cultural cooperation between Russia and the EU.

The agreement contains mutually binding commitments, among other things in the sphere of equal treatment. It is stated that, subject to the laws, conditions and procedures applicable in each Member State, the Community and its Member States shall ensure that the treatment accorded to Russian nationals, legally employed in the territory of a Member State shall be free from any discrimination based on nationality, as regards working conditions, remuneration or dismissal, as compared to its own nationals.<sup>66</sup>

No reference is made to any provision stipulating the right to enter the territory of a Member State, or to enter its labour market. The provisions are confined to the principle of equal treatment of Russian migrant workers, who are legally employed in the EU Member States.

#### Multilateral agreements with some Mediterranean states

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<sup>63</sup> ACP Partnership Agreement (Article 13, paragraph 1).

<sup>64</sup> ACP Partnership Agreement (Article 13, paragraph 2).

<sup>65</sup> ACP Partnership Agreement (Article 13, paragraph 3).

<sup>66</sup> Partnership and Cooperation agreement with Russia, Article 23, Paragraph 1.



The Euro-Mediterranean partnership between the European Union and the countries of the Southern Mediterranean began in 1995. This partnership, which implies reciprocity, solidarity and co-development, is intended to establish political, economic and social cooperation. As part of this process, a new generation of bilateral agreements have been set up between the EU on the one hand and a number of Mediterranean countries on the other.

The bilateral agreements provide for specific arrangements with each Partner State, however, the association agreements all tend, among other things, to promote social, cultural and educational cooperation. This means that cooperation actions are mainly intended to manage the movements of persons and workers, to ensure that the role of women in public life is promoted, to enable social protection systems to be developed, and to foster improvements in living conditions.

These aims have been further specified in each of the agreements concluded with the individual Mediterranean countries. As regards the legal position of migrant workers from these countries in the European Union, a number of these agreements deserve specific attention. These are Association Agreements, signed with Tunisia (1995) and Morocco (1996), a Stabilisation and Association Agreement with Croatia (2005), a Stabilisation and Association Agreement with FYROM, and an Agreement on Cooperation and Customs Union with San Marino (2002). Below the legal position of migrant workers will be briefly explained consecutively.

#### Mediterranean Association Agreements with Tunisia and Morocco

With regard to ensuring equal treatment of workers of Tunisian and Moroccan nationality, both agreements state that the treatment accorded by each member state to workers of Tunisian/Moroccan nationality employed in its territory shall be free from discrimination based on nationality, as regards working conditions, remuneration and dismissal, relative to its own nationals. Furthermore, all Tunisian/Moroccan workers allowed to undertake paid employment in the territory of a Member State on a temporary basis shall be covered by the provisions of the previous paragraph with regard to working conditions and remuneration.<sup>67</sup>

With regard to the right to social security provisions<sup>68</sup>, the Association Agreements state that workers of Tunisian/Moroccan nationality and any members of their families living with them shall enjoy, treatment free from any discrimination based on nationality relative to nationals of the Member State in which they are employed. All periods of insurance, employment or residence completed by such workers in the various Member States shall be added together for the purpose of pensions and annuities in respect of old age, invalidity and survivors' benefits, family, sickness and maternity benefits, and also for that of medical care for the workers and for members of their families resident in the Community. The workers in question shall receive family allowances for members of their families who are resident in the Community. The workers in question shall be able to transfer freely to Tunisia/Morocco any pensions or annuities in respect of old age, survivor status, industrial accident or occupational

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<sup>67</sup> Mediterranean Association Agreements with Tunisia and Morocco, Article 64.

<sup>68</sup> The concept of social security shall cover the branches of social security dealing with sickness and maternity benefits, invalidity, old age and survivors' benefits, industrial accident and occupational disease benefits and death, unemployment and family benefits.

disease, or of invalidity resulting from industrial accident or occupational disease, except in the case of special non-contributory benefits.<sup>69</sup>

No reference is made to any provision granting the right to enter the territory of a Member State, or to enter its labour market. The provisions are confined to the principle of equal treatment of Moroccan and Tunisian migrants, who are legally employed in the EU Member States. Neither are legal provisions laid down as regards a prolonged stay or the search for employment in case the employment contract has ended.

#### Stabilisation and association agreement with Croatia

In 2005 the European Community and its Member States, and Croatia established a Stabilisation and Association Agreement, with the aim, among other things, to promote harmonious economic relations and to adapt its national legislation to the requirements of the Community.

Regarding the movement of workers, the agreement contains a separate section, stating that, subject to the conditions and modalities applicable in each Member State:

- treatment accorded to workers who are Croatian nationals and who are legally employed in the territory of a Member State shall be free of any discrimination based on nationality, as regards working conditions, remuneration or dismissal, compared to its own nationals,
- the legally resident spouse and children of a worker legally employed in the territory of a Member State, with the exception of seasonal workers and of workers coming under bilateral agreements within the meaning of article 46, unless otherwise provided by such agreements, shall have access to the labour market of that Member State, during the period of that worker's authorised stay of employment.<sup>70</sup>

No reference is made to any provision regarding the right to enter the territory of a Member State, or to enter its national labour markets. The provisions are confined to the principle of equal treatment of Croatian migrants, who are legally employed in the EU Member States. Neither are legal provisions laid down as regards a prolonged stay or the search for employment in case the employment contract has ended.

#### Stabilisation and association agreement with FYROM

In 2004 the European Community and its Member States came to an agreement with the former Yugoslav Republic of Macedonia. The Movement of Workers Chapter, prescribes that, subject to the conditions and modalities applicable in each Member State:

- treatment accorded to workers who are nationals of the former Yugoslav Republic of Macedonia and who are legally employed in the territory of a Member State

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<sup>69</sup> Mediterranean Association Agreements with Tunisia and Morocco, Article 65.

<sup>70</sup> Stabilisation and Association Agreement with Croatia, Article 45.

shall be free of any discrimination based on nationality, as regards working conditions, remuneration or dismissal, compared to its own nationals,

- the legally resident spouse and children of a worker legally employed in the territory of a Member State, with the exception of seasonal workers and of workers coming under bilateral agreements, unless otherwise provided by such agreements, shall have access to the labour market of that Member State, during the period of that worker's authorised stay of employment.<sup>71</sup>

No reference is made to any provision regarding the right to enter the territory of a Member State, or to enter its national labour markets. The provisions are confined to the principle of equal treatment of migrants from the former Yugoslav Republic of Macedonia, who are legally employed in the EU Member States. Neither are legal provisions laid down as regards a prolonged stay or the search for employment in case the employment contract has ended.

#### Agreement on Cooperation and Customs Union with San Marino

The treaty between the Member States of the European Union and San Marino was agreed upon in 1992. In the agreement it was stated that the treatment accorded by each Member State to workers of San Marino nationality employed in its territory shall be free from any discrimination based on nationality in relation to its own nationals as regards working conditions or remuneration. The Republic of San Marino shall accord the same treatment to workers who are nationals of a Member State and employed in its territory.<sup>72</sup>

Subject to the general and final provisions of the Agreement, workers of San Marino nationality and any members of their families living with them shall enjoy, in the field of social security, treatment free from any discrimination based on nationality in relation to nationals of Member States in which they are employed. All periods of insurance, employment or residence completed by such workers in the various Member States shall be added together for the purpose of pensions and annuities in respect of old age, death and invalidity, and also for the purpose of medical care for the workers and for members of their families resident in the Community. The workers in question shall receive family allowances for members of their families who are resident in the Community. In addition, the workers in question shall be able to transfer freely to San Marino, any pensions or annuities in respect of disability, old age, death, industrial accident or occupational disease.<sup>73</sup>

No reference is made to any provision regarding the right to enter the territory of a Member State, or to enter its national labour markets. The provisions are confined to the principle of equal treatment of migrants from San Marino, who are legally employed in the EU Member States. Neither are legal provisions laid down as regards a prolonged stay or the search for employment in case the employment contract has ended.

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<sup>71</sup> Stabilisation and Association Agreement with FYROM, Article 44.

<sup>72</sup> Agreement on Cooperation and Customs Union with San Marino, Article 20.

<sup>73</sup> Agreement on cooperation and customs union with San Marino, Article 21.

## ANNEX 2 - ANALYSIS OF MS RESPONSES TO QUESTIONNAIRE ON LEGAL STATUS OF THIRD COUNTRY WORKERS

### Admission regimes for third-country economic immigrants

#### *Application procedure for residence and work permit*

As first remark, it is worth noting that the MS interviewed generally give no *specific definition of third country workers*. Only CY, FI and ES provides for an explicit legal definition of this category. However, in the case of CY and FI<sup>74</sup>, such definition seems to be very generic and no directly addressed to immigrants entering the country for paid employment. ES gives a more specific definition, since a set of criteria to qualify as third-country workers is detailed<sup>75</sup>.

However, the MS concerned have diverse legal instruments and national procedures which are relevant for the admission of third country nationals for the purpose of paid employment (third-country workers).

The table below illustrates the characteristics of the MS having answered to the questionnaire, with respect to the type of application procedure foreseen for the admission of third-country workers. What clearly emerges is that more than half of MS has a single application procedures, whereas in the remaining MS separate procedures for obtaining work and residence permits are needed.

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<sup>74</sup> CY makes a distinction between “Migrant” (“*alien who enters the Republic for permanent residence*”) and “Temporary residents” (“*alien who enters for any other purpose other than permanent residence*”). In FI, accordingly to Aliens act 3 § 1 and 2: 1) Alien means a person who is not a Finnish citizen; 2) EU citizen or a comparable person means a citizen of a Member State of the European Union (EU) or a citizen of Iceland, Liechtenstein, Norway or Switzerland.

<sup>75</sup> THIRD COUNTRY WORKERS are defined as: temporary residents with authorization to work who are foreign more than 16 years old, who are authorized to stay in ES for more than 90 days and less than 5 years, who carry out a lucrative activity (either self-employed or subordinate activity). See the summary of MS responses in the next section for more details.

**Table 1 Kind of permit: single application/separate permits for work and residence**

Kind of permit	AT	BG	BE	CZ	CY	DE	EE	EL	ES	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK	UK
Single application procedure for joint residence/work permit					X	X	X	X	X	X	X		X			X	X				
Work permit and residence permit	X	X	X	X								X		X	X			X	X	X	X

In particular, a notable number of MS (DE, EE, EL, ES, FI, FR, IT, PT)<sup>76</sup> provide for a *single application procedure for a joint residence/work permit*, which in many cases take the form of a residence permit allowing access to the labour market.

Moreover, in most of MS above mentioned (all excluded EE and PT), diverse kinds of permits exist depending on the different categories of third-country workers (mainly, for self employed or for salaried employment; for specific categories such as company executives, sportsmen, members of entertainment groups<sup>77</sup>; for professionals in the field of arts and culture<sup>78</sup>, for highly qualified people<sup>79</sup>, etc.). However, this form of permit allowing a single procedure for stay and work is generally valid for all third-country workers with no exclusion<sup>80</sup>.

On the whole, the presence of a combined title and a unique procedure for residence and work permit represents a notable simplification in terms of admission regimes for third-country workers. For example in FR, it has been found that the interdependence of the two titles could lead the applicants to a vicious circle, as there was no residence permit without work permit and vice versa<sup>81</sup>.

In the other MS, *two separate title and procedures are requested for work and residence permit*. In general, in each MS, separate authorities are in charge of issuing the work and the residence permits (for example, this is the case of CY, CZ, LV, RO, UK). At the same time, the employer generally submit the request for work permit (BG, CY, LT, LV, RO, SI), whereas, the application for the residence permit can remain in charge to third-country workers (for example, SI).

Finally, it is worth noting that in several MS legislative changes on this issue are foreseen. Indeed, in LV, RO and UK, proposals to introduce a single responsible institution and a joint residence/ work permit for third-country workers are currently under way.

The following table summarizes the general processing time of application based on the Member States self-assessment:

Member States	Period of processing applications for a residence permit and a working permit (distinct procedure)	Period of processing applications for a combined residence and working permit (single procedure)
Hungary	<p><b>30 days</b> for the residence permit</p> <p><b>10 days</b> for the work permit (after a 15-60 registration period in the employment office)</p>	
Latvia	<p>-The employer notifies the State Employment Agency for a vacancy.</p> <p>- The vacancy remains registered for a <b>month</b>.</p>	

<sup>76</sup> For specific description of permits issued, see the summary of MS responses in the next section.

<sup>77</sup> This is the case of EL.

<sup>78</sup> The case of FR.

<sup>79</sup> For example, DE.

<sup>80</sup> The only exception appears to be the FR. Indeed, only the temporary workers must obtain a temporary residence visa (“travailleur temporaire”) in addition to work permit (according to the Law on Immigration of July 2006).

<sup>81</sup> EC, DG Justice and Home Affairs, “Admission of third country nationals for paid employment or self-employed activity”, 2001.

	<p>- The confirmation of job invitation takes <b>5 days</b>.</p> <p>- The third country national submits to the Office of Citizenship and Migration Affairs the necessary documents, including the confirmed job invitation, which are needed for the issuing of the residence permit.</p> <p>-<b>30 days</b> for processing the application</p>	
<b>Romania</b>	<p>- <u>Residence permit</u></p> <p><b>30 days</b> (possibility of 15 days extension)</p> <p>- <u>Working permit 10 days</u></p>	
<b>Lithuania</b>	<p>-<u>Temporary residence permit</u><sup>82</sup></p> <p>4 months for EU long term residents</p> <p>6 months for other third country nationals (possibility for 3 months extension)</p> <p>-<u>Permanent residence permit</u></p> <p>6 months</p> <p>-<u>Working permit</u></p> <p>1 month for EU LTR (???)</p> <p>2 months for other third country nationals</p>	
<b>Slovenia</b>	<p>Two month each</p> <p>Issue of a residence permit is bound to the prior issue of a work permit</p>	
<b>Slovakia</b>	<p>Police decides on the residence permit on the basis of already issued work permit within 90 days with a possible extension of another 90 days</p>	
<b>Poland</b>	<p>30 days for each procedures with a possible extension for 2 months if it is of a specifically complicated nature</p>	<p>To be examined by the relevant authorities whether to change the current procedures</p>
<b>Czech Republic</b>	<p><b>120 days</b> for a residence permit for the purpose of employment (ongoing amendment to limit deadline <b>in 90 days</b>)</p> <p><u>Parallel application procedure:</u></p> <p>-two distinct administrative bodies, same reference number for both residence and working permits, the issuing of the residence permit is subject to the decision of the employment bureau on the working permit.</p>	<p>To be changed to a single residence/work permit by 1 Januar 2008</p>
<b>The Netherlands</b>	<p>- <u>Residence permit</u></p> <p><b>6 months</b> (in practice 3)</p>	<p>2 weeks target (only for highly skilled workers and their family members)</p>

	<p>- <i>Working permit</i></p> <p><b>5 weeks (10 weeks</b> in total in case of a labour market test: the employer should register the vacancy in the Public Employment Service, 5 weeks before the submission of an application for working permit)</p>	
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<b>Austria</b>	Maximum within 6 months	Only for key workers "Schlüsselkraft" Within 6 weeks
<b>Denmark</b>		Average 68 days for the processing of all cases (target is 55 days)
<b>Estonia</b>		6 months (in practice 1,5)
<b>Italy</b>		Residence permit includes right to work, but two distinct procedures: - 40 days (20 for seasonal work) for the employer to obtain an 'authorisation to employ'. - Consular authorities issue the visa <sup>83</sup> .
<b>Germany</b>		No general deadline In practice does not exceed 3 month
<b>Finland</b>		55 days target (in practice average is 68 days)
<b>Greece</b>		2 months+15 days <sup>84</sup> (for the forwarding of the relevant file from the local authorities, competent for the submission of the application, to the regional authorities, competent for the issuing of the permit).
<b>Portugal</b>		Visa application 30 days Residence permit 60 days
<b>France</b>		Two procedures are established:  - <i>The entry of workers</i> (in case of contracts concluded for more than 3 months)  The employer who wishes to recruit a third country worker asks for authorisation from DDTEFP (Direction Départementale du Travail, de l' Emploi et de la Formation Professionnelle). In case of a positive reply, the ANAEM (Agence Nationale d' Accueil des Etrangers et des Migrations) is informed and after it consults the Ministry of Interior it invites the third country national for a medical visit.

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<sup>83</sup> The third country national is allowed to enter the country with the visa has to reach the local authority that has issued the 'authorisation to employ', within 8 days from entering the country (to sign a sort of 'residence contract').

<sup>84</sup> In large cities, deadline is not always kept due to high number of applicants. Possibility for third country nationals to submit a special application to speed up the examination of their file and get their residence permit sooner.

		<p>- <i>The modification of status</i></p> <p>It refers to persons that reside in France under a status that does not allow them to work (eg students). The third country national has to present himself in the Prefecture of his/her place of residence and request a working permit. If he/she does not receive a reply within 4 months, his/her application is implicitly considered as rejected.</p>
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***Kinds of work permit and residence permit***

In the next table the kinds of **work permit** issued by each Member State for third-country workers are summarized with respect to the main typologies. In fact, most MS have ***different forms of work permits generally addressed to particular categories of workers***

**Table 2 Kind of work permit<sup>85</sup>**

Kind of work permit	AT	BE	BG	CY	CZ	DE	EE	ES	EL	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK	UK
N° of kinds of work permits <sup>86</sup>	3	3	2	2	1	3	1	4	6	2	3	4	4	4	3	2	4	7	3	2	16
General work permits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Work permit issued for specific categories of workers:			X					X	X				X	X				X			X
- seasonal workers									X				X	X		X		X			
- students									X					X							
- trainees									X		X			X				X			
- intra-corporate transferees/ transnational transfer for service provisions			X					X	X			X						X		X	
- migrants with specific skills/qualifications						X			X		X				X						X

<sup>85</sup> For MS that provide for a single title allowing to work and reside in the country, work permits as such don't exist (for example, IT, EL, PT have only residence permits for employment). All the same, such MS have been integrated in the analysis of work permits. In these cases, this table refers to residence permits for employment.

<sup>86</sup> Main kinds of permits issued to third country workers, as mentioned in the responses to questionnaire.

More in details, UK have a particularly high number of kinds of work permits for third-country workers. These relate to different categories of third-country workers, for which specific scheme for entry and work in UK are in place. On the contrary, some MS, such as BG, FI, SK, CY, provide for only two kind of work permits; in particular, only one kind of permit is present in, CZ and EE.

In all the MS concerned, the provision of work permit is related to *domestic labour market situation*. The majority of the MS provides for an assessment of the internal labour market situation as condition for a positive decision upon the issue of the work permits. However, this condition does generally applies only to some of the admission scheme/permits implemented by each MS. Thus, not all the categories of third-country workers are equally subject to restrictions depending on labour market or economic situation of the hosting country. In most cases, third-country workers with particular skills or qualification are not subject to labour market test (for example, LV) or annual quota substitutes this criterion (RO, SI).

The *eligibility criteria* of MS do not vary very significantly. The most MS requires qualification/professional experience, a minimum salary level (not less than the average salary in the country) or sufficient means of subsistence (LV, SI, SK), clean criminal records, health certifications. Some MS also require a basic knowledge of the national language (for example, RO).

Finally, the *validity in time* of work permit is generally equal to 1 year; however, some MS grant work permits valid up to 5 years (the latter is the case of LV and UK)<sup>87</sup>. Similarly, all the work permits issued by each MS are always renewable, from a minimum of 1 year to a maximum of 3 years (BG, FI). Nevertheless, it should be noted that in several MS the possibility for renewing the work permit is limited to some admission schemes (ES, LT, LV, RO, UK).

As to the **residence permits** issued by each MS, similar remarks can be highlighted.

The table below summaries these evidences.

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In particular, DE grant unlimited establishment permit to highly qualified people. However, this provision is limited to a particular group of THIRD COUNTRY WORKERS that it is not specifically taken into consideration in the present analysis.

**Table 3 Kind of residence permit**

Kind of residence permit	AT	BE	BG	CY	CZ	DE	EE	ES	EL	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK	UK
N° of kinds of residence permits foreseen	15		2	-	2	3	2	2	6	2	3	1	4	2	3	1	2	2	1	1	N/A
Temporary residence permit	Yes		X	-	X	X	X	X	-	-	X		X	X	-		X	X	X	X	N/A
Permanent/long term residence permit	Yes		X	-	X	X		X	-	-				X	-			X			N/A

In particular, a first remark relates the number of residence permits. Differently from the provisions relating work permits, the number of residents permits provided for by each MS appears to be definitively more limited: it ranges from a maximum of 6 kinds of residence permits (EL<sup>88</sup>) to a single type of permit issued (SI and SK).

A relevant distinction refers to the possibility of third-country workers for applying for *temporary* or *permanent residence permit*. On this issue, the table above shows that most of the Member States have both the kinds of residence permits. Several MS, such as CY<sup>89</sup>, EE, FR, IT, PT, SI, SK, do not mention the possibility for applying for permanent residence permit<sup>90</sup>.

Furthermore, the residence permits *are always tied to employment purposes* (i.e. conditions related to work need to be fulfilled in order to obtain a residence permit)<sup>91</sup>. Still, the *eligibility criteria are quite similar* among MS: clean criminal record, subsistence means, health assurance, proof of accommodation.

Finally, the *length of residence permits* varies between 1 year and 5 years (LT, LV, RO). Moreover, in several MS the length of residence permit is subordinated to the length of work contract (CZ, DE, FR, SI). Residence permits are always renewable in the MS concerned

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<sup>88</sup> However EL provides for a single title allowing to reside and work in the national territory, thus the number of residence permits corresponds to the number of work permits foreseen.

<sup>89</sup> CY issues an “Immigration permit” with indefinite validity. Instead, the “temporary residence and work permit” has a validity of 1 year, extendable up to 4 years, and further extension are possible only in particular cases/occupation.

<sup>90</sup> However, except that in DE (for particular categories of third-country workers) and CY, a permanent residence permit is never granted to third country workers who apply for a residence permit for the first time, because it requires several years of legal residence in the respective MS. Indeed, according to the Council Directive 2003/109/EC, all the MS mentioned grant third country workers the eligibility for long term residence status after five years of legal residence in the MS concerned (the above mentioned Directive applies to all MS, except that DK, UK and IE).

<sup>91</sup> Except that for residence permits issued under specific circumstances, such as international protection, humanitarian reasons (ES).

### Entry and mobility

The next table investigates the presence in each MS of specific provisions with respect to the entry and mobility rights granted to third-country workers.

The results of this analysis show a notable variability among MS on these issues.

**Table 4 Presence of specific provisions for third-country workers with respect to the entry and mobility rights**

	AT	BE	BG	CY	CZ	DE	EE	EL	ES	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK	UK
Re-entry after temporary absence	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	No	Yes	No	No	Yes	No
Passage through other Member States	Yes	No	No	No	No	Yes	No	Yes	Yes	Yes	No	No	No	No	No	No	Yes	No	No	Yes	No
Free access to the entire territory of the MS	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	No	Yes	No	No
Eligibility for a long-term residence status	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	N/A	No	Yes	Yes	Yes



The large part of Member States set up *specific provisions for* third-country workers especially with reference to the right for third-country workers to *free access to the entire territory of the Member State* and *eligibility for a long-term residence status*. However, as regards the right to free movement within the entire national territory, Member States generally grant third-country workers with this right, either specific provisions exist or not. Moreover, the long term residence is generally granted after five years of residence in the MS<sup>92</sup>.

The *passage through other Member States is generally allowed* to third-country workers, *without* the necessity of *any special provision* for third-country workers on this matter (Schengen acquis is commonly applied<sup>93</sup>).

Finally, as regards the existence of specific provisions on the *right to re-entry after temporary absence*, the MS position is quite variable.

On the one hand, *six Member States* (EE, EL, ES, FI, IT, LT, PT, SK) envisage *specific legislative provisions for* third-country workers, which are mainly related to validity of the residence permit issued to third-country workers. In other words third-country workers generally can re-entry in the MS, provided that the residence permit is still valid (EL, IT). In other cases (namely in the case of EE and SK), if the period of absence exceeds a certain amount of time, the residence permit can be withdrawn.

On the other hand, *a similar number of Member States* (BG, CZ, FR, LV, RO, SI, UK) *do not have special rules exclusively addressed to* third-country workers. Nevertheless, as for the previous group of countries, the third-country workers *right to re-entry the MS after temporary absence is generally recognized and it is related to kind* (BG recognizes this right to third-country workers holding long term stay visa) *or validity of residence permit* (FR, RO). Only UK does not grant third-country workers with this right (although *in practice* immigrants with an existing leave who exit UK are allowed to back in), whereas the re-entry in SK is not possible if the absence exceed a certain period (independently from the validity of residence permit).

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<sup>92</sup> In compliance with the provisions of Council Directive 2003/109/EC.

<sup>93</sup> It is worth remembering that Schengen acquis has specific provisions for THIRD COUNTRY WORKERS and it does not apply to the whole EU MS.

## Employment and education

### *Access to employment*

As regards the *access to employment*, the rights granted to third-country workers *frequently differ from that recognized to nationals*. The table below presents the position of each MS on the basis of the national provisions aimed at recognizing equal treatment between third-country workers and nationals.

**Table 5 Access to employment: equal treatment between third country nationals**

	AT	BE	BG	CY	CZ	DE	EE	EL	ES	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK	UK
Freedom to choose an occupation/ employer	✓	✓	⊕	✓	✖	✓	✓	✓	✖	⊕	✖	✓	⊕	✓	⊕	✓	✖	⊕	✓	⊕	✖
Right to access to the public sector <sup>94</sup>	✓	✓	✓	✓	⊕	✓	⊕	NR	⊕	✓	✓	✓	✓	✓	✓	✓	🔊	✓	🏢	⊕	NR
Full access to management functions	✖	⊕	⊕	✓	⊕	✓	⊕	NR	🔊	✓	⊕ <sup>95</sup>	🔊 <sup>96</sup>	⊕	⊕	⊕ <sup>97</sup>	✓	🔊	⊕	NR	⊕	⊕
Right to seek new employment in case of job loss <sup>98</sup>	✖	✓	✓	✓	⊕	✓	✓	✖	NR	⊕	✖	✓	⊕	✓	✓	✖ <sup>99</sup>	🔊	⊕	⊕	✓	✖

*Legend:*

- ◆ Equal treatment between THIRD COUNTRY WORKERS and nationals;
  - ⊕ Equal treatment between THIRD COUNTRY WORKERS and nationals with certain limitations;
  - ⊖ No Equal treatment between THIRD COUNTRY WORKERS and nationals.
- NR: No answer.

<sup>94</sup> In this case, it is equal treatment in respect of EU citizens, not of nationals. It would also be useful to know whether there are differences in respect of the rules applicable in this case to long-term residents (Directive 2003/109/EC, Article 11(1)(a) and (3)(a)).

<sup>95</sup> FR specifies the interdiction from management functions within the public sector.

<sup>96</sup> The Intra-Company Transfer Scheme is for a restricted number of vacancies at senior management and key personnel level

<sup>97</sup> In the case of LV, the answer to the questionnaire specifies that THIRD COUNTRY WORKERS are not allowed to take a position in civil service. It is not clear if EU citizens are also excluded.

<sup>98</sup> During the validity of work permit.

<sup>99</sup> If a work permit is needed, the THIRD COUNTRY WORKERS has a period of one year to find a new job

In particular, the MS interviewed generally provides for equal treatment between third-country workers and nationals only with respect to the full *access to management functions* (only FI specify that equal treatment with nationals is not granted in this case).

The situation is more complex with respect to the other rights considered. More in detail, third-country workers enjoy *the freedom to choose job or employer* at the same conditions of country nationals in many of the MS considered (such as BG, FI, FR<sup>100</sup>, IT, LV, RO, SK). Nevertheless, in a similar number of MS, the work permit can be issued to TWC only for specific position or job vacancies and upon an invitation from the employer, provided that no country national meets the employer qualifications requirements. This is partly also the case of CZ and UK, where limitations to this right are in force depending on the particular scheme/admission regime applied.

With reference to the right to seek a new job or to change job/employer, several MS recognizes to third-country workers equal *right to seek a new job in the event of job loss*<sup>101</sup> (this is the case of BE<sup>102</sup>, CZ, FI, IT, RO, SI<sup>103</sup>, UK<sup>104</sup>), whereas a more limited number of MS allows third-country workers to *change job and/or employer* at the same conditions with nationals (FI, FR<sup>105</sup>, IT, SI<sup>106</sup> and UK<sup>107</sup>). On the contrary, in many Member States, different conditions apply to third-country workers (as compared to nationals): the work permit could be revoked in the event of loss of job (BG, IE, LT, LV, SK) and/or a new work permit could be needed in order to change job/employer (BG, IE, CZ, DE, EE<sup>108</sup>, LT, LV, RO, SK). In CY and EL the right to seek a new job in the event of its loss and to change job/employer is subjected to certain limitations (EL<sup>109</sup>) or it is allowed within the same sector and occupation (CY).

Finally, with reference to the *access of third-country nationals to public sector*, it should be noted that with regard to this matter, the national legal framework is quite complex and some time unclear at the national level.

However, on the basis of the MS replies to the questionnaire, in most cases third-country workers *do not appear to benefit from the same treatment reserved to EU nationals*<sup>110</sup>.

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<sup>100</sup> In FR this right is excluded or limited for THIRD COUNTRY WORKERS with reference to some regulated professions.

<sup>101</sup> During the validity period of work permit; moreover, in some MS (EL and UK) further limitations are applied.

<sup>102</sup> Only of the worker has right to unemployment benefits and settlement.

<sup>103</sup> For example, the SI position appears particularly notable in this view: an alien is entitled to get an unemployment benefit for a duration specified in the national legislation. For the time of getting an unemployment benefit, an alien has the right to obtain or prolong the residence permit and he/she is granted to seek for another job.

<sup>104</sup> The right to seek a new job in case of job loss is granted to THIRD COUNTRY WORKERS depending on the scheme of admission of THIRD COUNTRY WORKERS .

<sup>105</sup> Only for to permanent workers.

<sup>106</sup> Only in the case of “personal work permit”.

<sup>107</sup> The possibility for change job/employer is limited to some schemes. For example, work permit holders cannot change employers, but those here under the Science and Engineering have unrestricted access to the labour market.

<sup>108</sup> As regards EE, in the case of a job loss and if there' s no other employer who would employ him, the residence permit will be terminated.

<sup>109</sup> In particular, if the THIRD COUNTRY WORKERS changes the kind of activity, the labour market situation is to be considered. See the summary of MS responses in the next section for more details.

<sup>110</sup> On this issue, it should be considered that a difference of treatment exists also between country-nationals and EU nationals (according to the Article 39(4) of the EC Treaty, the free movement of workers does not apply to employment in the public sector). However, the European Court of Justice

### *Working conditions*

In table below, the working conditions granted to third-country workers are considered and the equal treatment between third-country workers and nationals is still considered.

In large part of Member States, third-country workers are generally subject to the **same working conditions provided for country nationals** by the corresponding legislations<sup>111</sup>.

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has interpreted in a very restrictive way this provision: EU MS cannot exclude EU nationals from access to public sector, but only those posts in which the exercise of public authority and the responsibility for safeguarding the general interest of the State is involved may be restricted to their own nationals (OJ C 465, 16.9.2004, p. 1). Moreover, also the Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents provides for access to the public sector (Article 11(1)(a), "provided that such activities do not entail even occasional involvement in the exercise of public authority").

<sup>111</sup> However, it should be noted that only few EU MS, to date, have acceded to International Conventions protecting the rights of migrant workers, and in particular to the OIL Convention 143/1975 concerning also the promotion of equality of opportunity and treatment of migrant workers - c143 (1975). For example, IT recently ratified the mentioned Convention.

**Table 6 Working conditions: equal treatment between third country workers and nationals**

	AT	BE	BG	CY	CZ	DE	EE	EL	ES	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK
Right to safe and healthy working conditions										NR										
Right of employed women to protection of maternity										NR										
Right to dignity at work										NR										
Treatment in case of termination of a job			✓							NR										
Treatment in case of dismissal		✓	✓							NR									NR	
Protection in the event of unjustified dismissal										NR										
Right to protection in the event of employer's insolvency										NR									NR	
Treatment in payments/wages										NR										
Treatment in terms of taxation										NR									NR	
Right to freedom of association, affiliation and										NR									NR	

<sup>112</sup> In LV, right to establish trade union is limited to inhabitants who work or study.

	AT	BE	BG	CY	CZ	DE	EE	EL	ES	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK
collective bargaining, including the right to form trade unions																				
Specific rights for workers with family responsibilities, including part-time	☺		☺	☹	☺	☺	☺	☺	☺	NR	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺
Specific rights for workers with disabilities	☺	☺	☺	☹	☺	☺	☺	☺	☺	NR	☺	☺	☺	☺	☺	☺	☺	☺	☺	☺

*Legend:*

☺ Equal treatment between THIRD COUNTRY WORKERS and nationals;

☹ Equal treatment between THIRD COUNTRY WORKERS and nationals with certain limitations;

✓ No Equal treatment between THIRD COUNTRY WORKERS and nationals

NR: No answer.

However, some exceptions exist and especially the *treatment in case of termination of a job and the treatment in case of dismissal* represent two particularly critical points. Indeed, as in the previous analysis highlighted, in all the MS concerned the work and/or residence permits are subordinated to the existence of a valid work contract. In the case of job termination or dismissal, *such MS grant the right to seek a new employment within a certain period of time, whereas other MS* (and namely BG, LT, LV, SK) *provide for the automatic withdrawal of work and/or residence permits*. Thus no equal treatment between third-country workers and nationals could actually be granted.

However, from the responses to the questionnaires, the majority of the MS affirms the grant equal treatment in case of termination of a job as well as the treatment in case of dismissal. Only BG specifies that the revoke of work permit is foreseen in case of termination of job or end of work contract. Similarly, in CY, third-country workers are only employed under fixed period contracts, as well as the third-country workers should be repatriated unless he/she secures a release paper to seek employment with another employer.

### ***Education***

The table which follows analyzes the equal treatment between third-country workers and nationals in the field of education.

As clearly emerges on this issue, *equal treatment with national is generally granted to* third-country workers. In particular:

- TWC are granted with *access to linguistic training* at the same conditions of nationals in all the MS concerned. For example, in BG third-country workers are given several possibilities for linguistic training beyond these for nationals, whereas in FR language learning is part of a specific agreement (the “contrat d’accueil et d’intégration”) for permanent workers entering FR. In Austria, with regard to academic education, there are no differences between TWC or nationals, but it is up to the offering institution to set up the conditions for access and to decide on the access in concrete cases.
- Similarly, the *full access to vocational and academic training* is usually granted. The only exception are CY, DE and LV. More in details, third-country workers entering CY labour market are supposed to have the necessary skills, so that they have no access to training. In LV different treatment in terms of tuition fees are reserved to third-country workers.



- However, a proposal of the Latvian Ministry of Education and Science for the amendments of Law on Education regards just the extension of categories which can benefit equal treatment with nationals. Finally, in DE access to academic education is regulated by bilateral or specific agreements. In Austria, as for University, TWC applicants must additionally prove that they are entitled to enter the relevant study programme at a university of the country in which the secondary school leaving certificate has been conferred. No difference, however, in artistic studies.
- The *recognition of foreign diplomas and the assessment of foreign diploma's certificates* for third-country workers are subject to different procedures in several MS, and namely CZ, FR, SI. For example, in the case of CZ, the procedure of recognition of diplomas and certificates depends on the existence of an international agreement between the CZ and the particular country. In FR, a specific procedures can be applied according to different circumstances. In Austria, with regard to academic recognition, no difference between holders (nationals or third-country workers) of foreign qualifications. With regard to professional recognition, the relevant EU directives (e.g. Directive 2005/36) apply only to EU, EEA and Swiss citizens.

**Table 7 Education: equal treatment between apply and nationals**

	AT	BE	BG	CY	CZ	DE	EE	EL	ES	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK	UK
Full access to vocational or academic training	✓	NR	☺	✓	☺	✓	☹	☺	☹	NR	☺	✓	☺	☺	✓	☺	☹	☺	NR	☺	☺
Recognition of foreign diplomas and certificates	☺	NR	☺	☺	✳	✓	☹	☺	☹	NR	✳	☺	☺	☺	☺	☺	☹	☺	NR	☺	☺
Assessments of foreign diploma's or certificates	NR	NR	☺	☺	✳	✓	☹	NR	☹	NR	☺	☺	☺	☺	☺	☺	☹	☺	NR	✳	☺
Access to linguistic training	NR	NR	☺	☺	☺	☺	☹	☺	☹	NR	☺	✓	☺	☺	☺	☺	☹	☺	NR	☺	☺

Legend:

☺ Equal treatment between THIRD COUNTRY WORKERS and nationals;

✳ Equal treatment between THIRD COUNTRY WORKERS and nationals with certain limitations;

✓ No Equal treatment between THIRD COUNTRY WORKERS and nationals

NR: No answer.

## Social benefits and access to public services

### *Social security*

Third-country workers **can be excluded** from several rights to social security **for reasons of nationality, on the basis immigration status, or on the basis of other criteria.**

The table below considers the position of each Member States with respect to this issue. In particular, the analysis investigates whereas limitations to access to social benefits are in place for third-country workers on the basis of multiple reasons.

However, what emerges is that *the large part of the Member States fully recognizes to* third-country workers *access to these rights and benefits* (EE, EL, ES, RO, SI, SK) *or they provide for exceptions related to a single criterion* of those above mentioned (BE, FI, FR, PT, UK).

**Table 8 Social security: exclusion of third-country workers from such rights for reasons of nationality, on the basis immigration status, or on the basis of other criteria**

	AT	BE	BG	CY	CZ	DE	EE	EL	ES	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK	UK
Unemployment benefits					✓		<sup>113</sup>										<sup>114</sup>				
Occupational diseases and accidents at work																N/A		N/A			
Sickness benefit																					
a) in kind																		NR			
b) in cash																					
Maternity leave																		NR			
Old age pension																			N/A		
Invalidity benefits																			N/A		
Family benefits																					
Social assistance						<sup>115</sup>	<sup>116</sup>														

*Legend:*

<sup>113</sup> From a comparison with other relevant documents on this issue, the access to this right appears to be conditioned to the holding of residence (see Social Security Administration and International Social Security Association, 2006).

<sup>114</sup> Ibidem.

<sup>115</sup> Ibidem.

<sup>116</sup> Ibidem.

No exclusion foreseen;

Exclusion of third-country workers on the basis of a single criterion;

Exclusion of third-country workers on the basis of 2 criteria;

Exclusion of third-country workers on the basis of all the 3 criteria;

NR: No answer.

The main and more frequent exceptions regard a group of social benefits as:

- **Unemployment benefits:** third-country workers are eligible to this benefit upon certain conditions, such as the acquiring of the long term residence status (e.g. in CZ and UK; in this case the exclusion is based on the immigration status) or if bilateral agreement with the country of origin are in place (still, CZ and UK; a nationality criterion is applied). In some cases, the access of third-country workers to this right is related to the duration of employment and work permit (CY, DE, BG, LT).
- **Family benefits and social assistance** in several MS these benefits are limited to particular categories of third-country workers, such as long term residents, those with refugee, humanitarian status or right to asylum (BG, DE, CZ, LT, LV, UK) or they are granted only in presence of bilateral agreements (BG, UK)<sup>117</sup>.
- **Maternity leave:** in Belgium third-country workers may be excluded from maternity leave: employees are eligible for maternity leave after a waiting (or real contract) period of at least six months. Within this period the person concerned must have been working at least 120 days and must have sufficiently contributed to the sector of social security. There exist special arrangements for part-time workers, seasonal workers and contract workers.
- **Invalidity benefits:** in Belgium third-country workers may be excluded from invalidity benefits : employees are eligible for invalidity benefits after a waiting (or real contract) period of at least six months. Within this period the person concerned must have been working at least 120 days and must have sufficiently contributed to the sector of social security. There exist special arrangements for part-time workers, seasonal workers and contract workers.

As regards the position of the MS concerned, BG and CZ appears to have the more restrictive regimes in this field. Indeed, as above highlighted, CZ provides the exclusion of third-country workers from unemployment and family benefits on different grounds (i.e. on the basis of nationality as well as on the basis of immigration status). CZ, in particular, grants access to unemployment benefits only if bilateral agreement exists, if the third-country workers has acquired the long term resident status and if he/she fulfils the conditions fixed for nationals and permanent residents.

#### ***Possibility for transfer social security benefit outside the EU***

The following analysis relates to the possibility, granted to third-country workers, for transfer social security benefits outside the EU or for obtain the restitution of such benefits. The table which follows summaries the provisions of each Member State on this issue.

***Commonly, Member States do not allow third-country workers to transfer social security payments outside the EU, whereas the possibility of restitution of individual contributions to a social security scheme after leaving EU is allowed exclusively by one Member State (DE).***

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On the whole, as regards the rights on social assistance, it should be noted that many Member State have indicated not to differentiate between nationals and third-country workers. However, a crucial precondition for entitlement is that third-country workers must legally reside in these countries. And this is likely not the case for a large majority (since, as previously highlighted, third-country workers must leave the country after their work contract has been expired).

**Table 9 Right to transfer of social security payments outside the EU or possibility for the restitution of individual contributions to a social security scheme**

	AT	BE	BG	CY	CZ	DE	EE	EL	ES	FI	FR	IT	LT	LV	NL	PT	RO	SI	SK	UK	IE
Unemployment benefits			✓	NR	✓	✓		NR	NR	✓	✓	✓	✓	✓	NR	✓		NR	✓	NR	✓
Occupational diseases and accidents at work			✓	NR				NR	NR		✓			✓	N/A			NR		NR	✓
Sickness benefit																					
a) in kind			✓	NR	✓			NR	NR	✓	✓	✓		✓	✓		NR	NR		NR	✓
b) in cash																					
Survivors benefit			✓	NR											NR			NR		NR	
Old age pension			✓	NR														NR		NR	
Invalidity pension			✓	NR							✓	✓			✓			NR		NR	
Family benefits			✓	NR	✓			NR	NR	✓	✓	✓	✓	✓	✓		NR	NR		NR	

*Legend:*

Possibility for transfer and restitution<sup>118</sup>;

Possibility for transfer on the basis of bilateral agreements;

Possibility for transfer on the basis of bilateral agreements and upon other conditions;

✓ No possibility for transfer or restitution;

NR: No answer.

<sup>118</sup> It should be noted that the possibility for restitution is foreseen exclusively by DE. In the other MS with the same score, only transfer is allowed.

More in details, the position of BG is particularly restrictive from this point of view, since both options are excluded for third-country workers, with reference to all security benefits concerned. On the contrary, DE is the only Member State which allows the transfer or, alternatively, the restitution of payments related to survivors benefit, old age pension, invalidity pension.

However, many Member State allow the transferability of pension benefits, although specific limitations are frequently in place. In particular:

- As regards *occupational diseases and accidents at work*, in Belgium there are possibilities to transfer benefits directly arising from occupational diseases or accidents at work. These benefits are paid in cash to the victim or his rightful claimant. No bilateral or international agreements are needed to effectuate these payments.
- As regards *sickness benefits* in Belgium benefits are possible to transfer abroad under certain conditions. The transfer is refused when the person concerned is entitled to similar benefits issued abroad, or when the person concerned does not stay in Belgium on the moment the benefit should be granted. Transfer of benefits may also be possible through mediation of medical staff or in case of great urgency. Besides, a number of international agreements have been signed, assessing the transfer of benefits in case of temporary stay.
- As regards *survivors benefit*, a notable number of Member State allows third-country workers to transfer these benefits with no limitation (this the case of CZ, FI, FR, IT, LT, SK), whereas other MS grant this right only upon the conditions that specific bilateral agreements exist (BE<sup>119</sup>, AT, EE, IR, LV, RO)<sup>120</sup>.
- For *Old age pension*, 4 MS (CZ, FI, FR, SK) fully recognize to third-country workers the transferability of payments. The existence of bilateral agreement is a necessary condition in several MS (EE, IR, LV, RO), whereas LV provides for further criteria<sup>121</sup> to be fulfilled and IT requests that the Italian residence is maintained<sup>122</sup>. In Belgium the transfer is allowed if there is a social security convention with the interested Country.
- *Invalidity pension* payments can be transferred without any limitation (, CZ, FI, LT,SK) or upon conditions that bilateral agreements are in force in several MS (BE, EE, IR, LV, RO). In Belgium, in particular, the principle of territoriality stands in the way the payments of invalidity pensions abroad. Under certain conditions the transfer of invalidity pensions is possible. This may be the case when the people concerned resides abroad on a strict temporary basis and through mediation of medical staff. Besides, a number of international agreements enable the transfer of invalidity pensions abroad, often after consultation of the medical staff.

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<sup>119</sup> If there is a social security conventions with the interested Country.

<sup>120</sup> In particular, EL specifies a common condition with respect to the three benefits here concerned (Survivors benefit, Old age pension, Invalidity pension): that pension benefits granted to THIRD COUNTRY WORKERS can be transferred in case they *emigrate at their country of origin*.

<sup>121</sup> See the summary of MS responses in the next section for details.

<sup>122</sup> For the case of EL, see note 12.



- As regards *family benefits* in Belgium the transfer are allowed under derogation of the principle that states that no family transfers are provided to children out of the Country.

#### *Access to public services*

Finally, the rights to access to certain public services at the same conditions with nationals is considered. The table below shows whereas equal treatment between third-country workers and nationals is granted.

However, it should be noted that many MS did not furnish any information on this issue or only incomplete answers were provided.

**Table 10 Access to public service: equal treatment between third-country workers and nationals**

	AT	BE	BG	CY	CZ	DE	EE	EL	ES	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK	UK
Right of access to placement services		NR	✓		NR					NR		NR			✓	✓	NR		NR		NR
Right to access to services of general economic interest	NR	NR	NR			NR	✓			NR		NR			✓	NR	NR	NR	NR		NR
Right to access to other public services, including public housing	NR	NR	✓		✓	NR	NR			NR		NR		✓	✓	✓	NR	NR	NR	N/A	NR

*Legend:*

Equal treatment between third-country workers and nationals;

Equal treatment between third-country workers and nationals with certain limitations;

✓ No Equal treatment between third-country workers and nationals

NR: No answer; N/A: Not Applicable.

On the whole, *several limitations for* third-country workers *are currently applied* in the most of the MS interviewed. More in detail:

- The right to *access to placement services* is commonly restricted to some categories to third-country workers (LT, RO) or it is conditioned to the fulfillment of particular eligibility criteria related to work status (FR, LT, SK)<sup>123</sup>;
- Right to *access to services of general economic interest* is equally granted by several MS (CZ, EL, FR, IT, LT), whereas limitations related to work status are foreseen in SK.
- Right to *access to other public services, including public housing*, is equally granted only by FR and EL, whereas IT requests the holding of the residence permit at least for 1 year.

Finally, such MS as BG, CY and LV do not provide for equal treatment between nationals and third-country workers with respect to any of the rights considered.

#### *The position of women*

Immigrant women should be considered as a vulnerable group, since they may find themselves in a position of double discrimination, because of their immigration status and of their sex.

Nevertheless, *the large part of Member States*, indeed, *have general legislative provisions* aimed at preventing discrimination on the basis of sex and/or nationality, but they are *not targeted specifically towards immigrant women*.

However, a narrow group of Member States have specific legislation or program specifically addressed to protect or support immigrant women in employment.

The single experiences in this field at MS level can be remarked:

- CZ, in its yearly program on the immigrant integration, pays special attention to the immigrant women and their children as one of the areas of project financing. Moreover, a qualitative research project on this issues is currently under way and, next to mainstreaming integration, two more measures were introduced in 2005. These measures, called “goal-directed measures and supportive measure”, are aimed to strengthen an anti- discrimination approach in social integration of immigrant population.
- In EL a specific project addressed to women<sup>124</sup> contains a special provision for women who belong to vulnerable groups (repatriating, immigrant women, etc.) and women having been characterized as victims of trafficking are also included. Moreover, an important provision mentioned by EL should be underlined: women victims of trafficking immediately obtain a residence permit which, at the same time, functions as a work permit<sup>125</sup>.

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<sup>123</sup> See the summary of MS responses in the next section for more details on such limitations.

<sup>124</sup> The reference is to a project entitled «Financing the provision of Integrated Interventions in favour of Women», which belongs to Measure 3 of Axis 5 of the Business Plan «Employment and Vocational Training 2000-2006».

<sup>125</sup> Law 3274/2004, Article 34, par. 7 and Law 3386/2005 Article 50. These provisions stem from the Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration,

- In FR, a study on “double discrimination”, with respect to sex and nationality, was carried out by the Ministry of Labour, Social cohesion and housing, as it highlighted relevant conclusions and recommendations for immigrant women.
- In ES, the recent strategic Plan for the integration of immigrants (Plan Estratégico de Integración de Inmigrantes) contains specific provisions addressed to immigrant women.

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who cooperate with the competent authorities. However, the progress on the transposition of such directive in the MS is not yet known.

Following, the information available for the other MS who did not answer to the questionnaire are reported.

In the boxes below, the information for HU, PL and SE are aggregated with respect to the main issues considered in the analysis (i.e. admission regimes, entry and mobility, employment and education, etc.)

With reference to LU and MT, no comparable information appear to be available. Thus, only the data on the admission regimes were reported.

Finally, it is worth noting that in accordance with the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of Directives concerning the migration policies.

### *Issuance regimes for third-country economic immigrants*

Labour migration is governed by Act N° 4 of 1991 on the Promotion of Employment and Unemployment Contributions and the implementing Ministerial Decree of 1999 on the Authorisation of Employment for Foreigners in Hungary.

The work permit system is highly bureaucratic and permits are issued upon the application of the employer. Hungary has concluded a series of bilateral agreements with a number of European countries regulating the mutual exchange of migrant workers and trainees. Finally, five categories of migrant workers can be distinguished in Hungary even if labour migrant categories are not determined on an occupational basis.

The maximum duration of the work permit is one year. Furthermore, permits can be extended and renewed on a discretionary basis.

### *Entry and mobility*

Migrants possessing work permits are not entitled to any secure residence status or permanent residence independent of their employment. Residence permit is strictly tied to the work permit

### *Employment and education*

There is no right to change job, employer or employment sector

### *Social benefits and access to public services*

Migrant workers who are in employment, and their families, have access to all the health services which are provided within the framework of social insurance

(family support and invalidity support falls outside of social insurance)

### *Migration regimes for third-country economic immigrants*

The principal rules regarding migration are found in the Law of 14 December 1994 on Employment and Combating Unemployment and the Law of June 1997 on Aliens which was revised on 11 April 2001.

On the basis of this framework it is possible to identify three main categories of migrant workers admitted for employment in Poland:

- Foreigners performing gainful employment for employers,
- Migrant posted to Poland by foreign employers
- Foreigners allowed to settle in Poland or recognised as refugees

Finally, there are other groups not covered by these categories such as seasonal labour migrants and trainees who are part of an international exchange.

### *Entry and mobility*

For the first and the second category the duration of work permit is granted for one year. For third category of migrants the initial permit is issued for permanent residence.

### *Employment and education*

Migrant workers are entitled to change their job, employer or employment sector

### *Social benefits and access to public services*

Migrant workers are not excluded from any social security (health care, etc.) provided that they pay the insurance premium

### *Admission regimes for third-country economic immigrants*

The principal rules regarding migration are found in the Aliens Law and the Aliens Order (1989).

It is possible to identify three categories of migrants admitted for employment to Sweden:

- Migrants admitted to address temporary shortages in the domestic labour force
- Migrants part of an international exchange programme
- Migrants taking up employment leading to permanent residence

The category into which migrants fall depends on the kind of work they are offered

### *Entry and mobility*

For the first and the second category of migrants there is no right to change job, employer or employment sector. For the third category there is free access to labour market.

### *Social benefits and access to public services*

Access to national health and social welfare depends on civil registration and foreigners can only be registered if their stay exceeds one year.



### *Admission regimes for third-country economic immigrants*

Malta is not an immigration country. Permanent residence permits are granted on the basis of financial qualifications. Moreover employment licences are granted in exceptional circumstances.

In particular, employment licences are granted in those cases where Maltese nationals are not available or where there is an insufficient number of Maltese nationals available to perform the work involved. Foreigners may also be authorised for temporary residence permits (extensions of stay) on the island.

### *Admission regimes for third-country economic immigrants*

Admission of migrants is based on the 1972 Law on the entry and residence of foreigners. There are three types of work permits:

- Type A is valid for one year and for one employer;
- Type B is valid for four years and for one sector of activity; and
- Type C is valid for five years and for all sectors of activity.

Residence permits are valid for five years. Before employing an immigrant, an employer must prove that they were unable to find anyone in the EU to fill the position.

It is also important to note that candidates cannot apply for new or renewed permits themselves. This responsibility falls to the employer alone, regardless of the type of permit being sought.

Finally, limits or quotas on the number of immigrants have not been established but permits are granted according to the economic situation.

## Summary of the MS responses

### **Admission regimes for third-country economic immigrants**

Does the Aliens Act or immigration law in your country provide an explicit legal definition of third-country workers, who have been legally admitted into the European Union but who have not yet been granted long-term resident status?

Presence of an explicit legal definition	No explicit definition
ES, FI, SK	AT, BG, CZ, CY, DE, EE, EL, FR, IE, IT, LT, LV, NL, PT, RO, SI, UK

MS	Definition of THIRD COUNTRY WORKERS
AT	-
BE	NR
BG	-
CZ	-
CY	-
DE	-
EE	
EL	-
ES	<p>According to the Article 48 of “Reglamento de la Ley Orgánica 4/2000”, of 11 of January, on rights and freedom of foreign in Spain and their legal integration, approved with the Royal Decree 2393/2004, of 30 of december, THIRD COUNTRY WORKERS are defined as:</p> <p>Temporary residents with authorization to work who are foreign more than 16 years old, who are authorized to stay in ES for more than 90 days and less than 5 years, who carry out a lucrative activity (either self-employed or subordinate activity).</p>
FI	<p>1) Alien means a person who is not a Finnish citizen;</p> <p>2) EU citizen or a comparable person means a citizen of a Member State of the European Union (EU) or a citizen of Iceland, Liechtenstein, Norway or Switzerland.</p>
FR	-
IE	
IT	-
LT	-
LV	-
NL	
PT	-
RO	-
SI	-
SK	LEGAL BASE: ACT Nr. 5 : set of 4 December, 2003 on employment services and on amending and supplementing certain acts as amended by legislation, § 21 Employing of Aliens.
UK	-

Do you have in your national legislation different admission regimes with regard to economic immigrants who have not (yet) been granted the status of long-term resident?

**Kinds of work permit available to third-country workers**

MS	kinds of work permit	Relation with the domestic labour market situation	Eligibility criteria	Duration in time	Possibilities for prolongation
AT	1) Employment permits 2) Work permit (Arbeitserlaubnis). 3) Exemption certificate (Befreiungs-schein)	1) The provision of the employment permit is directly related to the situation and development of the Austrian labour market. 2) This document provides to the foreign worker full access to the labour market of the province where he/she has worked before with an employment permit; when employment is intended in other provinces the employer has to apply for an employment permit for those provinces; therefore the admission is directly related to the situation and development of the labour market in those provinces. 3) It provides full access to the labour market; a certain degree of integration on the Austrian labour market is necessary to get this document (e.g. five years of employment with certain employment authorizations, etc. have to be proven).	1) The employment permit is issued to an employer for employing the third-country workers on a certain position; Strict labour market test (admission of foreigner only if the position cannot be filled by an unemployed person of the domestic workforce); in case the so-called maximum numbers (on federal and provincial level) are exceeded employers may be issued permits only for foreigners belonging to a few privileged groups (e.g. key personnel, family members of integrated foreigners, etc) and under an even stricter labour market test. All other requirements in Austrian laws and regulations especially regarding work conditions, wages and social security including the immigration status (residence or settlement permit which allows to work) have to be fulfilled. 2) This document is not for the first-time admission; it can be issued to the third-country workers after one year of employment based on an employment permit or to family members of third-country workers after one year of settlement if the third-country workers himself/herself holds a work permit; all other requirements in Austrian laws and regulations especially regarding work conditions, wages and social security including the immigration status (residence or settlement permit which allows to work) have to be fulfilled.	1) One year. 2) Two years. 3) Five years	1) Renewable. 2) Renewable. 3) Renewable.
BE	1) Permit A 2) Permit B 3) Permit C	2) Exam on the national job market .	1) 4 working years, covered by Permit B. 2) No available labour 3) Temporary residence situation	1) Illimited duration 2) 1 year maximum 3) 1 year maximum	2) renewable 3) renewable: only the residence permit

MS	kinds of work permit	Relation with the domestic labour market situation	Eligibility criteria	Duration in time	Possibilities for prolongation
BG	1.) For foreigners employed or posted in BG; 2.) For foreigners wishing to pursue a self-employed activity in BG.	1.) Subject to labour market test; 2.) Possible restrictions depending on the labour market or economic situation in the country.	1.) Specialised knowledge, skills or experience necessary for the respective work or position. 2.) Economic or social effect must be proved with the business plan.	For both kinds of permits: validity of 1 year.	1) Prolongation of of 12 months. The duration with all prolongations cannot exceed 3 years with few exceptions for some categories of workers. 2) Prolongation of of 12 months.
CZ	<b>One kind permit</b> – issued for a specific position, workplace, and duration and employer	2 categories of work permits: 1) permits related to the domestic labour market situation, 2) permits not related to the domestic labour market situation. (3) free access without work permit).	Valid residence permit; Suitable qualifications; Health status.  The invitation of employer is requested.	Max. 1 year	Work permit renewable for max. 1 year (prolongation can be repeated)
CY	1.Immigration permits; 2. Temporary residence and work permits	They are related to domestic labour market situation	The employer should have a vacant post (for skilled or unskilled labour) which can not be filled by Cypriots or other EU nationals.  Terms and conditions of employment should be at those prevailing at national level.  Documents requested: employment contract, passport, guarantee for covering repatriation expenses, medical certifications and insurance.	1. Indefinite 2. Temporary residence and work permit :1 year	2. Renewable up to 4 years. Further extension for certain cases / occupations
DE	The German Immigration Law does not distinguish between work and residence permit any longer.	After the introduction of the Law on Immigration on January 1, 2005, the administrative processes for the admission of foreigner workers who do not belong to any EU State were effectively changed. TC citizens need a residence title in order to regularly work. Through the adoption of the so-called 'one-stop government' principles the release of the residence and work permits is performed in only one approval	No info provided	No info provided	No info provided

MS	kinds of work permit	Relation with the domestic labour market situation	Eligibility criteria	Duration in time	Possibilities for prolongation
		process. The residence permit is released by the immigrants' bureaucracy. They examine the immigrants' needs and when the approval of the federal agency for labour is needed, they also turn to the local labour agency.			
EE	Work permit	No relation to the domestic labour market situation.	One must possess a valid residence permit. People who have a residence permit because their permanent legal income ensures their subsistence in Estonia cannot apply for a work permit.	It is connected to the validity of residence permit.	Can be prolonged till the end of the validity of the residence permit.
EL	Residence permit allowing access to labour market (see next table)				
ES	Temporary authorization to stay and work: 1. as subordinate worker; 2. as subordinate worker for limited duration; 3. as self-employed; 4. in the framework of transnational transfer for service provision	For the issue of authorization to stay and work (as subordinate worker and for limited duration), the labour market situation is taken into account. In particular, every three months, a list of occupations which are difficult to be filled is elaborated (i. e catálogo de ocupaciones de difícil cobertura).	Identity certificates of the worker and records of the enterprise; proof of qualification and professional experience; work contract or job offer; Entry visa and entrance in the national territory within one month. As to the authorization for self employment: compliance with national legislation;	As to authorization for subordinate workers and self-employment, the validity is 1 year, renewable; As to transnational transfer for service provision: the authorization is valid for the duration of work contract, up to 12 months. As to the authorization to work as subordinate worker for limited duration, maximum length is 9-12 months, according to the kinds of activities carried out.	Authorization to stay and work at points 1) and 3) are renewable for further 2 year. Authorization at the point 4) is renewable for 1 year. Authorization at point 2) is not renewable, unless different provisions in the national legislation.
FI	1. Residence permit for employed persons; 2. Employment without	1. Decision of the employment office; 2. No need for labour market test	- Section 79 (34/2006) Unrestricted employment under residence permits other than residence permits for employed persons (e.g. family ties; temporary protection or other humanitarian immigration; particular categories of	1 year	Renewable for further 3 years

MS	kinds of work permit	Relation with the domestic labour market situation	Eligibility criteria	Duration in time	Possibilities for prolongation
	residence permits for employed persons		workers, such as experts; professional athletes, coaches or umpires; professionals in science, culture or arts, in international organization; etc);  - Section 80 Restricted employment under residence permits other than residence permits for employed persons: for particular categories of workers (e.g. visiting teachers, consultant or researchers; work under a supply contract; for study; traineeship that is part of an intergovernmental agreement or an exchange programme)		
FR	1. Temporary authorization to work (for temporary worker); 2. Temporary stay visa called "salarie" 3. Temporary stay visa called "profession artistique et culturelle"	The labour market situation is considered except that for Title 3) ("profession artistique et culturelle")	Employment situation in the sector concerned; Conditions for the application of social legislation for the employer; Condition of employment and remuneration offered to the foreign worker; Arrangements concerning the accomodation of third-country workers; For title 3), the work contract is also required.	According to the different schemes: 1). 9 months; 2). 1 year 3). 1 year	All renewable, except that title 3).
IT	See next table				
LT	1. Work permits; 2. Work permits for seasonal workers; 3. Work permits for trainees and interns 4. Work permits for students	The needs of the Lithuanian labour market are taken in account.	A work permit is issued specifying the job (position) and enterprise, agency or organisation.	1. Max 2 years; 2. For seasonal employed, max six-month period in a year; 3. Max 1 years; 4. From the second year of residence students may work only outside their study time, the maximum number of 20 hours per week	1. Possibility to prolongation only within these 2 years when work permit was issued for shorter period 3. Prolongation allowed only in case of exception;

MS	kinds of work permit	Relation with the domestic labour market situation	Eligibility criteria	Duration in time	Possibilities for prolongation
LV	<p>1. Work permit issued together with visa;</p> <p>2. Work permit issued together with residence permit (type 1)</p> <p>3. Work permit issued together with residence permit (type 2)</p>	Only for 2) – Work permit issued together with residence permit (type 1) -Labour market test is needed.	<p>Work permit 1) and 3) are issued to particular categories of third-country workers (e.g. artists, IT specialists, experts, who provide help for state or municipal institutions);</p> <p>Work permit 2) is not restricted, third-country workers is allowed to take any position.</p> <p>Other criteria:</p> <p>For work permit 2): Proof of qualification (educational attainments/professional experience);</p> <p>For work permit 1) and 2): salary level not less than average salary in country.</p>	<p>For work permit 1): 1 year;</p> <p>For work permit 2) and 3): maximum 5 years, according to the work agreement.</p>	2) and 3) can be prolonged
NL	<p>1. Temporary workpermit</p> <p>2. Regular work permit</p>	<p>1. There is a labour market test</p> <p>2. In general there is a labour market test</p>	<p>1. Shortage on the Dutch/EU labour market.</p> <p>Labour migrant should be qualified for his job.</p> <p>2. Shortage on the Dutch/EU labour market.</p> <p>Labour migrant should be qualified for his job.</p>	<p>1. 24 weeks; no prolongation.</p> <p>2. Maximum validity of 3 years (after that the labour migrant is free on the labour market)</p> <p>A work permit with a validity less than 3 year could be prolonged.</p>	
PT	<p>1. Residence visa: it enables its holder to ask for a residence permit once in country. Residents (i.e. third country nationals who have a residence permit), are allowed to work without any additional authorization;</p> <p>2. Work visa: its holder may</p>	For a work visa (point 2) the labour market test is requested.	No information provided	<p>1. Residence visa is valid for a period of 6 months;</p> <p>2. Work visa is valid for 1 year;</p> <p>The extend of stay is valid for 1 year.</p>	<p>Work visa is renewable up to 3 year;</p> <p>Extend to stay is also renewable.</p>

<sup>126</sup> The temporary stay visa is issued to family members of citizens holding a study visa, a work visa and a permanence authorization. A work permit may be issued to family members.

<sup>127</sup> This extend of stay for work purposes depends of the following criteria: serious personal or professional reasons, humanitarian reasons or other serious reasons.

MS	kinds of work permit	Relation with the domestic labour market situation	Eligibility criteria	Duration in time	Possibilities for prolongation
	<p>obtain a residence permit.</p> <p>There are two additional types of authorizations:</p> <p>-Work permit, issued to a temporary stay visa holder<sup>126</sup>;</p> <p>-Extend of stay for the purpose of work, issued only in special circumstances to citizens who entered in the country with a Schengen visa, under a visa exemption regime, a student visa or a temporary stay visa<sup>127</sup>.</p>				
RO	<p>Type A work permit (permanent workers);</p> <p>Type B work permit (posted workers);</p> <p>3. Type C work permit (seasonal workers);</p> <p>4. Type D work permit (trainee workers);</p> <p>5. Type E work permit (sportsmen);</p> <p>6. Type F work permit (nominal);</p> <p>7. Type G work permit (cross-border workers)</p>	<p>Only work permit TYPE A, C, D are subjected to labour market test (and annual quota).</p> <p>The remaining are subjected only to annual quota.</p>	<p>- Fulfillment of the special conditions for vocational training, expertise and authorization, requested by the employer according to the legislation in force;</p> <p>- if the foreign makes proof of being medically fit to pursue the activity in question and do not have criminal record;</p> <p>-the employers have paid all obligations to the national public budget;</p> <p>- minimum knowledge of Romanian language.</p> <p>These criteria do not apply to Type B</p>	<p>Max 12 months;</p> <p>Max 6 months for seasonal workers.</p>	<p>Possibility of prolongation up to 12 months (except that for seasonal workers: no prolongation possible).</p>
SI	<p>1. A personal work permit</p> <p>2 An employment permit</p>	<p>1. Labour market test is not required;</p> <p>3. a foreign employer must obtain a work</p>	<p>In general: employer invitation is needed.</p>	<p>1. A personal work permit is issued for a fixed (from 1 to 3</p>	<p>In general, it is possible to renew the work permits for a</p>



MS	kinds of work permit	Relation with the domestic labour market situation	Eligibility criteria	Duration in time	Possibilities for prolongation
	3. A work permit (permit for work)	permit, which is issued without checking the situation and conditions on the labour market as part of the quota determined for seconded alien workers.		years) or indefinite period of time; 2. An employment permit is issued for 1 year, exceptionally for a period of two years <sup>128</sup> 3. A work permit is issued subject to different time restrictions, depending on the purpose for which it is issued (from three months for seasonal workers to 1 year)	fixed period.
SK	1. Employment permit for alien employed in the legal-labour relation 2. Employment permit for alien posted for performance of work and for alien posted within the internal transfer	1. Economic test is carried out.	1. Document on education or practise is required. Following the issued employment permit, he/she may apply for temporary residence permit for purpose of employment.	Employment permit is issued for the period of employment stipulated in the work contract, however for maximum of 1 year.	The permit may be prolonged repeatedly, always for maximum of 1 year.
UK	1. Work Permits (there are 6 types of work permit). 2. Science and Engineering Graduates Scheme 3. Representatives of overseas newspapers, news agencies and broadcasting organisations	For work permits (1) the job offer must pass a Resident Labour Market Test	Complex set of criteria. Among them: Qualifications; professional experience;	Validity depends on the kind of work permits. In general the permits can be valid up to 6 months, 12 months, two years, 5 years.	All the work permits are renewable, with the exception of scheme 2 (Science and Engineering Graduates Scheme) and scheme 4 (Science and Engineering Graduates Scheme)

MS	kinds of work permit	Relation with the domestic labour market situation	Eligibility criteria	Duration in time	Possibilities for prolongation
	<p>5. Sole representatives</p> <p>6. Private servants in diplomatic households</p> <p>7. Domestic workers in private households</p> <p>8. Overseas government employees</p> <p>9. minister of religion, missionary, or member of a religious order</p> <p>10. Visiting religious workers and religious workers in non-pastoral roles</p> <p>13. Airport based operational ground staff of overseas-owned airlines</p> <p>14. Persons with United Kingdom ancestry</p>				
IR	<p>1. Work Permit</p> <p>2. Green Card</p> <p>3. Spousal Work Permits</p>	<p>1. Work Permits are available for certain employees who do not qualify for Green Cards and for a very restricted number of workers in labour shortage areas. Such Work Permits are only issued subject to a strict labour market test to ensure that the vacancies involved cannot be sourced from within the EU/EEA/ Switzerland</p> <p>2. Green Cards are issued to highly skilled employees in sectors where high level skills shortages have been identified.</p> <p>3. Spousal Work Permits for spouses and dependants of Employment Permit holders. There is no labour market test</p>	<p>1. Work Permit applicants must be earning at least €30,000 for occupations other than those which are contrary to the public interest and under €30,000 in a very limited number of labour shortage areas.</p> <p>Following their arrival in the State the employee must register with the relevant Immigration Authorities and obtain the appropriate permission to reside (as an employee).</p>	<p>1. After 5 years legal residence Work Permit holders may apply for an exemption for Work Permit requirements, and a five year residence extension.</p> <p>2. Green Card Holders are eligible to apply for long term residency after 2 years.</p> <p>3. The duration of a Spousal/Dependant Work Permit will normally be linked to</p>	<p>1. Yes a five years resident extension</p> <p>2. Yes term residency after 2 years</p> <p>3. the duration of the existing Permit H§older</p> <p>4. No residency rights</p>

MS	kinds of work permit	Relation with the domestic labour market situation	Eligibility criteria	Duration in time	Possibilities for prolongation
			<p>2. Green Cards – the applicant must be earning over €60,000 per year or be earning between €30,000 and €9,999 in a list of identified skills shortage occupations e.g. Information and Communication Technology, Healthcare, Engineering, Financial Services etc.</p> <p>3. There are no restrictions as to occupations.</p> <p>On receipt of the Permit, the spouse or dependant must return to the relevant Immigration Authorities to change their status from dependant to worker</p>	the duration of the existing Permit Holder	

### Kinds of residence permit available to third-country workers

MS	kinds of residence permit	Conditions related to work to be fulfilled in order to obtain a residence permit	Other eligibility criteria	Duration in time	Possibilities for prolongation
AT	<p>1) Settlement permit: key worker (“Niederlassungsbewilligung-Schlüsselkraft”)</p> <p>2) settlement permit restricted (§ 43 NAG)</p> <p>3) settlement permit-unrestricted-</p> <p>4) Residence permit (Aufenthaltsbewilligung)</p> <p>5) Long-term residence permit (Daueraufenthalt EG)</p> <p>6) Long-term residence permit for family members (Daueraufenthalt Familienangehöriger)</p> <p>7) Residence title for family members (“Aufenthaltsstitel Familienangehöriger”)</p> <p>8) Aufenthaltsbewilligung (AB)</p>	<p>1)</p> <p>a) positive assessment of the labour market: i.e. an expertise of the Public Employment Service (AMS) that there is a real demand for that special qualification and business on the Austrian labour market (which cannot be filled by domestic workforce) and that the employment of the key worker has a special significance for the region or labour market segment in question that goes beyond company-related interests or the intended employment contributes to the creation of new jobs or the safeguarding of existing jobs or the intended employment involves the transfer of investment capital to Austria or the foreign national has a decisive influence on managing the affairs of the company (senior executive) or has an academic background or some other specially acknowledged professional background;</p> <p>b) Additionally the key worker must receive a minimum monthly gross salary of generally at least 60 per cent of the maximum assessment basis pursuant to section 108 para 3 of the General Social</p>	<p>1) key worker quota has to be available; all other requirements in Austrian laws and regulations regarding work conditions and social security are examined (expertise of the AMS);</p> <p>2) all other requirements in Austrian laws and regulations especially regarding work conditions, wages and social security have to be fulfilled; Meeting the conditions for integration (Integrationsvereinbarung 14 NAG)</p> <p>3) all other requirements in Austrian laws and regulations especially regarding work conditions, wages and social security have to be fulfilled</p>	<p>1) maximum of 18 months; worker who has worked 12 months within those 18 months may get settlement permit –unrestricted.</p> <p>2) maximum 12 months</p> <p>3) For 12 month/ For one year, renewable as settlement permit restricted/ For one year, renewable as settlement permit unrestricted 4.after 5 years – Residence permit</p> <p>4) Unrestricted</p> <p>5) Unrestricted</p> <p>6) Unrestricted</p> <p>7) 12 months</p> <p>8) 12 months</p> <p>9) 12 months</p>	<p>1) renewable.</p> <p>2) renewable</p> <p>7) further prolongation possible</p> <p>8) further prolongation possible</p> <p>9) further prolongation possible</p> <p>10) further prolongation possible</p> <p>11) further prolongation possible</p> <p>12) further prolongation possible</p> <p>13) further prolongation possible</p> <p>14) further prolongation possible</p>

MS	kinds of residence permit	Conditions related to work to be fulfilled in order to obtain a residence permit	Other eligibility criteria	Duration in time	Possibilities for prolongation
	Rotationsarbeitskraft 9) AB Betriebsentsandte 910) AB Selbständige 11) AB Artist (AB Künstler) 12) AB dependent labour special purpose (AB Sonderfälle Unselbständige) 13) AB Pupil (AB Schüler) 14) AB Student (AB Studierende) 15) AB Social service (AB Sozialdienstleistende) 16) AB Researcher (AB Forscher)	insurance Act (ASVG) plus special bonus payments (in 2007 that is 2304 € x 14 months = 32256 € yearly). 2) The third-country worker has to hold an employment permit, work permit or exemption certificate 3) third-country workers must have worked with a settlement permit-key worker (this is to be certified by the AMS) or he/she must be a case of downgrading from the long-term residence status; it provides full access to the Austrian labour market 4) third-country workers have to hold any kind of valid work authorization or belong to a group which is exempted from the Act Governing Employment of Foreign Nationals (Ausländerbeschäftigungsgesetz), e.g. accredited journalists, priests, etc. 5), 6), 7) Free access to the labour market 8), 9) Concession of regular legal labour position 10) Communication from the Labour Market Service 11) Regular legal labour position for dependent employment 12) According to the employment situation stated in the Law for Foreigner Labour 13) Possible concession for regular legal labour position 14) Possible concession for regular legal labour position 12 months, further prolongation possible 15), 16) Remuneration not stated in the Foreign Labour Law	Meeting the conditions for integration (Integrationsvereinbarung 14 NAG) 4) all other requirements in Austrian laws and regulations especially regarding work conditions, wages and social security have to be fulfilled, 5), 6), 7) Meeting the conditions for integration (§ 14 NAG)	10) 12 months 11) 12 months 12) 12 months 13) 12 months 14) 12 months 15) 12 months 16) 12 months	15) further prolongation possible 16) further prolongation possible
BG	Short term stay and long term stay	A foreigner shall be able to receive the long term		The short term stay: up to 90	

MS	kinds of residence permit	Conditions related to work to be fulfilled in order to obtain a residence permit	Other eligibility criteria	Duration in time	Possibilities for prolongation
		<p>stay permit if:</p> <ul style="list-style-type: none"> <li>- wish to work under legal terms of employment upon permit by the bodies of the Ministry of Labour and Social Policy;</li> <li>- are foreign specialists staying in the country by force of international agreements to which the BG is a party.</li> </ul> <p>Visa for long term stay shall be issued to a foreigner who wishes to settle for a continuous period in the country.</p>		<p>days from the date of entering the country.</p> <p>The long term stay: up to one year.</p>	
CZ	<ul style="list-style-type: none"> <li>- First: the third-country workers has to obtain a visa for a stay longer than 90 days.</li> <li>- Then, the third-country workers can obtain a long-term residence permit</li> </ul>	<p>For an application for visa to stay longer than 90 days: a work permit issued by the Employment Office of the Czech Republic, which entitles the alien to perform his/her job for up to 90 days;</p> <p>For the long term residence permit: a travel document; photograph; Deposit" (i.e. a financial sum); medical report</p>		Duration of long-tem residence permit issued for purpose of employment is dependent on duration of work permit.	Prolongation is possible
CY	See above table				
DE	1. Residence permit for a job	<p>It depends on the Labour Agency's approval. Arrival and residence of TC citizens is possible only for the activities explicitly regulated by bilateral agreements, as well as by the labour regulations.</p> <p>Examples: Season and Au-pair permits among the non-qualified professions; Specialist and IT-professionals among the qualified professions.</p> <p>Further criteria for the release of the federal labour permission follow the rule that</p> <ul style="list-style-type: none"> <li>no German or EU-citizen is available for that specific job;</li> <li>the labour market faces no negative consequences;</li> <li>the same labour conditions as to the Germans are granted.</li> </ul>	No	The residence permit is ensured for the duration of the job or for three years at most.	The residence permit can be prolonged for the same time period.
	2. Establishment permit	It is an unlimited authorization for the TC citizens		Unlimited	

MS	kinds of residence permit	Conditions related to work to be fulfilled in order to obtain a residence permit	Other eligibility criteria	Duration in time	Possibilities for prolongation
	3. Establishment permit for Highly qualified people	<p>who have already had the residence permit for five years, who are socially integrated (knowledge of German language, regulations and society) and whose living behaviour is certified.</p> <p>It is granted to highly qualified TC citizens, such as scientists, well-known professors, or specialists with a notable professional career and a gross income which is at least twice the limit of the national health insurance.</p>		Unlimited	
EE	<p>1.) Residence permit for employment</p> <p>2) Residence permit for enterprise</p>	<p>1) An employer must have a permission of Labour Market Office, who assesses the situation in the labour market. If a suitable worker cannot be found from the local labour market a foreign worker could be granted a permission to work in Estonia.</p> <p>2) The enterprise should be necessary from the point of view of national interests in advancing Estonian economics.</p>	<p>1) Permission from the Labour Market Office, required qualification, education, health, work experience and necessary working skills.</p> <p>2) A certain amount have been invested into a business venture in Estonia that has a description of a business plan. The alien must have a valid health insurance.</p>	<p>1) A residence permit for employment can be granted for max of 2 years.</p> <p>2) The duration of that residence permit is max 2 years.</p>	<p>1) If all conditions are still fulfilled the residence permit can be prolonged.</p> <p>2) It also can be prolonged if the conditions are still fulfilled.</p>
EL	<p>1. Salaried employment or service or work rendering</p> <p>2. Seasonal employment</p> <p>3. Company executives</p> <p>4. Temporary transfer for service provision</p> <p>5. Athletes – Trainers</p> <p>6. Members of entertainment groups</p> <p>7. Intellectual creators</p>	<p>- Work contract for all the kind of permit;</p> <p>- Proof provided by the company that there is a contract for service provision with a recipient in Greece (4)</p> <p>- Certification by the corresponding archeological school (8)</p>	<p>Possession of a valid travel document and a visa when required, health certificate. The third country national concerned should not be a threat to public security</p>	<p>1 year;</p> <p>6 months for:</p> <p>- Temporary transfer of a third country national who move from a company established in a third country in order to provide services in Greece (4);</p> <p>- seasonal employment (2)</p>	<p>Renewable, except that for Seasonal employment (2)</p>

MS	kinds of residence permit	Conditions related to work to be fulfilled in order to obtain a residence permit	Other eligibility criteria	Duration in time	Possibilities for prolongation
	8. Members of foreign archeological schools				
ES	<p>1. Temporary residence: authorization to stay for more than 90 day, and less than 5 years – it does not implies the access to labour market;</p> <p>2. Temporary residence for the purpose of family reunification;</p> <p>3. Temporary residence on the basis of specific circumstances: permit for being established in ES (<i>arraigo cultural y social</i>); ancestry; international protection; humanitarian reasons; collaboration with Spanish authorities.</p>	For the of the issue of the residence authorization for work purposes, the work authorization is requested.	<p>Criminal record; medical record; proof of sufficient means for subsistence.</p> <p>For the residence authorization for being established in ES (<i>arraigo social</i>), the following criteria are requested:</p> <p>To have been residing in ES at least for a continuative period of 1 year;</p> <p>Proof of working relation at least for a period of 1 year.</p>	1 year	<p>1. Renewable for further 2 year;</p> <p>3. Renewable for further 1 year.</p>
FI	Residence permits for employed persons (see above)				
FR	<p>Only for scheme 1):</p> <p>Temporary residence visa is required (carte de séjour temporaire portant la mention « travailleur temporaire ».)</p>				
IT	<p>1. Seasonal workers;</p> <p>2. Open ended contract (subordinate job)</p> <p>3. Temporary subordinate job;</p> <p>4. Self employed;</p>	<p>1, 2 and 3: work contract+ other criteria (guarantee of adequate lodging and expenses for repatriation);</p> <p>4. minimum salary level + other criteria</p>	<p>For categories 1 and 2, priority to :</p> <p>- workers have already carried out seasonal work;</p> <p>- foreign participating in specific educational and training intergovernmental programs;</p>	<p>1. Seasonal workers: 9 months</p> <p>2.. Open ended contract (subordinate job): 2 years;</p> <p>3. Temporary subordinate job: 1 year;</p> <p>4. Self employed: 2 years.</p>	For seasonal workers: renewable but max 9 months per year
IE	1. Residence Permit- work permit conditions.	2. The third-country workers must have been issued with a Work Permit or Green Card to qualify for a residence permit.		1. one year (Work Permits) and two years (Green Card)	

MS	kinds of residence permit	Conditions related to work to be fulfilled in order to obtain a residence permit	Other eligibility criteria	Duration in time	Possibilities for prolongation
LT	1. Temporary residence permit 2. Permanent residence permit	1. For temporary residence permit: Work contract; intermediation writing of employer; sufficient means and residence.  For categories who not need work permit: intermediation writing of employer, incorporation certificate of employer company, permit for a company to employ third-country workers  2. For permanent residence permit:  To reside in LT for a continuous period of 5 years holding a temporary residence permit		1. Temporary residence permits: validity 1 year; 2. Permanent residence permit: validity 5 years	1. Temporary permit is renewable for max 1 year, if the conditions are fulfilled.  2. Permanent residence permit: replaced after the lapse of the period.
LV	Residence permit	If the aliens receive work permit TYPE 1: only work invitation approved by State Employment Agency;  If the aliens receive work permit TYPE 2: work agreement (average salary in country)	Not imperil state security, public policy or public health.  Documents certifying place of residence in Latvia.	Max 5 years	Prolonged
NL	1. residence permit for the duration of the labour permit	1. The third-country workers must apply for a so called <i>Machtiging tot Voorlopig Verblijf</i> (MVV), a national visum for a stay in the Netherlands of more than 3 months. The IND will issue a residence permit if the third-country workers has proven that he has sufficient means of existence.	1. The third-country workers does not pose a threat to public security, public order or national health.	1. third-country workers may apply for a prolongation.	



MS	kinds of residence permit	Conditions related to work to be fulfilled in order to obtain a residence permit	Other eligibility criteria	Duration in time	Possibilities for prolongation
PT	See table above				
RO	1. Temporary residence permit; 2. Permanent residence permit	1. work permit, job contract, wage at least as high as the minimum wage per national economy. 2. No condition related to labour market	1. Criteria to be fulfilled/documents to be presented: approval of the Office for the Migration of the Labour Force and of the Authority for Aliens; medical suitability; criminal record; proof of the means of support. 2. No eligibility criteria	1 year; 5 years with the possibility for renewal <sup>129</sup>	Possibility of prolongation (for temporary permit, the prolongation is according to work permit prolongation)
SI	Residence Permit for Employment or Work Purposes	Valid work permit or other permit required by labor legislation	- Valid passport; - Health insurance; - Sufficient means of subsistence; - not being threat to public safety.	Temporary residence permit is valid for a period of duration of work permit, but maximum 1 year.	Residence permit can be renewed in case that conditions are still met. After five years of temporal residence, worker can obtain permanent residence permit.
SK	1. Temporary stay permit to an alien for the purpose of employment	The work permit is needed	A set of criteria/documentation to be fulfilled:  integrity, financial coverage, secured accommodation, proof of the purpose of his/her stay (e.g. employer's confirmation that the alien would execute activities for which work permit is not required, a confirmation issued by a school or other educational institution, etc)	Maximum 2 years	Renewal max. for 3 years

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According to the new draft amending GEO no. 194/2002 pending approval, the permanent residence permit will be issued for an unlimited period of time.

MS	kinds of residence permit	Conditions related to work to be fulfilled in order to obtain a residence permit	Other eligibility criteria	Duration in time	Possibilities for prolongation
UK	The UK does not provide residence permits as such. Migrants need to be granted leave to remain under one of the employment schemes outlined above.				

### Single application procedure for a joint residence/work permit

Does your country have a single application procedure for a joint residence/work permit, which may also take the form of a residence permit allowing access to the labour market?

single application procedure for a joint residence/work permit	Distinct permits for work and residence
AT, EE, DE, EL, ES, FR, FI, IT, NL, PT	BE, BG, CY, CZ, IE, LV, LT, RO, SI, SK, UK, IE

- If yes, is it foreseen in general for all third-country workers or only for certain specific categories? If only for certain categories: could you list the criteria that a third-country worker must meet to obtain a joint residence/work permit?

- If no, please specify which procedure(s) is (are) applicable for obtaining a work permit and a residence permit?

MS	Single permit/kinds of procedure	Categories allowed to joint work/residence permit	Eligibility criteria	Procedures for work and residence permit
AT	Yes			<p>It is related to the “key workers” establishment concession that operates as a “one-stop-shop process“ and is regulated by both the Residence Law, as well as the Employment Law for being granted the residence title.</p> <p>Although accessible to all TWCs, following Criteria are to be fulfilled by the the single person:</p> <ol style="list-style-type: none"> <li>1. Communication / Certification by the Labour Market Service</li> <li>2. requested education or specific competencies</li> <li>3. minimum salary</li> <li>4. positive effects of the employment / general economic utility for the labour market / region / investment capital, or higher level of education</li> </ol>
BE	Work and residence permits			<p>Work permit</p> <ol style="list-style-type: none"> <li>1) provided after formal request submitted by a Belgian employer, to the competent authority (Region)</li> <li>2) Permits A and C are delivered under the direct</li> </ol>

MS	Single permit/kinds of procedure	Categories allowed to joint work/residence permit	Eligibility criteria	Procedures for work and residence permit
				worker's request.  Residence permit In order to obtain a residence permit the request of a Temporary Residence Permit must be submitted to the Belgian diplomatic representation in the origin country.
BG	Work and residence permits	-	-	? A work permit is issued by the Employment Agency after a request from the employer.  A work permit for self-employment is issued by Employment Agency upon application of the person concerned, within 1 month.
CZ	Work and residence permits	-	-	Different authorities issue the respective permits:  - The Employment Office of the Czech Republic issues a work permit.  - The Alien Police of the Czech Republic issues a long-term residence permit.
CY	Entry and/or residence permit			Firstly the potential employer needs to obtain the approval of the Department of Labour and then submit this approval with the application to obtain entry or resident permit for ththird-country workers at the CRM Department.
DE	Joint residence / work permit	See above		
EE	Residence permit for employment			
EL	Joint residence/work permit	For all third-country workers in general	No answer (the procedure is extended to allthird-country workers)	
ES	Temporary authorization to stay and wok:	The authorization is issued for: 1. subordinate worker; 2. subordinate worker for limited duration;	-	

MS	Single permit/kinds of procedure	Categories allowed to joint work/residence permit	Eligibility criteria	Procedures for work and residence permit
		3. self-employed; 4. in the framework of transnational transfer for service provision		
FI	Joint residence/work permit	Aliens Act Section 72 and 73, Section 36		
FR	Two scheme require a single title			
IT	Joint residence/work permit (residence permit for employment purposes)	For all third-country workers in general	No answer (the procedure is extended to all third-country workers)	
IE	Work and residence permits			Two different procedures are foreseen and different authorities are involved.
LT	Work and residence permits			The employer applies to the Lithuanian Labour Exchange, which examines the application for a work permit within two months.
LV	Work and residence permits			In order that third-country workers obtain access to internal labour market, the employer has to notify a job vacancy and submit a job invitation. The State Employment Agency then carries out a labour market research and confirms the job invitation.  The foreigner has to supply the requested documents, including confirmed job invitation, in order to receive a residence permit.
NL	Joint residence/work permit			1. Their employer should have concluded a covenant with the Immigration and Naturalisation Service (IND) regarding some guarantees – f.ex. the knowledge worker shall not apply for social assistance  2.The knowledge worker should earn a gross annual salary of €46.500 if he is older than 30 years and € 34.000 if he is younger. For scientific researchers a salary criterion doesn't exist.
PT	Joint residence/work permit			

MS	Single permit/kinds of procedure	Categories allowed to joint work/residence permit	Eligibility criteria	Procedures for work and residence permit
RO	Work and residence permits			<p>For <u>work permit</u>:</p> <p>The employer has to submit a motivated request to the Office for the Migration of Labor Force regarding the necessity of employment of the alien, accompanied by a set of documents, depending on the type of work permit envisaged. The application for the issuing of the favorable opinion by the Office for the Migration of Labor Force shall be solved within 15 days.</p> <p>Within 10 days of the date of issuing the work permit, the employer has to conclude an individual labor contract for a definite period with the alien and to register the contract concluded.</p> <p>For <u>residence permit</u>:</p> <p>The long stay visa for employment is issued on grounds of the approval of the Office for the Migration of the Labour Force and of the Authority for Aliens and upon the request of the employer.</p>
SI	Work and residence permits			<p>The employer submits an application for a work permit for employment or work. For obtaining a personal work permit, an alien gives an application to the Employment Service of Slovenia</p> <p>Once a work permit has been issued, residence permit for purposes of work and employment can be granted. In order to grant residence, applicant has to be in possession of a valid work permit and has to fulfil other conditions prescribed by Aliens Act Migrant. In-country requests are not accepted; employer plays no role in the procedure of granting residence.</p>
SK	Work and residence permits			<p>There are two independent procedures for work and residence permit: the alien has to apply separately.</p>
UK	Work and residence permits			<p>Once migrants apply from overseas (for a specific scheme) have confirm that that they have met the requirements of the scheme they apply for Entry</p>

MS	Single permit/kinds of procedure	Categories allowed to joint work/residence permit	Eligibility criteria	Procedures for work and residence permit
				Clearance overseas.

Are there already any governmental or parliamentary initiatives to introduce such a combined procedure in the future (in particular, policy papers, draft legislation, etc.)?

YES	NO
LT <sup>130</sup> , LV <sup>131</sup> , PT <sup>132</sup> , RO <sup>133</sup>	AT, BE, CZ, DE, IE, IT, NL, SI, SK, UK <sup>134</sup>

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<sup>130</sup> Discussions on possible improvement are foreseen in later 2007.

<sup>131</sup> A draft “Conception of migration policy relating to employment” was developed by an inter-institutional working group at the end of 2006 and is currently under discussion in parliament. The draft Conception proposes to introduce a single responsible institution (“one-stop agency”) and a joint residence/ work permit by incorporating both of these documents in the residence permit card.

<sup>132</sup> There is a draft of a new immigration law harmonizing all the above described admission regimes under only one – the residence permit. To obtain this residence permit the third country national must obtain, previously and abroad, a residence visa.

<sup>133</sup> The Romanian authorities intend to simplify the procedures applicable to employment of third-country nationals in Romania mainly through the creation of a single department for issuing the residence permit for aliens.

<sup>134</sup> Points-Based System for managed migration will introduce a one-step process for those coming to the UK to work or study, combining the application for entry clearance and the migration scheme into one.

## Entry and mobility

### *Specification of entry and mobility rights:*

#### Does the law make specific provisions for third-country workers?

If yes, what are the **specific provisions** in the law?

Which law covers this right of third-country workers?

If no, which are the **limitations applicable**?

MS	Rights granted			
	Re-entry after temporary absence	Passage through other Member States	Free access to the entire territory of the Member State concerned	Eligibility for a long-term residence status
AT	Yes	Yes	Yes	Yes
BE	Yes Law 5/12/1980 for the access into the territory, the residence, the settlement et the dismissal of foreigners	No Except what provided in the framework set by the EC Directive 2003/109, for long term residents	No Same limitations as for Belgian citizens (military bases)	NR
BG	No, Law for the foreigners in BG applies. Until the elapse of the permitted term for stay, a foreigner who has permission for long term stay shall be able to re-entry.	No, Third-country workers need visas to enter the territory of other Member States.	Yes The foreigners in BG shall have all rights and obligations according to the Bulgarian laws and the ratified international agreements to which BG is a party except these for which Bulgarian citizenship is required.	Yes A permission for long stay shall be able to receive the foreigner who wish to work under legal terms of employment upon permit by the bodies of the Ministry of Labour and Social Policy
CZ	No specific provisions for third-country workers			Yes. Long-term residence status may be granted: after 5 years permanent residence in the territory;
CY	Yes	No	Yes Access to work is permitted only in the areas controlled by the government and not the occupies part of the Republic	Yes After five years of legal and continuous residence in Cyprus may apply for the long term residence status



MS	Rights granted			
	Re-entry after temporary absence	Passage through other Member States	Free access to the entire territory of the Member State concerned	Eligibility for a long-term residence status
DE	<b>Yes</b> The residence permit ends if the third-country worker does not come back in six months. Exceptions to this rule are the cases of third-country workers with an establishment permit, living in Germany for more than 15 years, or fulfilling the military service in their own Country.	<b>Yes</b> Possible according to article 21 of the Schengen treaty.	<b>Yes</b> Nonetheless the Labour agency may restrict the validity of the work authorization to certain areas.	<b>Yes</b>
EE	<b>Yes</b> If the period of absence exceeds a certain amount of time the residence permit can be withdrawn.	<b>No</b> Estonia doesn't issue residence permits that are valid in other MS' (e.g Schengen countries).	<b>Yes</b>	<b>Yes</b> If an alien has lived in Estonia legally for 5 years and his absence from the Estonian territory doesn't exceed a certain amount of time he can apply for a long-term residence status. He also must have stable income and cannot pose a threat to the public order and security.
EL	<b>Yes</b> , if his residence permit is still valid when he enters the Country again	<b>No</b> . Schengen acquis is applied (i.e. free movement for up to 3 months for those in possession of a residence permit issued by another member state)	<b>Yes</b> (limitations may apply under respective presidential decrees)	<b>Yes</b> . Exceptions <i>mainly</i> for those third-country workers who reside in Greece for the purpose of temporary employment according to immigration law
ES	<b>Yes</b>	<b>Yes</b> Schengen acquis is applied	<b>Yes</b>	<b>Yes</b>
FI	<b>Yes</b>	<b>No</b> . Schengen acquis is applied	<b>Yes</b>	<b>Yes</b>
FR	<b>No</b> , the holder of a temporary residence permit can re-entry during the validity period of such permit	<b>No</b>	<b>Yes</b>	<b>Yes</b>
IT	<b>Yes</b> . The production of residence permit is requested. If the residence permit is expired, the foreign can re-entry within 60 day, but an entry visa is required.	<b>No</b> , Schengen acquis is applied.	<b>No</b> , there is no limitation.	<b>Yes</b> , after the possession of valid residence permit for 5 years; available income not less than the annual social benefit.
IE	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>No</b>
LT	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>

	<b>Rights granted</b>			
<b>MS</b>	<b>Re-entry after temporary absence</b>	<b>Passage through other Member States</b>	<b>Free access to the entire territory of the Member State concerned</b>	<b>Eligibility for a long-term residence status</b>
LV	<b>No:</b> if a foreign with temporary residence permit resides outside the territory of the country for more than 3 months, he/she has to apply for a new residence permit.	<b>No</b>	<b>No:</b> THIRD COUNTRY WORKERS with a valid work permit and a residence permit can freely move within the entire territory of the Republic of Latvia.	<b>No:</b> long-term resident status according to general provisions (i.e., in accordance with the rules of Directive 2003/109/EC)
NL	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>

MS	Rights granted			
	Re-entry after temporary absence	Passage through other Member States	Free access to the entire territory of the Member State concerned	Eligibility for a long-term residence status
PT	<b>Yes</b> Temporary absence may not exceed six consecutive months or eight months with interruptions, within the total validity period of the temporary residence permit.	<b>Yes</b>	<b>Yes</b>	The directive on long term residence hasn't been transposed yet
RO	<b>No:</b> right to re-entry during the entire validity period of their residence permit.	<b>No</b>	<b>No,</b> right of free movement on the entire territory and the right to have the residence or domicile anywhere on the Romanian territory.	<b>No</b> <u>Art 70 of GEO no. 194/2002:</u> Aliens may establish their domicile in Romania if they simultaneously comply with the following conditions: a) a temporary stay, continuous and legal in the last <b>5 years</b> ; b) means of support in the amount provided for by the law; c) health insurance; c) speak the Romanian language at a satisfactory level; d) do not represent a danger for public order and national security. The Romanian law also provides permanent residence for: 1) Aliens of Romanian nationality or born in Romania, as well as those whose stay is in the interest of the Romanian state <sup>135</sup> without meeting the above conditions; 2) The minor alien may obtain the establishment of domicile in Romania at the same time with his/her parents. The aliens holding a temporary stay right for studies cannot request the establishment of the domicile in Romania. The right for permanent stay ceases in the certain situations ( <u>Art. 69 of GEO no. 194/2002</u> ).
SI	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>Yes,</b> after five years of uninterrupted residence with valid temporary residence permit.

<sup>135</sup>

The aliens who were granted asylum by the Romanian authorities may be granted permission to establish their domicile in Romania, without fulfilling the above mentioned conditions; the aliens who prove that they have invested more than one million euro or have created more than 100 jobs may be granted permission to establish their domicile in Romania, without fulfilling the above conditions.

MS	Rights granted			
	Re-entry after temporary absence	Passage through other Member States	Free access to the entire territory of the Member State concerned	Eligibility for a long-term residence status
SK	<b>Yes:</b> a temporary stay permit shall terminate when an alien fails to enter the territory of the Slovak Republic within 180 days from granting of the temporary stay permit.	<b>Yes:</b> the countries applying the decision 895/2006/EC should enable visa-free transit for its holders.	<b>No,</b> right of free movement on the entire territory	<b>Yes,</b> after five years continuous residence on territory of the Slovak Republic.
UK	<b>No.</b> Those subject to immigration control (not specifically third-country workers) who exit the UK technically are not allowed back, but in practice those with existing leave are allowed back in.	<b>No.</b> In particular, movement to a from the Republic of Ireland does not count as leaving the UK (this applies not only to third-country workers).	<b>No:</b> there are no restrictions on movement within the UK.	<b>Yes:</b> five years residence in the UK is required before migrants may apply for Indefinite Leave.

Are there already any governmental or parliamentary initiatives that directly affect these rights in the future (in particular, policy papers, draft legislation, etc.)?

YES	NO
CY <sup>136</sup> , IE <sup>137</sup>	BE <sup>138</sup> , CZ, EE, EL, IT, NL, RO

## Employment and education

Do all **third-country workers** enjoy equal treatment with nationals?

<sup>136</sup> Draft legislation on family reunification.

<sup>137</sup> Provisions for the introduction of Long-Term Residence for Work Permit Holders who have resided legally in Ireland for five years.

<sup>138</sup> Except what provided in the EC Directive 2003/119/EC.

**If no**, what are the **differences between the rights of third-country workers and nationals**? Please, take into account that different groups of **third-country workers** may have different rights.

MS	Rights granted				
	Freedom to choose an occupation/employer	Right to access to the public sector <sup>139</sup>	Full access to management functions	Right to seek new employment in case of job loss	Right to change job/employer
AT	No  Labour market test for third-country workers; settlement permit-key worker or employment permit are issued to a certain employer to cover a certain position with the foreigner	No  Limited possibilities - restrictions for filling positions dealing with vital government interests and governmental power (plus labour market test)	NR	Yes	Yes  Labour market test still applies unless he/she is holder of a work permit, exemption certificate, etc or after 18 months of having held a settlement permit-key worker and having worked for 12 months as a key worker within that settlement permit-key worker
BE	No  Depending on the permit demanded (A, B or C)	No  Depending on the job to be covered.	Yes	No  Depending on the permit being held (A, B or C)	No  Depending on the permit being held (A, B or C)
BG	Yes	Yes  Some positions are available only for Bulgarian nationals.	Yes	No,  Work permit is terminated in case of termination of employment.	No,  The work permit certifies the right of the individual to work only for a concrete employer at a concrete position, place, type of work and time limit.
CZ	<b>Yes</b>  It has to be vacancy so-called suitable for third-country workers, if law requires it.	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>  If a third-country worker loses the job, there should be time for it in the notice period at least in the length	<b>Yes</b>  They however have to gain new work permit for a new position and employer.

<sup>139</sup> In this case, it is equal treatment in respect of EU citizens, not of nationals. It would also be useful to know whether there are differences in respect of the rules applicable in this case to long-term residents (directive 2003/109/EC, Article 11(1)(a) and (3)(a)).

Rights granted					
MS	Freedom to choose an occupation/employer	Right to access to the public sector <sup>139</sup>	Full access to management functions	Right to seek new employment in case of job loss	Right to change job/employer
				of 2 months, in compliance with the Labour Code (No. 262/2006 Coll.)	
CY	<b>No</b> Temporary residence permit is granted in connection with a specific post and employer	<b>No</b> Access to public sector is strictly limited to such job	<b>No</b> The community preference is followed	<b>No</b> One month after a release agreement between employer and third-country worker	<b>No</b> Right to move to another employer of the same sector and in the same occupation, after a release agreement
DE	<b>No</b> The work permit is released in relation to a specific position in a certain sector. This restriction does not apply to a third-country worker who has worked for three years or has continuously lived in Germany for at least four years.	<b>No</b> Only German and EU citizens can work in the Public sector.	<b>No</b> The expression “management functions” and “manager” are not mentioned in the regulation for the job approval. For the middle management positions the labour market exceptions.	<b>No</b> Should the third-country worker lose his /her job, the main criterion for the work permit is lost. In that case, the Immigrants authority has to decide whether the work permit can be prolonged or not., and, in case, how long is the period allowed to the third-country worker to seek another job.	<b>No</b> A change in job or employer revoke the original work permit and therefore needs for a new one.
EL	<b>No</b> The first entry and residence is linked to a specific invitation by an employer	-	-	<b>YES</b> , under certain limitations.  For the period the initial residence permit is valid, only within the same type of specialty for which the residence permit was initially issued, as well as the insurance organisation.  Following the initial residence permit, the third-country workers has the right to change employer and territory, provided that the initial work contract is terminated and he has signed a new one with another employee in a different prefecture.	
EE	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	

MS	Rights granted				
	Freedom to choose an occupation/employer	Right to access to the public sector <sup>139</sup>	Full access to management functions	Right to seek new employment in case of job loss	Right to change job/employer
	Some positions in the public service are only for nationals or EU nationals.	Some positions in the public service are only for nationals or EU nationals. However, there are no restrictions to working in the public service as support staff or non-staff.		An employee can change the employer but in this case he has to apply for a new residence permit. In the case of a job loss and if there's no other employer who would employ him, the residence permit will be terminated. An employer has an obligation to inform the immigration offices about the termination of the work contract.	
ES	<b>Yes</b> For permanent residents	<b>Yes</b> third-country workers enjoy the same conditions with EU MS nationals.	<b>Yes</b>	<b>No answer</b>	<b>Yes</b> The authority which has issued the initial authorization to stay and work (as subordinate worker or self employed) can issue the authorization to change employer/job. If the third-country workers changes the kind of activity, the labour market situation is to be considered.
FI	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>
FR	<b>Yes</b> Except that for certain regulated professions	<b>No</b>	<b>Yes</b>	<b>Yes,</b> For permanent workers	<b>Yes</b> For holders of title mentioned "salariés"
IT	<b>Yes</b>	<b>Yes,</b> the public sector is restrained to Italian citizens	<b>Yes</b>	<b>Yes</b> The THIRD COUNTRY WORKERS (with permit for dependent work) can register itself as unemployed, for the validity of work permit.	<b>Yes</b>
IE	<b>No</b> Only in those occupation where	<b>No</b> Only in those occupation where	<b>No</b> The Intra-Company Transfer	<b>No</b> A new work permit is	<b>No</b> Normally after 12 months,

Rights granted					
MS	Freedom to choose an occupation/employer	Right to access to the public sector. <sup>139</sup>	Full access to management functions	Right to seek new employment in case of job loss	Right to change job/employer
	shortages are signaled.	shortages are signaled	Scheme is for a restricted number of vacancies at senior management and key personnel level	needed	but a new work permit is needed
LT	<b>No</b> A work permit may be issued to an alien if there is no specialist in Lithuania meeting the employer's qualification requirements. A work permit shall be issued specifying the job (position) and enterprise, agency or organisation where the alien will be employed	<b>No</b>	<b>Yes</b> Except civil service.	<b>No</b> An alien's work permit shall be revoked: upon the termination of an employment contract with the alien. Upon the expiry of validity of a work permit an alien must depart from the Republic of Lithuania.	<b>No</b> A work permit shall be issued specifying the job (position) and enterprise, agency or organisation where the alien will be employed.
LV	<b>Yes</b>	<b>No</b> , third-country workers are not allowed to take a position in civil service.	<b>Yes</b>	<b>No</b> In case of job loss third-country workers has to leave the country and to apply for a new work permit and a residence permit once he/she has found a new job.	<b>No</b> Permits for third-country workers are issued only for a specific job vacancy. Subsequently, if third-country workers wants to change a job/ employer, he/she has to apply for new work permit and a residence permit <sup>140</sup> .
NL	<b>No</b> The third-country workers has the right to choose an occupation/employer, but in general a work permit is required. This requirement limits the opportunities	<b>No</b>	<b>No</b>	<b>Yes</b> If a work permit is needed, the third-country worker has a period of one year to find a new job	<b>Yes</b>

<sup>140</sup>

It should be noted that also if THIRD COUNTRY WORKERS wants to work simultaneously also for another employer (other than specified in a work permit), or for the same employer but in two or more different job positions, he/she has to apply for a new work permit.



	Rights granted				
	Freedom to choose an occupation/employer	Right to access to the public sector <sup>139</sup>	Full access to management functions	Right to seek new employment in case of job loss	Right to change job/employer
MS	for third-country workers to find a job.				
PT	<p><b>Yes</b></p> <p>But Holders of working visa, studying visa and temporary staying authorised can only change their occupation/employer status if included in one of the activity sectors as defined by the Ministers Council Resolution 51/2004, of April 13</p> <p>Holders of residence or permanence permit benefit from total mobility.</p>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
RO	<b>Yes</b>	<p><b>No</b></p> <p>For the public servants, one of the access conditions is to have Romanian citizenship.</p>	<p><b>Yes</b></p> <p>According to the Labour Code, the duration of the notice period cannot be less than 15 working days<sup>141</sup>. According to the Collective labour agreement concluded at the national level, applicable to all employers in the country, for the entire duration of the notice the person has the right to 4 hours/day to seek new employment, without the diminution of his/her wages</p>	<p><b>Yes</b></p> <p>According to the Labour Code, the duration of the notice period cannot be less than 15 working days<sup>142</sup>. According to the Collective labour agreement concluded at the national level, applicable to all employers in the country, for the entire duration of the notice the person has the right to 4 hours/day to seek new employment, without the diminution of his/her wages.</p>	<p><b>Yes</b></p> <p>The holder of the work permit may be employed or transferred to a single employer, natural or legal person from Romania or a representative office, branch or subsidiary from Romania of a legal person with the headquarters abroad.</p> <p>If the labour relations of the alien with a employer are terminated before the expiry of the period for which the work permit was issued, employment at another employer may only be possible if a new work</p>

<sup>141</sup> For workers with disabilities, the notice period is at least 30 days.

<sup>142</sup> For workers with disabilities, the notice period is at least 30 days.

MS	Rights granted				
	Freedom to choose an occupation/employer	Right to access to the public sector <sup>139</sup>	Full access to management functions	Right to seek new employment in case of job loss	Right to change job/employer
SI	<b>No.</b> Condition to issue a work permit is that for the relevant job, there are no domestic jobseekers or persons who with regard to employment have the same rights. Gouvernement annually determinate quota for work permits.	<b>No,</b>	-	<b>Yes</b> An alien is entitled to get an unemployment benefit for a duration specified in a the national legislatio <sup>143</sup> n. For the time of getting an unemployment benefit, an alien has the right to obtain or prolong the residence permit and he/she is granted to seek for another job.	<b>No</b> A work permit is valid for a certain employer and job, except that in the case of personal work permit. A personal work permit, during its period of validity, provides the alien with free access to the labour market <sup>144</sup> .
SK	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b> In case of job loss the alien has to apply for the employment permit for which he/she should apply from the home country	<b>No</b> In case of change of employer or job, it is necessary to re-apply for issuance of employment permit.
UK	<b>No</b> It depends upon the particular scheme under which the migrant has leave-some give unrestricted access to the labour market, some restrict the migrant to an employer.	No answer	<b>Yes</b>	<b>No</b> It depends upon the conditions of the particular scheme under which the migrant has leave.	<b>No</b> It depends upon the particular scheme under which the migrant has leave <sup>145</sup> .

<sup>143</sup> The alien has to fulfill the conditions set by law, that is the alien worked for the last 12 months (continuously).

<sup>144</sup> Except in cases where the personal work permit has been issued for a period of validity of one year.

<sup>145</sup> For example, work permit holders cannot change employers, but those here under the Science and Engineering have unrestricted access to the labour market.

Are there already any governmental or parliamentary initiatives that directly affect these rights in the future (in particular, policy papers, draft legislation, etc.)?

YES	NO
CZ <sup>146</sup> , CY <sup>147</sup> , IT <sup>148</sup> , IE, PT <sup>149</sup> , UK <sup>150</sup>	AT, DE, NL

### Working conditions

Do all **third-country workers enjoy equal treatment with nationals?**

**If no**, what are the **differences** between the rights of **third-country workers** and nationals? Please, take into account that different groups of **third-country workers** may have different rights.

MS	Rights granted
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<sup>146</sup> Proposal for introduction of so called “protective period” after job loss for some categories of foreigners is being under discussion in the Ministry of Labour and Social Affairs and in the Ministry of Interior.

<sup>147</sup> Under a new Policy Paper, which has not been adopted yet, change of employer will be allowed after one year of employment.

<sup>148</sup> The access to public sector could be extended to third-country workers (residing for a long period).

<sup>149</sup> A new legislation regulating the conditions for entry, permanence, exit and expulsion of foreigners from Portuguese territory is foreseen and under discussion so it is not possible yet to know its final configuration.

<sup>150</sup> The Points-Based System for managed migration will place restrictions on some migrants’ ability to change employer.



	Rights granted											
	Right to safe and healthy working conditions	Right of employed women to protection of maternity	Right to dignity at work	Treatment in case of termination of a job	Treatment in case of dismissal	Protection in the event of unjustified dismissal	Right to protection in the event of employer's insolvency	Treatment in payments/wages	Treatment in terms of taxation	Right to freedom of association, affiliation and collective bargaining, including the right to form trade unions	Specific rights for workers with family responsibilities, including part-time	Specific rights for workers with disabilities
MS												
DE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes Same rights as every worker with disability
EE	Yes	Yes	Yes	Yes	Yes, But if a third-country worker's employment contract has ended then their residence permit will be terminated.		Yes	Yes	Yes	Yes	Yes	Yes
EL	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes, as for the right to become members of trade unions	Yes	Yes
ES	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
FI	-	-	-	-	-	-	-	-	-	-	-	-
FR 151	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
IT	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
IE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

	Rights granted											
	Right to safe and healthy working conditions	Right of employed women to protection of maternity	Right to dignity at work	Treatment in case of termination of a job	Treatment in case of dismissal	Protection in the event of unjustified dismissal	Right to protection in the event of employer's insolvency	Treatment in payments/wages	Treatment in terms of taxation	Right to freedom of association, affiliation and collective bargaining, including the right to form trade unions	Specific rights for workers with family responsibilities, including part-time	Specific rights for workers with disabilities
MS												
LT	Yes	Yes	Yes	Yes, An alien's work permit shall be revoked: upon the termination of an employment contract with the alien. Upon the expiry of validity of a work permit an alien must depart from the LT.			Yes	Yes	Yes	Yes	Yes	Yes
LV	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No, for rights to establish trade unions. These rights are granted for inhabitants of LV who work or study <sup>152</sup> .	Yes	Yes
NL	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
PT	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
RO	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
SI	Yes	Yes	Yes	Yes	-	Yes	-	Yes	-	-	Yes	Yes

<sup>152</sup>

Law On Trade Unions. Rights to freedom of association, affiliation and collective bargaining are not restricted.

Rights granted												
	Right to safe and healthy working conditions	Right of employed women to protection of maternity	Right to dignity at work	Treatment in case of termination of a job	Treatment in case of dismissal	Protection in the event of unjustified dismissal	Right to protection in the event of employer's insolvency	Treatment in payments/wages	Treatment in terms of taxation	Right to freedom of association, affiliation and collective bargaining, including the right to form trade unions	Specific rights for workers with family responsibilities, including part-time	Specific rights for workers with disabilities
MS												
SK	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
UK <sup>153</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Are there already any governmental or parliamentary initiatives that directly affect these rights in the future (in particular, policy papers, draft legislation, etc.)?

YES	NO
IE	AT, CZ, IT, NL, UK

## Education

Do all **third-country workers** enjoy equal treatment with nationals?

If no, what are the differences between the rights of **third-country workers** and nationals? Please, take into account that different groups of **third-country workers** may have different rights.

MS	Rights granted
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<sup>153</sup>

Health and safety and employment legislation, applicable to all migrant workers (irrespective of their status).

	<b>Full access to vocational or academic training</b>	<b>Recognition of foreign diplomas and certificates</b>	<b>Assessments of foreign diploma's or certificates</b>	<b>Access to linguistic training</b>
AT	<b>NR</b> Vocational training within an employment contract has to fulfill the rules of admission to labour market (employment permit, etc.); most of the third-country workers, especially young people are holder of long-term authorizations with full access to the labour market	<b>Yes</b> According to article 90 of the 2002 University Law and according to article 68 of the 2005 HighSchool Law	<b>NR</b>	<b>NR</b>
BE	<b>NR</b>	<b>NR</b>	<b>NR</b>	<b>NR</b>
BG	<b>Yes</b>	<b>Yes</b> According to the Lisbon recognition convention	<b>Yes</b>	<b>Yes</b> Third-country workers are given several possibilities for linguistic training beyond these for nationals.
CZ	<b>Yes</b>	<b>No,</b> Procedure of recognition of d. and c. depends on the existence of an international agreement between the CZ and the particular country, or not. If not, d., and c. are subject of procedure called nostrification <sup>154</sup> .		<b>Yes</b>
CY	<b>No</b> Third-country workers should have the skills necessary for the job they are connected with.	<b>Yes</b>	<b>Yes</b>	<b>Yes</b> Access is possible to special courses organised by the Ministry of education on nominal fees.
DE	No Vocational Training: Generally all immigrant people with an establishment perspective	No Recognition depends on different elements and can be granted according to the specific case.	No Recognition depends on different elements and can be granted according to the specific case.	Yes

<sup>154</sup>

Regulation of Ministry of Education, Youth and Sport No. 12/2005 on Conditions on Recognition of Equality and Nostrification of Certificates Issued by Foreign Schools.



MS	Rights granted			
	Full access to vocational or academic training	Recognition of foreign diplomas and certificates	Assessments of foreign diploma's or certificates	Access to linguistic training
	<p>are granted a chance to labour integration. Therefore, these people can access all the regulation instruments defined by the national labour policies.</p> <p>Academic Training: Access to high education is regulated by both bilateral or specific agreements. It may also be granted by the single education institution according to the specific case.</p>			
EE	Yes	Yes	Yes	Yes
EL	Yes	Yes	No answer (not clear question)	Yes
ES	Yes	Yes	Yes	Yes
FI	No answer	No answer	No answer	No answer
FR	Yes	Yes, According to different circumstances, the recognition can be automatic or a specific procedure is applied.	Yes	Yes, The learning of French language is part of the “contrat d'accueil et d'intégration” for permanent workers entering FR. Moreover, the language training is part of an employee training plan (Law of 4 May 2004)
IT	Yes	Yes	Yes	Yes, language training is carried out by volunteers associations.
IE	No Different conditions with reference to the fees	Yes	Yes	Yes
LT	Yes	Yes	Yes	Yes

MS	Rights granted			
	Full access to vocational or academic training	Recognition of foreign diplomas and certificates	Assessments of foreign diploma's or certificates	Access to linguistic training
LV	<b>No</b> , Different treatment in terms of tuition fees <sup>155</sup> .	<b>Yes</b> The final decision regarding the recognition of degree/diploma is taken by the higher education institution which receive the application, upon advise of the Latvian Academic Information centre. Academic Information centre assesses the foreign degree/diploma and issues a statement which can be also presented to the potential employers in non-regulated professions <sup>156</sup> .	<b>Yes</b> Law on Regulated Professions and Recognition of Foreign Qualifications and Cabinet regulation No 337 of August 8, 2002 lists the regulated professions in Latvia (with specialities and sub-specialities indicated).	<b>Yes</b>
NL	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
PT	<b>Yes</b>	<b>Yes</b>	<b>Yes</b> Depends if there have been established agreements or if there is a reciprocity treatment.	<b>Yes</b>
RO	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>

<sup>155</sup> According to the Law on Education (adopted in 1998), every citizen of Latvia and a person who is entitled to the alien's passport, who has received a permanent residence permit, as well as citizens of European Union countries who have received temporary residence permits as well as their children shall be equally entitled to acquire education. However: (a) A foreign citizen and a stateless person shall pay a tuition fee in accordance with the agreement concluded with the particular educational institution; (b) For citizens of European Union countries and their children who acquire education in Latvia, tuition fee is determined and paid according to the same procedure as for citizens and permanent residents of the Republic of Latvia.

<sup>156</sup> Law on Education.

MS	Rights granted			
	Full access to vocational or academic training	Recognition of foreign diplomas and certificates	Assessments of foreign diploma's or certificates	Access to linguistic training
SI	No answer	No answer	No answer	No answer
SK	Yes	Yes According to the national legislation, the document on education and the level of the obtained education are recognized, thus TC nationals enjoy same treatment with nationals.	Yes The document on education is recognized without the specification of the purpose of recognition <sup>157</sup> .	Yes
UK	Yes	Yes The National Academic Recognition Information Centre (NARIC) provides information and advice on the comparability of international and UK qualifications.	Yes	Yes

Are there already any governmental or parliamentary initiatives that directly affect these rights in the future (in particular, policy papers, draft legislation, etc.)?

YES	NO
LV <sup>158</sup> , PT, SK <sup>159</sup>	AT, NL, UK

<sup>157</sup> Differently, in case of Member States nationals, the qualification is recognized solely for the performance of job (so called professional recognition).

<sup>158</sup> The proposals of Ministry of Education and Science for the amendments of Law on Education regards, in particular, (i) the extension of the right to education to “under-age children of asylum seeker and under-age asylum seeker”; (ii) with respect to tuition fees, the extension of categories which can benefit equal treatment with LV nationals.

<sup>159</sup> SK is currently preparing the legislation which transposes the directive 2005/36/EC on recognition of qualification (the draft of Act on Recognition of the professional qualification was approved on 28.2.2007). The new legislation will distinguish solely the purpose of recognition not the state of origin. After the adoption of the new act on recognition, SK will have only the legal regulation covering the professional and academic recognition.

**Social benefits and access to public services**

**Social security: Nationality criterion**

May third-country workers **be excluded from the following rights for reasons of nationality?**

**Are there exceptions for specific nationalities to this exclusion?**

**Which nationalities** are included in the social security scheme?

MS	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
AT	No	No	No	No	No	No	No  All third-country workers that live in Austria as parent or child according to 8 and 9 NAG can access the family	No

	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
MS							aid and the children care money. The employment is not a requirement.	
BE	<b>NR</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>NR</b>
BG	<b>No</b>	<b>No</b>	Yes, sickness benefits in kind is applicable to: foreign nationals who are permanent residents  in case of a bilateral agreement to those with refugee, humanitarian status or right to asylum.	No	No	No	Yes, Family benefits are limited to the same categories allowed to sickness benefits in kind.	Yes, Social allowances are limited to the same categories allowed to sickness benefits in kind.
CZ	Depends on the relevant bilateral agreement, if it exists	<b>No</b>	No	No	No	No	No	No  On condition of the permanent residence or refugee status.  Nationals of the states which are parties to the European Social Chart are treated equally as the Czech nationals.
CY	<b>No</b>	<b>No</b>	No	No	No	No	No	No
DE	<b>No</b>	<b>No</b>	No	No	No	No	No	Yes



MS	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
UK	<b>No</b> According to the Immigration Rules, people seeking limited leave to enter or remain in the UK are required to support and maintain themselves and any dependants without recourse to certain public benefits and services. Thus, they are ineligible for certain public benefits or services before the permanent permission <sup>160</sup> . Exceptions may apply where such a person is from a country which has a social security agreement with the UK.	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>

Are there already any governmental or parliamentary initiatives that directly affect these rights in the future (in particular, policy papers, draft legislation, etc.)?

YES	NO
	AT, DE, NL, UK

<sup>160</sup>

The exclusion for migrants appears to depend upon their status in the UK.

## Social security: Immigration status

May third-country workers be excluded from the following rights on the basis of immigration status?

Under which conditions with regard to immigration status are third-country workers excluded from these benefits? Please, take into account that different groups of third-country workers may have different rights.

MS	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
AT	Yes If TWC do not have a settlement permit which allows them to work	No	No	No	No	No	No They are excluded from family services if they live illegally in Austria	No Other who do not have a residence permit
BE	NR	No	No	No	No	No	No	NR
BG	No	No	Yes, sickness benefits in kind is applicable only to permanent residents in BG, in case of a bilateral agreement or to those with refugee, humanitarian status or right to asylum.	No	No	No	Yes, only to permanent residents in BG and in presence of a special law or an international convention to which BG is a party.	Yes, only to permanent residents in BG, in case of a bilateral agreement or to those with refugee, humanitarian status or right to asylum.
CZ	Yes, third-country workers are excluded if they do not have permanent residence status	No	No	No	No	No	No	No
CY	Yes,	No	No	No	No	No	No	No



MS	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
	third-country workers on a temporary residence permit as employees connected with a certain employer are excluded.							
DE	<b>No</b> Should the third-country workers lose his /her job, the main criterion for the work permit is lost. In that case, the Immigrants authority has to decide whether the work permit can be prolonged or not and, in case, how long is the period allowed to the third-country worker to seek another job.	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>Yes</b> No specific people groups are excluded. Concession is granted according to the residence status.	<b>No</b>
EE <sup>161</sup>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
EL	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
ES	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
FI	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>

<sup>161</sup>

In general, immigrants legally residing in Estonia (incl persons possessing a temporary residence permit, i.e. THIRD COUNTRY WORKERS s) have equal rights with nationals regarding social benefits and access to public services. However, as the residence permit of THIRD COUNTRY WORKERS s is terminated in case of job loss, they won't be legal residents any more and will have to leave the country.

MS	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
FR	No Except people out of labour market (students, holder of a provisional authorization to work)	No	No	No	No	No	No	No
IT	No	No	No	No	No	Yes, Only to foreign holding a residence permit for long term residence	No	No
IE	No	No	No Sickness benefit are based on residence conditions	No	No	No	No	No
LT	No	No	No	No	No	No	No	Yes, All LT nationals and foreign or stateless persons with permanent or temporary residence permit can receive <b>social services</b> .  <b>State social assistance benefits can be awarded to persons permanently residing in LT<sup>162</sup></b>
LV	Yes	No	No	No	No	No	Yes	Yes

<sup>162</sup>

With the exception of orphan's social assistance pensions.



MS	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
UK	<b>Yes,</b> Those with limited leave are generally not entitled to access public benefits and services. Where migrants are entitled to take up employment in the UK, pay National Insurance (NI) and build up sufficient NI contributions they are generally entitled to access benefits based on those contributions <sup>163</sup> . A person may also be entitled to unemployment benefits if he/she has been living in a country that has a social security agreement with the UK.	<b>No</b>	<b>Yes,</b> Those people that are not in employment are ineligible for this benefit.	<b>Yes,</b> Those people that are not in employment are ineligible for this benefit.	<b>No</b> The state pension is available to all entitled people who have reached the state pension age and paid or received NI contributions.	<b>Yes,</b> These benefits are paid to people who have been granted: - Refugee status, - Humanitarian Protection (subsidiary protection), - Discretionary Leave or Indefinite Leave to Remain in the UK.  A person may also be able to access invalidity benefits if they have been living in a country that has a social security agreement with the UK or if they are a family member and living with an eligible person.		

Are there already any governmental or parliamentary initiatives that directly affect these rights in the future (in particular, policy papers, draft legislation, etc.)?

YES	NO
FI <sup>164</sup> IT <sup>165</sup>	AT, DE, LV, NL, UK

<sup>163</sup> Such as contributions-based jobseekers allowance and statutory maternity pay.

<sup>164</sup> As of 1st Jan 2008 the qualifying period for national pension(residence-based minimum pension) will be equal to that of nationals (3 years).

<sup>165</sup> The invalidity benefits could be extended to foreign regularly residing in IT for 2-3 years.

### Social security: other criteria

May THIRD COUNTRY WORKERS be excluded from the following rights for other reasons?

For which other reasons are THIRD COUNTRY WORKERS excluded from these benefits? Please, take into account that different groups of THIRD COUNTRY WORKERS may have different rights.

MS	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
AT	No	No	No	No	No	No	No	No
BE	NR	No	No	Yes	No	Yes	No	NR
BG	Yes After termination of employment and work permit, foreigners are not allowed to look for a new job and to register themselves at the employment services.	No	No	No	No	No	No	No
CZ	Yes If they do not fulfil conditions set down by law No. 435/2004 Coll., on employment – which are the same for permanent residents as for nationals.	No	No	No	No	No	No provided that they have been residing in the CZ at least for 365 days.	No provided that they hold the <b>permanent residence permit</b> or were granted refugee status.  Nationals of the states which are parties to the European Social Chart are treated equally as the CZ nationals.

MS	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
CY	<b>Yes</b> , Residence permit is connected with a contract of employment.	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
DE	<b>Yes</b> Unemployment benefits are granted as long as the foreigner is in Germany.	<b>No</b>	<b>Yes</b> If annual income exceeds a set limit (EUR 47,700 in 2007) access to statutory health insurance is subject to conditions (for German nationals and third-country workers alike)	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
EE	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
EL	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
ES	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
FI	<b>Yes</b> Legal residence requirement including residence permit at least for 1 year	<b>No</b>	<b>Yes</b> 1) there is a legal residence requirement except for urgent care; 2) third-country worker is insured if legal resident or has an employment contract for at least 4 months.	<b>Yes</b> Qualifying period for maternity benefit is 180 days of legal residence prior to the estimated date of delivery.	<b>No</b>	<b>No</b>	<b>Yes</b> there is a legal residence requirement	<b>No</b>

	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
MS								
FR	No	No	No	No	No	No	No	No
IT	No	No	No	No	Yes, The maintenance of residence in IT is a condition for eligibility to social welfare pensions.	No	No	No
IE	No	No	No	No	No	No	No	No
LT	Yes The right to unemployment benefit ceases with the expiring of work permit.	No	No	No	No	No	No	No
LV	No	No	No	No	No	No	No	No
NL	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes
PT	No No, if the staying is legal and the visa or residence permit are valid and if he/she maintains residence in national territory.	No	No	No	No	No	No	No
RO	No third-country workers are excluded from the unemployment benefits under the same conditions as the Romanian citizens.	No			No	No	No	No

	Rights granted							
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Maternity leave	Old age pension	Invalidity benefits	Family benefits	Social assistance
MS								
SI	No	No	No	No	No	No	No	No
SK	No	No	No	No	No	No	No	No
UK	No	No	No	No	No	No	No	No

Are there already any governmental or parliamentary initiatives that directly affect these rights in the future (in particular, policy papers, draft legislation, etc.)?

YES	NO
	AT, DE, IT, LV, NL, UK



In case a **third-country workers** has left the country, what are the **possibilities for the transfer of social security payments outside the EU** and, when this is not possible, for **the restitution of individual contributions to a social security scheme (i.e. lump sum)?**

MS	Rights granted						
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Survivors benefit	Old age pension	Invalidity pension	Family benefits
AT	<b>No</b> No possibility of restitution after leaving the EU	<b>Yes</b> No possibility of restitution after leaving the EU	<b>Yes</b> No possibility of restitution after leaving the EU	<b>Yes</b> No possibility of restitution after leaving the EU	<b>Yes</b> No possibility of restitution after leaving the EU	<b>Yes</b> No possibility of restitution after leaving the EU	<b>No</b> No possibility of restitution after leaving the EU
BE	<b>NR</b>	<b>Yes</b> There are possibilities to transfer benefits directly arising from occupational diseases or accidents at work. These benefits are paid in cash to the victim or his rightful claimant. No bilateral or international agreements are needed to effectuate these payments.	<b>Yes</b> In principle sickness benefits are possible to transfer abroad under certain conditions. The transfer is refused when the person concerned is entitled to similar benefits issued abroad, or when the person concerned does not stay in Belgium on the moment the benefit should be granted. Transfer of benefits may also be possible through mediation of medical staff or in case of great urgency. Besides, a number of international agreements have been signed, assessing the transfer	<b>Yes</b> If there is a social security convention with the interested Country	<b>Yes</b> If there is a social security convention with the interested Country	<b>Yes</b> The principle of territoriality stands in the way the payments of invalidity pensions abroad. Under certain conditions the transfer of invalidity pensions is possible. This may be the case when the persons concerned resides abroad on a strict temporary basis and through mediation of medical staff. Besides, a number of international agreements enable the transfer of invalidity pensions abroad, often after consultation of the medical staff.	<b>Yes</b> The transfers are allowed under derogation of the principle that states that no family transfers are provided to children out of the Country.

MS	<b>Rights granted</b>						
	<b>Unemployment benefits</b>	<b>Occupational diseases and accidents at work</b>	<b>Sickness benefit</b> a) in kind b) in cash	<b>Survivors benefit</b>	<b>Old age pension</b>	<b>Invalidity pension</b>	<b>Family benefits</b>
			of benefits in case of temporary stay.				
BG	No possibility for transfer or restitution						
CZ	No possibility for transfer or restitution	<b>Possibility for transfer</b>	No possibility for transfer or restitution	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	No possibility for transfer or restitution
CY	No answer	No answer	No answer	No answer	No answer	No answer	No answer
DE	No possibility for transfer and restitution	<b>Possibility for transfer</b>	No possibility for transfer and restitution b) Transfer is foreseen in some social insurance agreements (Israel, Morocco, Turkey, and former Yugoslavia countries).	<b>Possibility for transfer and restitution</b>	<b>Possibility for transfer and restitution</b>	<b>Possibility for transfer and restitution</b>	No transfer possibility
EE	No possibility for transfer or restitution	<b>Possibility for transfer</b> according to bilateral agreements	No possibility for transfer or restitution	<b>Possibility for transfer</b> according to bilateral agreements	<b>Possibility for transfer</b> according to bilateral agreements	<b>Possibility for transfer</b> according to bilateral agreements	No possibility for transfer or restitution
EL	<b>Restitution of health care contributions is not possible</b> by the Social Security System. <b>Pension benefits</b> granted to THIRD COUNTRY WORKERS are <b>transferred in case they emigrate at their country of origin.</b>						
ES	No answer	No answer	No answer	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	No answer
FI	No possibility for transfer or restitution	<b>Possibility for transfer</b>	No possibility for transfer or restitution	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	No possibility for transfer or restitution

MS	Rights granted						
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Survivors benefit	Old age pension	Invalidity pension	Family benefits
FR	No possibility for transfer or restitution	No possibility for transfer or restitution	No possibility for transfer or restitution	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	No possibility for transfer or restitution	No possibility for transfer or restitution
IT	No possibility for transfer or restitution	<b>Possibility for transfer</b>	No possibility for transfer or restitution	<b>Possibility for transfer</b>	No possibility for restitution; <b>Possibility for transfer if the Italian residence is maintained.</b>	No possibility for transfer or restitution	No possibility for transfer or restitution
IE	No possibility for transfer or restitution ( <b>restution in very limited circumstances</b> )	No possibility for transfer or restitution	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>		
LT	No possibility for transfer or restitution	<b>Possibility for transfer</b> according to bilateral social insurance agreements with Ukraine and Belarus.	<b>Possibility for transfer</b> Limited to in cash benefits and according to bilateral social insurance agreements with Ukraine and Belarus.	<b>Possibility for transfer</b>	<b>Possibility for transfer</b> , upon certain conditions: 1) the pensioner has acquired at least the minimum state social pension insurance record required for the pension of an appropriate type while working in LT undertakings, agencies or organisations; 2) the pensioner is a rehabilitated political prisoner or deportee who acquired a part of the insurance record during imprisonment or at the place of deportation .	<b>Possibility for transfer</b>	No possibility for transfer or restitution

MS	Rights granted						
	Unemployment benefits	Occupational diseases and accidents at work	Sickness benefit a) in kind b) in cash	Survivors benefit	Old age pension	Invalidity pension	Family benefits
					In other cases, a pension is paid only for six months ahead.  Moreover, <b>bilateral agreements</b> with third countries are in place.		
LV	No possibility for transfer or restitution	No possibility for transfer or restitution	No possibility for transfer or restitution	<b>Possibility for transfer</b> Only to bilateral agreement countries (Ukraine)	<b>Possibility for transfer</b> Only to bilateral agreement countries (Ukraine)	<b>Possibility for transfer</b> only to bilateral agreement countries (Ukraine)	No possibility for transfer or restitution
NL	<b>No</b>	N/A	<b>No</b>	NR	<b>Yes</b>	<b>No</b>	<b>No</b>
PT	No possibility for transfer or restitution	<b>Possibility for transfer</b>	No possibility for transfer or restitution	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	No possibility for transfer or restitution
RO	<b>Possibility for transfer</b>  under conditions regulated by international agreements and conventions to which RO is part.	<b>Possibility for transfer</b>  Based on bilateral agreements	No answer	<b>Possibility for transfer</b>  Based on bilateral agreements	<b>Possibility for transfer</b>  Based on bilateral agreements	<b>Possibility for transfer</b>  Based on bilateral agreements	No answer
SI	-	-	-	-	-	-	-
SK	No possibility for transfer or restitution	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>  Based on bilateral agreement on social insurance between SK and his/her home country.	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>	<b>Possibility for transfer</b>  Based on bilateral agreement on social insurance between SK and his/her home country.
UK	-	-	-	-	-	-	-

## Access to public services

Rights **granted equally** to nationals and third-country workers?

Which are **the eligibility criteria with reference to residence status and work status?**

MS	Right of access to placement services	Right to access to services of general economic interest	Right to access to other public services, including public housing
AT	Yes The TWC has to have a right of settlement which allows him/her to take up a work.	NR	NR
BE	NR	NR	NR
BG	No, Foreigners may register as unemployed only if they are granted a permanent residents status or a refugee, humanitarian status or right to asylum or if this is provided for in an international treaty to which BG is a party.	-	No, Foreigners may use social services only if they are granted a permanent residents status or a refugee, humanitarian status or right to asylum or if this is provided for in an international treaty to which BG is a party.
CZ	-	Yes	No
CY	No,	No,	No,
DE	Yes, third-country workers allowed to the German labour market can access the placement services.		No answer provided
EE	Yes	No	No answer
EL	<b>Yes</b>	<b>Yes,</b> Generally the treatment is equal to that of Greek nationals before and after the acquisition of long term resident status	<b>Yes,</b> eligibility criteria are the same with those needed to be fulfilled by Greek nationals: legal residence and number of work days for which the person concerned is insured, his family conditions etc.
ES	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
FI	-	-	-

MS	Right of access to placement services	Right to access to services of general economic interest	Right to access to other public services, including public housing
FR	<b>Yes</b> Except people out of labour market (students, holder of a provisional authorization to work)	<b>Yes</b>	<b>Yes</b>
IT	<b>Yes</b>	<b>Yes</b>	<b>Yes,</b> Holding of residence permit at least for 1 year.
IE	-	-	-
LT	<b>No,</b> When work permit is required	<b>Yes</b>	<b>No</b>
LV	<b>No</b>	<b>No</b>	<b>No</b>
NL	<b>No</b>		<b>Yes</b>
PT	No answer	No answer	No answer
RO	<b>Yes</b> jobseekers who fulfil one of these conditions: d) they have been granted the refugee status or other form of international protection, under the law; e) aliens who have been employed or have realised incomes in RO, under the law	-	-
SI	-	-	-
SK	<b>Yes</b> Eligibility criteria refers to work status	<b>Yes</b> Eligibility criteria refers to work status	It is not applied to the status of employment.
UK	-	-	-

Are there already any governmental or parliamentary initiatives that directly affect these rights in the future (in particular, policy papers, draft legislation, etc.)?

YES	NO
	AT, DE, IT, LV, UK

## The position of women

We would like to know whether female third-country workers are in a different or more vulnerable position as compared to male third-country workers. Could you shortly reflect on the following questions in this respect?

Immigrant women may find themselves in a position of double discrimination, because of their immigration status and of their sex, as well as for the jobs they are mainly employed in as a result of stereotypes. Do you have **any provision in your national legislation specifically aimed at protecting or supporting immigrant women in employment?**

Is **any legislation being developed** to improve the position of female third-country workers, including their legal rights?

MS	Specific provision for immigrant women in employment in national legislation	Legislation being developed to improve the position of female third-country workers
AT	In the Austrian laws there is no discrimination against migrant woman because of sex; some support is given in the framework of ESF programmes.	No
BE	NR	NR
BG	No special provision. Sexual discrimination is generally forbidden by the Bulgarian Constitution and the Law on Protection against Discrimination	No
CZ	<ul style="list-style-type: none"> <li>- In the integration policy, yearly programme on the immigrant integration pays special attention to the immigrant women and their children as one of the areas of project financing. The projects are implemented by non-governmental organizations.</li> <li>- Collection of separated statistical data;</li> <li>- A qualitative research project under way;</li> <li>- Next to mainstreaming integration, two more measures, called goal-directed measures and supportive measure were introduced in 2005 (toward an anti discrimination approach in social integration of immigrant population).</li> </ul>	No
CY	Law No 205 (1) of 2002 on equal treatment between men and women in employment and vocational training provides for equal treatment irrespective of nationality. Same rights are secured also through the equal treatment in Employment and Occupation Law(No 58(1)/2004).	No
DE	With respect to the participation in companies and the equal treatment, German Law on Labour does not distinguish between workers from third countries and those from Germany. That implies that there is no different treatment.	No answer provided
EE	<p><b>No special provision for foreign women currently exists.</b></p> <p>In general, the Gender Equality Act, the Employment Contracts Act and the Wages Act</p>	No

MS	Specific provision for immigrant women in employment in national legislation	Legislation being developed to improve the position of female third-country workers
	require equal treatment regarding working conditions and wages.	
EL	<p>Project entitled «<b>Financing the provision of Integrated Interventions in favour of Women</b>», which belongs to Measure 3 of Axis 5 of the <b>Business Plan «Employment and Vocational Training 2000-2006»</b>, implementing integrated interventions for unemployed women. The project contain a special provision for women who belong to vulnerable groups (repatriating, immigrant women, etc.).</p> <p>For the first time, women having been characterised as <b>victims of trafficking</b> are also included. Women victims of trafficking immediately obtain a residence permit which, at the same time, functions as a work permit.</p>	<p>Recent legislative intervention regards the following theme:</p> <p>Protection of refugee women;</p> <p>Violence against women;</p> <p>Trafficking in human beings;</p> <p>Domestic violence</p>
ES	<p>As well as national women, immigrant women suffer a situation of disadvantage and discrimination on Spanish labour market.</p> <p>Moreover, immigrant women are recognized as victims of discrimination on the labour market;</p>	<p>The recent strategic Plan for the integration immigrants (Plan Estratégico de Integración de Inmigrantes) contains specific provisions addressed to immigrant women.</p> <p>The National Reforms Plan (Plan Nacional de Reformas) and the National Plan for Inclusion (Plan Nacional de Inclusión) foresees measures addressed to the entry and permanence of women on labour market.</p>
FI	-	-
FR	<p>The Ministry of Labour, Social cohesion and housing has carried out a study on “double discrimination”: with respect to sex and nationality. The analysis highlighted some conclusions and recommendations:</p> <p>a more efficient coordination among public institutions (employment, training, placement) in order to better fight against double discrimination;</p> <p>a better consideration of psychological and cultural aspects, with particular focus on foreign or foreign born women;</p> <p>support for entrepreneurship development.</p>	No legislation foreseen
IT	<p><b>No special provision for foreign women currently exists.</b> The Immigration Act (Testo unico sull'immigrazione) contains general rules addressed to fight against racial, sexual and religious discrimination.</p>	
IE	<p><b>No specific provision for third-country workers women</b></p>	
LT	<p>There is <b>no provision in Lithuania national legislation specifically aimed</b> at protecting or supporting immigrant women in employment, however, LT national legislation foresees possibility of specific temporary measures set forth by the laws, aimed at accelerating the guaranteeing of factual equal rights for women and men.</p>	No legislation foreseen
LV	No answer	No answer



MS	Specific provision for immigrant women in employment in national legislation	Legislation being developed to improve the position of female third-country workers
NL	<b>no provision in NL national legislation specifically aimed</b> at protecting or supporting immigrant women	No
PT	<p><b>No special provision for foreign women currently exists.</b></p> <p>The work code and its regulation apply equally to national and foreign workers (right equal opportunities and non discrimination, forbidding discrimination based upon, and namely, ancestry, age, sex, sexual orientation, marital status, family situation, genetic heritage, reduced working ability, disability or chronicle disease, nationality, ethnical origin religion, political or ideological leaning, and union membership.)</p>	No legislation foreseen
RO	<p><b>No special provision for foreign women currently exists.</b></p> <p>At national level, the measures for promoting equal opportunities between women and men, in order to eliminate gender discrimination in all Romania's fields of public life, are specified in Law on Equal Opportunities between Women and Men<sup>166</sup>.</p>	No legislation foreseen
SI	<b>No special provision for foreign women currently exists.</b>	No legislation foreseen
SK	The matters of discrimination are covered by antidiscrimination act which does not contain the special provisions concerning the women – immigrants. They have the same rights as the nationals of the Slovak Republic.	No legislation foreseen
UK	<b>No special provision for foreign women currently exists.</b>	No legislation foreseen

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<sup>166</sup>

Law no 202/2002 and subsequent amendments and completions and in Law no 53/2003 – Labour Code and subsequent amendments and completions.

## ANNEX 3 - INTERNATIONAL AGREEMENTS

### 1. Treaties established by the Council of Europe

In addition to the EU Acquis, the agreements concluded by the Council of Europe may also serve as a source of inspiration with regard to the future legislation for third-country workers. Three agreements deserve special attention, i.e. the European Social Charter, the European Convention on the Legal Status of Migrant Workers and the European Convention on Human Rights.

#### The European Social Charter

Although the social protection afforded in the European Social Charter is not as extensive as that granted by Community law and therefore has less relevance in those member states which are also member of the EU and EEA countries, the importance of the Charter has grown in recent years given that it has been ratified by a number of countries which have not been acceded to the EU.<sup>167</sup> The personal scope of the Charter is, however, rather limited because it only applies to foreigners who are nationals of other contracting parties.

The revised European Social Charter of the Council of Europe of 1996 calls on countries to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, in order to ensure equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation.<sup>168</sup>

More specifically, the Revised European Social Charter guaranteed a number of rights of migrant workers and their families to protection and assistance. With a view to ensuring the effective exercise of the right of these migrant workers and their families to protection and assistance, the charter calls on the Parties to undertake the following:<sup>169</sup>

- to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration,

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<sup>167</sup> These are: Croatia, FYROM, Liechtenstein, Switzerland and Ukraine (from Cholewinski (2004) *The Legal Status of Migrants Admitted for employment, A comparative study of law and practice in selected European states*. Council of Europe Publishing. All EU member states, except Lithuania, Latvia, have ratified the Revised European Social Charter. However, both countries did sign the charter.

<sup>168</sup> Revised European Social Charter, Article 12, paragraph 4, sub a.

<sup>169</sup> Revised European Social Charter, Article 19.

- to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey,
- to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries,
- to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect to the following matters,

remuneration and other employment and working conditions,

membership of trade unions and enjoyment of the benefits of collective bargaining,

accommodation.

- to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons,
- to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory,
- to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article,
- to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality,
- to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire,
- to extend the protection and assistance provided for in the article to self-employed migrants insofar as such measures apply,
- to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families,
- to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

The Parties accept as the aim of their policy, to be pursued by all appropriate means, the attainment of conditions in which the rights as specified above are effectively realised. However, in order to effectuate these rights, the Parties may consider national legislation and practice.

### The European Convention on the Legal Status of Migrant Workers

This convention is the most comprehensive Council of Europe instrument covering most principle matters concerning the legal status of migrant workers (cf. Cholewinski, 2004). Its objectives, as expressed in the preamble, are to regulate “the legal status of migrant workers ... so as to ensure that as far as possible they are treated no less favourable than workers who are nationals of the receiving state in all aspects of living and working conditions”.

The European Convention on the Legal Status of Migrant Workers has been agreed upon in 1977 by the Council of Europe and directly arises from the idea that the legal status of migrant workers who are nationals of Council of Europe Member States should be regulated so as to ensure that as far as possible they are treated no less favourable than workers who are nationals of the receiving state in all aspects of living and working conditions.

For the purpose of this convention the term ‘migrant worker’ means a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment. The Convention does not apply to frontier workers, artists, other entertainers and sportsmen, seamen, persons undergoing training, seasonal workers, and workers carrying out specific work on behalf of an undertaking having its registered office outside the territory of the receiving country.

With regard to the legal position of migrant workers, which is the central issue of this Impact Assessment, the following rights will be specified more in detail: right of admission and right to exit, work and residence permits, re-employment and conditions of work, social security, transfer of savings and housing. These will be explained consecutively:

*Right of admission and right to exit.* Each Contracting Party shall guarantee the following rights to migrant workers: the right to leave the territory of the Contracting Party of which they are nationals and the right to admission to the territory of a Contracting Party in order to take up employment after being authorised to do so and obtaining the necessary papers. Both rights shall be subject to such limitations as are prescribed by legislation and are necessary for the protection of national security, public order, public health or morals.<sup>170</sup>

*Work permits.* Each Contracting Party which allows a migrant to enter its territory to take up paid employment shall issue or renew a work permit for him (unless he is exempt from this requirement), subject to the conditions laid down in its legislation. However, 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 longer than a year. In case of renewal of the migrant worker’s work permit, this should as a general rule be for a period of at least one year, in so far as the current state and development of the employment situation permits.<sup>171</sup>

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<sup>170</sup> The European Convention on the legal status of migrant workers, Article 4.

<sup>171</sup> The European Convention on the legal status of migrant workers, Article 8.

*Residence permit.* Where required by national legislation, each Contracting Party shall issue residence permits to migrant workers who have been authorised to take up paid employment on their territory under conditions laid down in this Convention. The residence permit shall in accordance with the provisions of national legislation be issued and, if necessary, renewed for a period as a general rule at least as long as that of the work permit. When the work permit is valid indefinitely, the residence permit shall as a general rule be issued and, if necessary, renewed for a period of at least one year. The provisions of this article shall also apply to members of the migrant worker's family who are authorised to join him. If a migrant worker is no longer in employment, either because he is temporarily incapable of work as a result of illness or accident or because he is involuntarily unemployed, he shall be allowed for the purpose of re-employment to remain on the territory of the receiving state for a period which is no less than five months. The residence permit may be withdrawn for reasons of national security, public policy or morals, if the holder refuses to comply with the measures prescribed for him by an official medical authority with a view to the protection of public health, or if a condition essential to its issue or validity is not fulfilled.<sup>172</sup>

*Conditions of work.* In the matter of conditions of work, migrant workers authorised to take up employment shall enjoy treatment not less favourable than that which applies to national workers by virtue of legislative or administrative provisions, collective labour agreement or custom.<sup>173</sup>

*Re-employment.* If a migrant worker loses his job for reasons beyond his control, such as redundancy or prolonged illness, the competent authority of the receiving state shall facilitate his re-employment in accordance with the laws and regulations of that State. To this end the receiving State shall promote the measures necessary to ensure, as far as possible, the vocational retraining and occupational rehabilitation of the migrant worker in question, provided that he intends to continue in employment in the State concerned afterwards.<sup>174</sup>

*Social security.* Each Contracting Party undertakes to grant within its territory, to migrant workers and members of their families equality of treatment with its own nationals, in the matter of social security, subject to the conditions required by national legislation and by bilateral or multilateral agreements already concluded or to be concluded between the Contracting Parties concerned. The Contracting Parties shall moreover endeavour to secure to migrant workers and members of their families the conservation of rights in course of acquisition and acquired rights, as well as provision of benefits abroad, through bilateral and multilateral agreements. Furthermore, each contracting party undertakes to grant within its territory, to migrant workers and members of their families who are lawfully present in its territory, social and medical assistance on the same basis as nationals in accordance with the obligations it has assumed by virtue of other international agreements and in particular of the European Convention on Social and Medical Assistance of 1953. With regard to the prevention of industrial accidents and occupational diseases and to industrial hygiene, migrant workers shall enjoy the same rights and protection as national workers, in application of the laws of a Contracting Party and collective agreements, and having regard to their particular situation. A migrant worker who is victim of an industrial

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<sup>172</sup> The European Convention on the legal status of migrant workers, Article 9.

<sup>173</sup> The European Convention on the legal status of migrant workers, Article 16.

<sup>174</sup> The European Convention on the legal status of migrant workers, Article 25.

accident or who has contracted an occupational disease in the territory of the receiving State shall benefit from occupational rehabilitation on the same basis as national workers.<sup>175</sup>

*Transfer of savings.* Each contracting Party shall permit, according to the agreements laid down by its legislation, the transfer of all or such parts of the earnings and savings of migrant workers as the latter may wish to transfer. This provision shall apply also to the transfer of sums due by migrant workers in respect of maintenance and these transfers shall on no account be hindered or prevented. Each Contracting party shall permit, under bilateral agreements or by other means, the transfer of such sums as remain due to migrant workers when they leave the territory of the receiving State.<sup>176</sup>

*Housing.* Each Contracting Party shall accord to migrant workers, with regard to access to housing and rents, treatment not less favourable than that accorded to its own nationals, insofar as this matter is covered by domestic laws and regulations. Each Contracting Party undertakes to protect migrant workers against exploitation in respect of rents, in accordance with its laws and regulations on the matter.<sup>177</sup>

It is important to note, however, that the convention's significance is limited by the fact that it only encompasses the treatment of migrant workers authorised to work and reside in one Council of Europe Member State, who are national of another contracting party to the agreement. Furthermore, only a selected number of countries have ratified the convention.<sup>178</sup> Given that economic migrants from several parties benefit from the superior protection afforded by the freedom of movement arrangements of the EU, the practical importance of this convention is confined to relations between these countries and a few others (i.e. Turkey, Moldavia, and the Ukraine).

### The European Convention on Human Rights

The European Convention on Human Rights applies to everyone within the jurisdiction of a state party, which means that all migrant workers admitted for employment in Council of Europe member states are covered by its provision irrespective of their country of origin (Article 1). This is particularly important given that the personal scope of the before mentioned Council of Europe instruments are only limited to the nationals of the Council of Europe member states. However, there are no provisions in the ECHR specifically concerned with the legal status of migrant workers. Given that the ECHR primarily safeguards civil and political rights, the role of this instrument in the field of migrant workers' social and economic rights is rather limited (cf. Cholewinski, 2004).

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<sup>175</sup> The European Convention on the legal status of migrant workers, Articles 18-20.

<sup>176</sup> The European Convention on the legal status of migrant workers, Article 17.

<sup>177</sup> The European Convention on the legal status of migrant workers, Article 13.

<sup>178</sup> The European Convention on the legal status of migrant workers has been ratified by Moldavia (2006), Italy (1995), Norway (1989), France (1983), the Netherlands (1983), Turkey (1981), Spain (1980), Portugal (1979) and Sweden (1978). The Ukraine (2004), Belgium (1978), Germany (1977), Greece (1977) and Luxembourg (1977) have signed this convention thus far.

The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR), was adopted under auspices of the Council of Europe in 1950 to protect human rights and fundamental freedoms. Any person who feels their rights have been violated under the Convention by a state party can take a case to the Court. The decisions of the Court are legally binding, and the Court has the power to award damages. The establishment of a Court to protect individuals from human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena. The European convention is still the only international human rights agreement providing such a high degree of individual protection.

For the purpose of this overview, specific attention should be paid to ECHR, Article 14. This prohibition is broad in some ways and narrow in others. On the one hand, the article protects against discrimination based on any of a wide range of grounds. The article provides a list of such grounds, including sex, race, colour, language, religion and several other criteria, and most significantly providing that this list is non-exhaustive. As a result, discrimination on the basis of nationality is prohibited as well. On the other hand, the article's scope is limited only to discrimination with respect to rights under the Convention. With regard to the employment situation of third-country workers the right of freedom of assembly and association, including the right to form trade unions, appears to be the most relevant element of individual protection.

As of 2006, fourteen protocols to the Convention have been opened for signature. Protocol 12 on discrimination applies the current expansive and indefinite grounds of prohibited discrimination in Article 14 to the exercise of any legal right and to the actions of public authorities. The Protocol entered into force 1 April 2004 and has (as of November 2006) been ratified by 14 member states. Several member states - namely Andorra, Bulgaria, Denmark, France, Lithuania, Malta, Poland, Sweden, Switzerland and the United Kingdom – have not signed the protocol.<sup>179</sup>

## **2. Treaty established by the United Nations**

In addition, reference should be made to the International Covenant on Economic, Social and Cultural Rights, established by the United Nations. This Covenant entered into force 3 January 1976. The State Parties recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right (Article 6). Also important is the statement that the States Parties recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind, a decent living for themselves and their families, safe and healthy working conditions, equal opportunity for everyone to be promoted in his employment to an appropriate higher level, and rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays (Article 7). In addition, the State Parties undertake measures to ensure the right of everyone to form trade unions and join trade unions of his choice, subject to the rules of the organisation concerned (Article 8). Also the contracting parties recognise the right of everyone to education (Article 13). All Member-States of the European Union have ratified this UN covenant on economic, social and cultural rights.

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<sup>179</sup>

Information taken from Wikipedia.

## ANNEX 4 - MULTILATERAL AGREEMENTS BETWEEN THE EC AND THIRD-COUNTRIES

### List of multilateral agreements

Agreement between the EC and the Swiss confederation on the free movement of persons

EEA agreement

EC-Turkey association agreement: Decision No 1/80 of the association council of 19 September 1980 on the development of the association and Decision No 3/80 of the association council of 19 September 1980 on the application of the social security schemes of the member states of the European Communities to Turkish workers and members of their families

Mediterranean Association Agreements signed with Tunisia, Morocco, Algeria, Egypt, Israel and Jordan

Stabilisation and association agreement (SAA) with Croatia

SAA with FYROM

SAA with Albania (signed in June 2006 but not yet ratified)

SAA with Bosnia-Herzegovina (ongoing negotiations)

Cooperation and customs union (CUU) with San Marino

Partnership and cooperation agreement (PCA) with Russia

PCA with Ukraine

PCA with Moldavia

PCA with Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Turkmenistan

ACP partnership agreement (concluded with 77 countries)

Equal treatment-fields	Full Equal Treatment Clauses (Direct Effect)	Equal Treatment Clauses subject to conditions and modalities but with Direct Effect	Best Endeavour Clauses



Equal treatment-fields	Full Equal Treatment Clauses (Direct Effect)	Equal Treatment Clauses subject to conditions and modalities but with Direct Effect	Best Endeavour Clauses
Free movement and residence <sup>180</sup>	Norway, Liechtenstein, Iceland Switzerland		
Access to the labour market	Norway, Liechtenstein, Iceland, Switzerland, Turkey <sup>181</sup>		
Working conditions including dismissal	Norway, Liechtenstein, Iceland Switzerland Turkey ACP countries	Russia FYROM Croatia	Ukraine Moldavia Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Turkmenistan
Working conditions excluding dismissal	San Marino Morocco, Algeria, Tunisia <sup>182</sup>		
Vocational training	Norway, Liechtenstein, Iceland Switzerland		
Access to social security benefits	Norway, Liechtenstein, Iceland Switzerland Turkey Morocco, Algeria, Tunisia		

<sup>180</sup> Equal treatment with EC citizens

<sup>181</sup> After 4 years of legal employment

<sup>182</sup> The workers who are allowed to undertake paid employment in the territory of a Member State on a temporary basis. Those who are not considered as temporary have equal treatment also as regards dismissal.

Equal treatment-fields	Full Equal Treatment Clauses (Direct Effect)	Equal Treatment Clauses subject to conditions and modalities but with Direct Effect	Best Endeavour Clauses
Tax benefits	San Marino Norway, Liechtenstein, Iceland Switzerland		

## ANNEX 5 - TREATIES RATIFIED BY EUROPEAN UNION MEMBER STATES

Treaty	Ratification
Charter of Fundamental Rights of the European Union	All EU member states
European Convention for the Protection of Human Rights and Fundamental Freedoms	All EU member states
International Covenant on Civil and Political rights	All EU member states
International Convention on the elimination of all forms of racial discrimination	All EU member states
International Covenant on Economic, Social and Cultural Rights	All EU member states
International Covenant on Economic, Social and Cultural Rights	All EU member states
European Social Charter <sup>183</sup>	All EU member states, except Bulgaria, Estonia, Lithuania, Slovenia (signed)
European Social Charter (revised)	All EU member states. Treaty is signed but not ratified by Latvia, Austria, Greece, Hungary, Slovakia, United Kingdom, Czech Republic, Denmark, Poland, Spain. Germany has not signed
European Convention on the Legal Status of Migrant Workers	Ratified by Italy, France, Netherlands, Portugal, Sweden, Spain. Signed by Belgium, Germany, Greece, Luxembourg
ILO Migration for Employment Convention (Revised)	Belgium, Cyprus, France, Germany, Italy, Netherlands, Portugal, Slovenia, Spain, United Kingdom
ILO Migrant Workers Convention	Cyprus, Italy, Sweden, Slovenia, Portugal

<sup>183</sup> States who decide to ratify the European Social Charter have to accept at least five of the seven core Articles of the Charter: the rights to work, organise, bargain collectively, social security, social and medical assistance, rights of the family to social, legal and medical protection and the protection of migrant workers. Moreover, they agree to be bound by at least 10 of the 19 articles in Part II or by 45 of the 72 numbered paragraphs.

(C156) Workers with Family Responsibilities Convention International Convention on the rights of all migrant workers and members of their families	Finland, France, Greece, Netherlands, Portugal, Slovenia, Spain, Sweden Not signed by any EU member state
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### List of Legal Rights - International Treaties

Rights	Charter of Fundamental Rights of the European Union <sup>184</sup>	Treaties ratified by all EU member states (ECHR, ICERD, ICCPR, ICESCR)	Treaties ratified by most EU member states (ESC, ECS revised)	Treaties ratified by some EU member states (ECLSMW, ILO MEC revised, ILO MWC, WFRC)	Treaties not ratified by any EU member state (ICRMW)
<u>Basic Human Rights</u> Prohibition of inhuman living and working conditions: - torture, inhuman or degrading treatment - slavery and forced labour		ECHR, art 3 ECHR, art 4			ICRMW art 9 & 10 ICRMW art 11
Rights to freedom of thought, expression and religion Right to privacy (respect for private and family life) Right to liberty and security of person		ECHR, art 9, ICCPR, art. 18 ECHR, art 8 ECHR art 5, ICCPR art 9 (1), ICERD art 5 (b)			ICRMW, art 14 & 15 ICRMW art 16

<sup>184</sup> Rights emanating from the Charter are solemnly declared but not legally binding.

Right to fair trial		ECHR, art 6			
No punishment without law		ECHR, art 7			
Right of freedom of peaceful assembly and association		ECHR, art. 11, ICCPR, art. 21, art. 5 (d) ICESCR (Art: 8)			
Right to be informed on migrant own rights					ICRMW, art. 33
General prohibition of discrimination		12th Protocol to the ECHR, art. 1			
Entry and mobility					
Entry or admission to the territory				ECLSMW, art. 4	ICRMW, art. 8
Re-entry after temporary absence					ICRMW, art. 8
Residence permit				ECLSMW art. 9	
Work permit				ECLSMW art. 8	
Prohibition of collective expulsion		4th Protocol to the ECHR, art. 4			ICRMW art. 22
Procedural safeguards relating to expulsion of aliens		7th Protocol to the ECHR, art. 1			
Right at any time to enter and remain in their State of origin					ICRMW art. 8
<u>Employment</u>					
<i>Working conditions</i>					
Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex and religion		ICESCR (Art 7)	ESC revised, art 20		
Right to safe and healthy working conditions	Art. 31	ICESCR (Art 7)	ESC revised, art 2		ICRMW, art. 25
Right of employed women to protection of maternity	Art. 33 & 34		ESC revised art. 8		
Right to dignity at work	Art. 31		ESC revised art 26		
Right of workers with family responsibilities to equal opportunities and equal treatment			ESC revised, art. 27	WFRC	

Prohibition of child labour and protection of young people at work	Art. 32				
Freedom to choose an occupation and right to engage in work	Art. 15				
Right to re-employment in case of loss of job for reason beyond migrant own control				ECLSMW, Art. 25	ICRMW, art. 54 (d)
Protection in the event of unjustified dismissal	Art. 30				
Right to a fair remuneration			ESC revised, art. 4		
Access to co-operatives and self-managed enterprises					ICRMW, art. 43
Freedom to conduct a business	Art. 16				
Right to bargain collectively	Art. 28		ESC, art. 6		
Right to organise for the protection of their economic and social interests					ICRMW, art. 40 & art. 26
Right to information and consultation within undertaking	Art. 27				
Right to take part in the determination and improvement of the working conditions and working environment in the undertaking			ESC revised, art. 22		
Right to transfer earnings and savings				ECLSMW, art. 17	ICRMW, art. 32
Right to equal treatment in terms of taxation					ICRMW, art. 48
<i>Education</i>					
Access to vocational in-house/on-the-job training				ECLSMW, art. 14	
Right to vocational guidance			ESC art. 9	ECLSMW, art. 14	ICRMW, art. 43
Right to general education, vocation training and retraining		ICESCR (Art 13)		ECLSMW, art. 14	
Right to vocational training			ESC, art 10		ICRMW, art. 43
Right to re-training					ICRMW, art. 43

<p>To promote access to general and vocational schools and to vocational training centres, the receiving State shall facilitate the teaching of its language or, if there are several, one of its languages.</p>				ECLSMW, art. 14	
<p>The workers' previous attainments, as well as diplomas and vocational qualifications acquired in the State of origin, shall be recognised by each Contracting Party in accordance with arrangements laid down in bilateral and multilateral agreements.</p>				ECLSMW art. 14	
<p><b>Social benefits and public services</b></p>					
<p>Right of access to placement services</p>					ICRMW, art. 43
<p>Right to protection in cases of termination of employment</p>			ESC revised, art. 24		
<p>Right to unemployment benefits (in accordance with rules laid down by Community law and national laws and practices)</p>	Art. 34				
<p>Right to receive disability allowance</p>	Art. 26&34				
<p>Right of persons with disabilities to independence, social integration and participation in the life of the community</p>			ESC revised, art. 15		
<p>Right to receive sick pay (in accordance with rules laid down by Community law and national laws and practices)</p>	Art. 34				
<p>Right to parental leave</p>	Art. 33	ICESCR (Art 10)			
<p>Right to social security</p>	Art. 34			ECLSMW, art. 18	
<p>Right to social and medical assistance</p>				ECLSMW, art. 19	
<p>Right to benefit from social welfare services</p>			ESC revised, art. 14		
<p>Right to protection against poverty and social exclusion</p>			ESC revised, art. 30		
<p>Right to access to public health care</p>	Art. 35				ICRMW, art. 43(e)
<p>Right to housing</p>			ESC revised, art 31	ECLSMW, art. 13	ICRMW, art. 43
<p>Right to public housing</p>				ECLSMW, art. 13	
<p>Equal treatment in matter of rents</p>				ECLSMW, art. 13	

Right to access to services of general economic interest	Art. 36				
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**Abbreviations:**

*ACP* African, Caribbean and Pacific group of states

*CFREU* Charter of Fundamental Rights of the European Union

*ECHR* European Convention for the Protection of Human Rights and Fundamental Freedoms

*ECLSMW* European Convention on the Legal Status of Migrant Workers

*EEA* European Economic Area

*EFTA* European Free Trade Area

*ESC* European Social Charter

*ICCPR* International Covenant on Civil and Political Rights

*ICERD* International Convention on the Elimination of all forms of Racial Discrimination

*ICRMW* International Convention on the Rights of all Migrant Workers and members of their families

*ICESCR* International Covenant on Economic, Social and Cultural Rights

*ILO* International Labour Organisation

*(ILO)MEC* Migration for Employment Convention

*(ILO)MWC* Migrant Workers Convention

*WFRC (C156)* Workers with Family Responsibilities Convention



**ANNEX 6 - SUMMARY TABLE OF THE MAIN FINDINGS CONCERNING THE RIGHTS GRANTED TO THIRD-COUNTRY WORKERS IN EACH MEMBER STATE AND IN EU AS A WHOLE**

Kind of rights granted		AT	BE	BG	CY	CZ	DE	EE	EL	ES	FI	FR	IE	IT	LT	LV	NL	PT	RO	SI	SK	UK	EU <sup>185</sup>
Employment and education	Access to employment	✳	🏭	✳	✓	🏭	🏭	🚗	🚗	✳	✳	✳	✳	🏭	✓	🏭	🏭	🏭	🏭	🚗	✳	✳	✳
	Working conditions	🔊	🔊	🏭	🏭	🔊	🔊	🔊	🔊	🏭	NR	🔊	🔊	🔊	🔊	🔊	🔊	🔊	🔊	🔊	🔊	🔊	🏭
	Education	NR	NR	🔊	🏭	🏭	🏭	🔊	🏭	🏭	NR	🏭	✳	🔊	🔊	🏭	🔊	🔊	🔊	NR	🏭	🔊	🏭
Social benefits and to access public services	Social security	🔊	🏭	🏭	🏭	🏭	🏭	🔊	🔊	🏭	🏭	🔊	🔊	🏭	🏭	🏭	🏭	🔊	🏭	🔊	🔊	🏭	🏭
	Possibility for transfer or of restitution security benefits	🏭	🏭	🏭	NR	🏭	🔊	🏭	🏭	🏭	🏭	🏭	🏭	🏭	🏭	🏭	🏭	🏭	🏭	NR	🏭	NR	🏭
	Access to public services			🏭	🏭	🏭	🏭	🏭	🔊	🏭	NR	🏭		🏭	🏭	🏭	🏭	NR	🏭	NR	🏭	NR	🏭

Legend:

🏭 Right recognized and equal treatment between THIRD COUNTRY WORKERS and nationals;

✓ Right not recognized and no equal treatment between THIRD COUNTRY WORKERS and nationals;

The intermediate values refer to situation where rights and/or equal treatment with nationals are recognized under certain limitations.

NR: No answer.

<sup>185</sup>

EU value consists in a qualitative assessment based on the replies of the MS concerned.

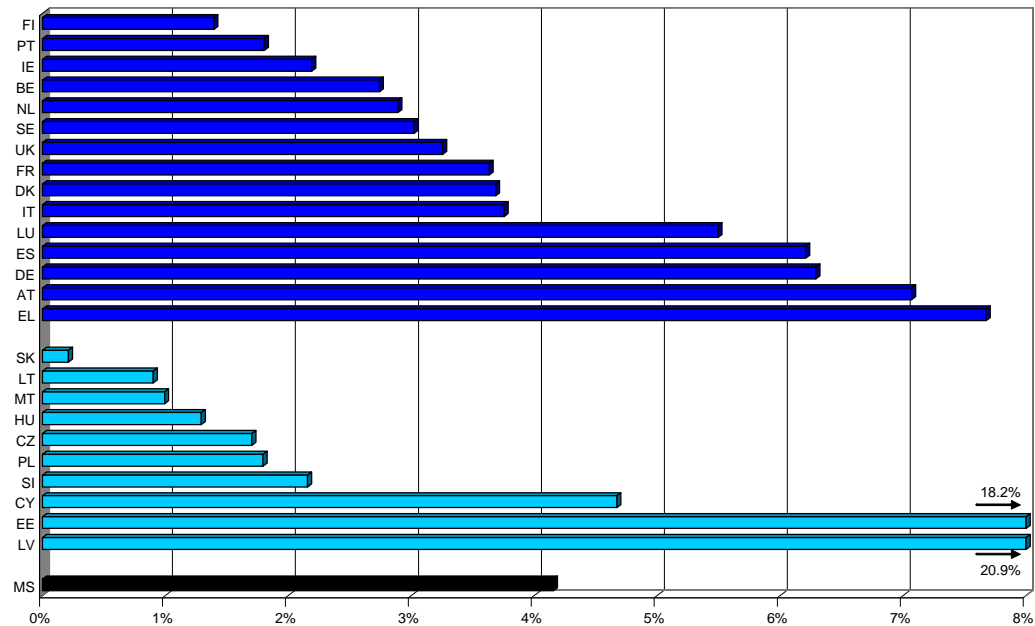
**ANNEX 7 STATISTICAL DATA****Table 1 Population by citizenship, January 1, 2005**

	Total population	Nationals	EU nationals from other MS	Non-EU nationals
BE	10,445,852	9,503,900	584,740	286,122
CZ	10,220,577	10,076,400	80,248	174,046
DK	5,411,405	5,126,400	68,220	199,384
DE	82,500,849	75,656,500	2,099,512	5,188,468
EE	1,347,000	1,084,500	5,000	245,000
IE	4,109,173	3,682,700	160,000	90,000
EL	11,075,700	10,239,200	100,000	850,000
ES	43,038,035	39,425,700	700,187	2,671,207
FR	60,561,200	56,314,000	1,300,000	2,200,000
IT	58,462,375	55,978,600	206,649	2,195,508
CY	749,175	647,900	35,000	35,000
LV	2,306,434	2,285,900	4,797	482,415
LT	3,425,324	3,428,300	1,451	30,876
LU	455,000	282,800	152,400	25,000
HU	10,097,549	9,986,600	13,376	130,398
MT	402,668	389,700	8,000	4,000
NL	16,305,526	15,555,800	228,141	471,210
AT	8,206,524	7,366,700	190,000	580,000
PL	38,173,835	37,518,400	15,000	685,000
PT	10,529,255	10,173,600	75,000	190,000
SI	1,997,590	1,951,100	1,235	43,050

SK	5,384,822	5,276,100	10,876	11,375
FI	5,236,611	5,112,700	35,356	72,990
SE	9,011,392	8,499,600	208,958	272,183
UK	59,934,290	56,592,700	1,050,000	1,950,000
<b>Total</b>	<b>459,388,161</b>	<b>432,155,800</b>	<b>7,334,146</b>	<b>19,083,232</b>

Source: Annual Report on Asylum and Migration 2005.

**Figure 2. The share of third-country nationals in the total population of EU25 Member States, January 1, 2005**



Source: Annual Report on Asylum and Migration 2005.

**Table 3** Number of third-country nationals that has lived in Germany for less than 5 years on December 31, 2003

	number	percentage of all foreigners with this nationality
Turkey	187,259	10.0
Serbia and Montenegro	87,231	15.4
Poland	93,187	28.5
Croatia	16,409	6.9
Russian Federation	106,607	61.5
Bosnia and Herzegovina	14,330	8.6
Ukraine	73,340	58.2

Romania	32,182	36.1
Vietnam	23,151	26.2
Iran	20,186	24.8
Morocco	21,407	26.8
China	52,444	68.3
Afghanistan	20,479	31.1
Total selected nationalities		
—non-EU	622,843	17.6
—EU	125,369	30.1
All foreign nationals	1,575,588	21.5

Source: Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration in Zusammenarbeit mit dem Europäischen Forum für Migrationsstudien, *Strukturdaten der ausländischen Bevölkerung Stand: 2004* (Berlin, January 2005).

**Table 4 The percentage share of regions and countries in the total stock of third-country nationals in five regions of the EU, January 1, 2004**

	New States CZ,HU,RO,SI,SK	Member States EL,ES,FR,IT,PT	Southern Europe DK,FI,SE	Scandinavia BE,NL,UK	North Western Europe DE,AT	Central Europe
<b>Europe</b>	<b>75%</b>	<b>23%</b>	<b>53%</b>	<b>12%</b>	<b>92%</b>	
--Turkey	2%	4%	13%	11%	51%	
--Balkan	26%	15%	16%	1%	33%	
--former USSR	47%	4%	7%	0%	8%	
--Iceland and Norway	0%	0%	16%	0%	0%	
<b>Americas</b>	<b>3%</b>	<b>22%</b>	<b>7%</b>	<b>13%</b>	<b>3%</b>	
--USA	3%	2%	5%	12%	3%	
--South America	0%	20%	3%	1%	0%	

<b>Africa</b>	<b>0%</b>	<b>47%</b>	<b>8%</b>	<b>32%</b>	<b>0%</b>
--Morocco	0%	24%	0%	13%	0%
--other North Africa	0%	17%	0%	1%	0%
--other	0%	6%	8%	18%	0%
<b>Middle East</b>	<b>2%</b>	<b>0%</b>	<b>23%</b>	<b>0%</b>	<b>2%</b>
--Iraq	0%	0%	18%	0%	2%
--other	2%	0%	4%	0%	0%
<b>Asia and Oceania</b>	<b>20%</b>	<b>8%</b>	<b>10%</b>	<b>44%</b>	<b>2%</b>
--China	6%	5%	1%	7%	0%
--Japan	0%	0%	0%	1%	0%
--India	0%	1%	0%	14%	0%
--Pakistan	0%	0%	2%	7%	0%
--other	14%	2%	7%	16%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Other, less important countries	17%	21%	36%	49%	29%

Source: Annexes to the Annual Report on Asylum and Migration 2003.

**Table 5. The employment status of nationals and third-country nationals according to the LFS, distinguishing the unemployed by level of education, 2005 (%)**

COUNTRY	EU-27
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Sum of VALUE	NATIONAL	SEX
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		National			Non EU25		
ILOSTAT	HATLEVID	1.Males	2.Females	Total	1.Males	2.Females	Total
1.Employed	1. Low	45483	35882	81366	3144	2014	5158
	2. Medium	97862	77834	175695	3020	2014	5034
	3. High	48252	44459	92711	1452	1146	2598
	No answer	324	206	529	29	18	47
1.Employed Total		191921	158381	350302	7645	5193	12838
2.Unemployed	1. Low	6020	5260	11280	793	545	1338
	2. Medium	9512	8743	18256	503	365	867
	3. High	2097	2327	4424	219	200	418
	No answer	43	50	92	4	6	10
2.Unemployed Total		17672	16380	34052	1519	1115	2634
3.Inactive	1. Low	41440	70108	111547	1548	3382	4931
	2. Medium	31156	45209	76365	793	1346	2140
	3. High	8546	10164	18710	312	633	945
	No answer	5569	9330	14899	119	175	294
3.Inactive Total		86711	134811	221522	2773	5537	8310
		296303	309572	605876	11936	11845	23781

**In percentage**

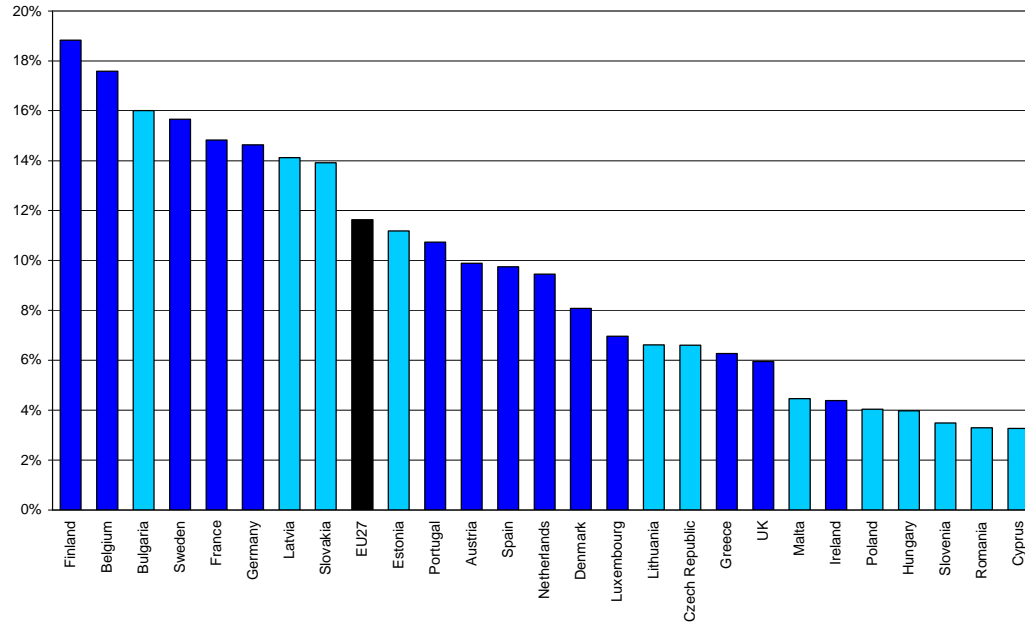
In percent	Nationals			Third-country nationals		
	Males	Females	Total	Males	Females	Total

Inactive	29,3	43,5	36,6	23,2	46,7	34,9
Employed	64,8	51,2	57,8	64,0	43,8	54,0
Unemployed	6,0	5,3	5,6	12,7	9,4	11,1
	100,0	100,0	100,0	100,0	100,0	100,0
Unemployment rate	8,4	9,4	8,9	16,6	17,7	17,0
Low	11,7	12,8	12,2	20,1	21,3	20,6
Medium	8,9	10,1	9,4	14,3	15,3	14,7
High	4,2	5,0	4,6	13,1	14,8	13,9

Source: LFS.



**Figure 6. Share of unemployed persons in the total number of third-country nationals according to the Labour Force Survey, 2005 (%)**



Source: LFS 2005.

**Table 7. Share of educational levels per occupational group: third-country nationals**

Occupation (ISCO-88 1-digit)	MALES			FEMALES			TOTAL		
	lower secondary	upper secondary	third level	lower secondary	upper secondary	third level	lower secondary	upper secondary	third level
(0) Armed forces							11.3%	82.1%	6.6%
(1) Legislators, senior officials and managers	24.7	42.4	32.9	22.3	37.7	40.0	24.0	41.1	34.9
(2) Professionals	3.5	21.3	75.2	3.1	22.9	74.0	3.3	21.9	74.8
(3) Technicians and associate professionals	14.8	44.6	40.6	12.4	41.8	45.8	13.5	43.1	43.3
(4) Clerks	33.1	46.4	20.5	26.0	47.3	26.7	29.0	46.9	24.1
(5) Service workers and shop and market sales workers	43.2	45.2	11.6	36.6	49.1	14.3	39.3	47.5	13.2
(6) Skilled agricultural and fishery workers	73.4	21.1	5.5	54.0	35.8	10.2	69.9	23.8	6.3
(7) Craft and related trades workers	47.4	44.3	8.3	58.2	32.4	9.4	48.3	43.3	8.4
(8) Plant and machine operators and assemblers	50.9	42.5	6.6	56.0	36.9	7.1	51.6	41.7	6.7
(9) Elementary occupations	56.4	33.0	10.6	59.6	30.4	10.0	58.1	31.6	10.3
<b>TOTAL</b>	<b>41.8</b>	<b>39.4</b>	<b>18.8</b>	<b>39.9</b>	<b>38.0</b>	<b>22.1</b>	<b>41.1</b>	<b>38.8</b>	<b>20.1</b>

Source: Eurostat, LFS

**Table 8. Share of educational levels per occupational group: nationals**

Occupation (ISCO-88 1-digit)	MALES			FEMALES			TOTAL		
	lower secondary	upper secondary	third level	lower secondary	upper secondary	third level	lower secondary	upper secondary	third level
(0) Armed forces	17.3	54.7	28.0	15.8	54.2	30.1	17.2	54.7	28.1
(1) Legislators, senior officials and managers	15.9	41.9	42.2	18.3	41.1	40.5	16.7	41.6	41.7
(2) Professionals	2.1	14.4	83.5	1.2	13.5	85.3	1.7	13.9	84.4
(3) Technicians and associate professionals	10.4	54.5	35.1	8.2	54.0	37.9	9.2	54.2	36.6
(4) Clerks	19.3	61.3	19.3	18.7	63.3	17.9	18.9	62.8	18.3
(5) Service workers and shop and market sales workers	25.4	62.3	12.3	28.4	62.6	9.0	27.5	62.5	10.0
(6) Skilled agricultural and fishery workers	43.5	51.0	5.6	51.5	45.3	3.2	46.6	48.8	4.6
(7) Craft and related trades workers	28.3	64.5	7.2	31.7	62.9	5.4	28.7	64.3	7.0
(8) Plant and machine operators and assemblers	33.8	61.7	4.6	39.9	56.3	3.8	34.9	60.7	4.4
(9) Elementary occupations	48.7	46.6	4.6	55.5	41.3	3.3	52.2	43.9	3.9
<b>TOTAL</b>	<b>23.5</b>	<b>51.3</b>	<b>25.2</b>	<b>22.4</b>	<b>49.4</b>	<b>28.2</b>	<b>23.0</b>	<b>50.4</b>	<b>26.6</b>

Source: Eurostat, LFS

**Table 9. Share of occupational groups per level of education: third-country nationals**

Occupation (ISCO-88 1-digit)	MALES				FEMALES				TOTAL			
	Level of education			total	Level of education			total	Level of education			total
	lower secondary	upper secondary	third level		lower secondary	upper secondary	third level		lower secondary	upper secondary	third level	
(0) Armed forces	0.0	0.4	0.1	<b>0.2</b>	0.0	0.1	0.0	<b>0.0</b>	0.0	0.3	0.0	<b>0.1</b>
(1) Legislators, senior officials and managers	3.9	7.1	11.6	<b>6.6</b>	2.2	4.0	7.2	<b>4.0</b>	3.3	5.9	9.7	<b>5.6</b>
(2) Professionals	0.7	4.6	33.8	<b>8.4</b>	0.6	4.3	23.8	<b>7.1</b>	0.6	4.5	29.4	<b>7.9</b>
(3) Technicians and associate professionals	2.3	7.4	14.2	<b>6.6</b>	3.5	12.3	23.2	<b>11.2</b>	2.8	9.3	18.1	<b>8.4</b>
(4) Clerks	3.1	4.6	4.3	<b>3.9</b>	5.3	10.2	9.9	<b>8.2</b>	3.9	6.8	6.7	<b>5.6</b>
(5) Service workers and shop and market sales workers	12.5	13.8	7.5	<b>12.1</b>	23.6	33.3	16.7	<b>25.8</b>	16.8	21.4	11.5	<b>17.5</b>
(6) Skilled agricultural and fishery workers	3.8	1.2	0.6	<b>2.1</b>	1.0	0.7	0.3	<b>0.7</b>	2.7	1.0	0.5	<b>1.6</b>
(7) Craft and related trades workers	29.2	28.9	11.4	<b>25.8</b>	5.1	3.0	1.5	<b>3.5</b>	19.8	18.8	7.1	<b>16.9</b>
(8) Plant and machine operators and assemblers	16.4	14.5	4.7	<b>13.5</b>	4.6	3.2	1.1	<b>3.3</b>	11.8	10.1	3.1	<b>9.4</b>
(9) Elementary occupations	28.2	17.5	11.8	<b>20.9</b>	54.0	29.0	16.4	<b>36.2</b>	38.2	21.9	13.8	<b>27.0</b>
<b>TOTAL</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Eurostat, LFS

**Table 10. Share of occupational groups per level of education: nationals**

Occupation (ISCO-88 1-digit)	MALES				FEMALES				TOTAL			
	Level of education			total	Level of education			total	Level of education			total
	lower secondary	upper secondary	third level		lower secondary	upper secondary	third level		lower secondary	upper secondary	third level	
(0) Armed forces	0.8	1.2	1.3	<b>1.1</b>	0.1	0.1	0.1	<b>0.1</b>	0.5	0.7	0.7	<b>0.7</b>
(1) Legislators, senior officials and managers	6.8	8.3	17.0	<b>10.1</b>	4.8	4.9	8.5	<b>5.9</b>	6.0	6.8	12.9	<b>8.2</b>
(2) Professionals	1.2	3.7	43.7	<b>13.2</b>	0.8	4.1	45.3	<b>15.0</b>	1.0	3.9	44.5	<b>14.0</b>
(3) Technicians and associate professionals	5.8	14.1	18.5	<b>13.2</b>	6.9	20.7	25.4	<b>18.9</b>	6.3	17.0	21.8	<b>15.8</b>
(4) Clerks	4.8	7.0	4.5	<b>5.8</b>	14.9	22.8	11.3	<b>17.8</b>	9.2	14.0	7.7	<b>11.2</b>
(5) Service workers and shop and market sales workers	7.9	8.9	3.6	<b>7.3</b>	26.6	26.6	6.7	<b>21.0</b>	16.1	16.7	5.1	<b>13.5</b>
(6) Skilled agricultural and fishery workers	10.2	5.5	1.2	<b>5.5</b>	9.9	4.0	0.5	<b>4.3</b>	10.1	4.8	0.9	<b>5.0</b>
(7) Craft and related trades workers	27.2	28.5	6.5	<b>22.6</b>	4.9	4.4	0.7	<b>3.5</b>	17.4	17.8	3.7	<b>14.0</b>
(8) Plant and machine operators and assemblers	18.7	15.7	2.4	<b>13.0</b>	6.4	4.1	0.5	<b>3.6</b>	13.3	10.5	1.5	<b>8.8</b>
(9) Elementary occupations	16.6	7.3	1.5	<b>8.0</b>	24.7	8.4	1.2	<b>10.0</b>	20.2	7.8	1.3	<b>8.9</b>
<b>TOTAL</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Eurostat, LFS

**Table 11 The number of permits issued to non-EU citizens in 2005 for employment purposes**

	valid for less than 12 months			valid for more than 12 months			total		
	males	females	total	males	females	total	males	females	total
Denmark									2297
Estonia	15	3	18	233	19	252	248	22	270
Greece	a)	a)	a)	152886	45740	198626	152886	45740	198626
Spain	5004	5684	10688	518977	386199	905176	523981	391883	915864
Cyprus	4506	4528	9034	313	8201	8514	4819	12729	17548
Latvia	463	210	673	253	80	333	716	290	1006
Lithuania				1039	142	1181	1039	142	1181
Hungary			19838			24485			44323
Netherlands	4499	1717	6216	4218	1421	5639	8717	3138	11855
Poland				3527	2000	5527	3527	2000	5527
Portugal				77677	35048	112725	77677	35048	112725
Slovak Republic	865	296	1161	1797	739	2536	2662	1035	3697
Finland	1901	569	2470	476	178	654	2377	747	3124
Sweden	4168	1169	5337	1511	615	2126	5679	1784	7463
Total									<b>1325506</b>

<sup>a)</sup> Greece has no residence permits for employment purposes for less than 12 months. Source: Source: Eurostat, LFS

## **ANNEX 8 DATA AVAILABILITY**

The analysis presented here has been partly constrained by limitations in data availability and significant lack of comparability in migration statistics at EU and international level. With regards to the socio-economic perspective of the problem, several gaps in the data collection have to be highlighted. At EU level, Eurostat does not provide data on the migration flows into the Member States distinguished by the reason for migration.

Other useful statistics are based on residence permit data. However, Eurostat has only recently begun to collect these and a significant number of EU Member States appears to be unable currently to supply such data. Moreover, even where data are available, the statistics are not readily comparable due to significant differences between Member States and over time in the definitions which apply to the data supplied. Therefore, in order to estimate the current inflows of third-country workers to the EU, different sources and estimates has been used.

The employment position of third-country nationals on the EU labour market has been analysed by means of the European Labour Force Survey (LFS). The LFS allows us to distinguish workers on the European labour market on the basis of nationality. It proved impossible to construct a time series according to the “nationality” criterion. We have consequently only examined the EU27 in the year 2005. It is important to note that a percentage of those who were counted as immigrants before the two enlargements (2005 and 2007) are now EU citizens.

That being said, it is worth noting that a process of harmonisation of migration statistics at EU level is currently underway. In particular, residence permit data are included under the new EU legislation on migration statistics (Regulation (EC) No 862/2007). This legislation can provide a framework to improve the availability of these data.

The definition of the problem from a legal perspective encountered similar problems. The analysis is based on the responses by Member State experts to a questionnaire circulated as part of this study in March 2007.



















The review of the data collected has pointed out some limits in terms of:

- **Data availability**, since some Member States did not respond or gave incomplete answers to the questionnaire.
- **Data comparability**, since the quality of the information provided by the Member States was not consistent (in terms of completeness, pertinence and exhaustiveness).

It is worth noting that the comparability among Member States was reinforced by the structure of the questionnaire circulated. In addition, the analysis adopted different comparison techniques according to the level of data availability and comparability.

**ANNEX 9 CONSISTENCY AND INTENSITY OF THE CONNECTIONS BETWEEN GLOBAL AND SPECIFIC OBJECTIVES THE OTHER RELEVANT EU POLICIES AND ACQUIS**

**Table Consistency and intensity of the connections between global and specific objectives the other relevant EU policies and acquis**

EU policies and acquis	Lisbon Strategy	European Employment Strategy	European Sustainable Development Strategy	COM(2005) 571 final
<b>Global and specific objectives</b>				
<b>Global Objectives</b>				
I) Granting rights to third country workers comparable to those of EC citizens by means of establishing the principle of <b>equal treatment</b> for third country workers across the EU, particularly to protect them from abuse and inadequate working conditions and to grant them basic benefits.				
II) Improving <b>the functioning of the EU labour market</b> .				
III) Protecting the EU labour force from <b>unfair competition</b> in the labour market.				
<b>Specific Objectives</b>				
1. To have a common understanding at EU level of the group of third-country workers that legally resides in the EU but has not yet acquired long-term resident status.				
2. To determine a set of rights for third-country workers.				
3. To increase the transparency of the common EU labour market for third-country workers by reducing disparities between Member States in the rights granted to third-country workers and improving the				



information available to (potential) third-country workers				
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**ANNEX 10 - ANALYSIS OF THE DEGREE OF VARIATION BETWEEN THE RIGHTS OF THIRD-COUNTRY WORKERS AND NATIONALS IN THE MEMBER STATES**

<i>area</i>	<i>degree of variation</i>	<i>general pattern</i>
Entry and mobility	low	There exist a lot of opportunities. Rights are not defined for third-country workers specifically.
Legal definition	–	Few definitions for third-country workers exist.
Kinds of permit	fair	Most Member States have at least 3 types of permit (11 of 17).
Single admission procedure and single residence/work permit	–	9 of 17 MS have a single application procedure.
Access to employment (including working in the public sector)	high	The majority of Member States treat third-country workers different from other workers, particularly with respect to job choice and job mobility, and –to a lesser extent– the type of function (management functions and access to public sector).
Working conditions	very low	In almost every respect, third-country workers have the same rights as others. Only two MS (Bulgaria and Cyprus) grant different rights with regard to job termination and dismissal.
Education, i.e. access to education and recognition and assessment of foreign diplomas and certificates	low	A small minority of MS grants different rights to third-country workers, notably with respect to full access to vocational and academic training. The Czech Republic and Germany stand out in this respect.
Access to social security	fair	The biggest differences occur in unemployment benefits. The rights with respect to family benefits and social assistance are also different in several MS (7 and 6 respectively). Most differences are based on a single criterion (either nationality, immigration status or other criteria).
Possibility of transfer of pension savings and restitution of security benefits	high	Most MS restrict the rights to transfer and restitution, most particularly with regard to unemployment, occupational diseases, sickness and family benefits. The differences between third-country workers and other workers are lower for survivors benefits, old-age pensions and invalidity pensions.
Access to public services (access to placement services, to services of general economic interest, and to other public services, including public housing)	high	Only in Greece, Spain, France and Italy do third-country workers receive more or less the same rights as other workers. Other countries generally do not grant these rights to third-country workers.

## ANNEX 11 - ASSESSMENT OF THE COSTS

In our qualitative assessment of the financial and administrative costs, we have considered the following costs:

- *Administrative costs*, which include the costs of monitoring, reporting, and evaluation as well as the administrative costs involved in the extension of the rights of third country workers with respect to social security, education, health care, and other public services, given that this extension increase the volume of information obligations on Member States.
- *Net implementation costs*, which involve the balance between the additional expenditure on social security, education, health care, and other public services resulting from the extension of third country workers rights and the additional revenues produced by third country workers.

### Granting equal treatment for third country workers

The administrative and implementation costs of granting third country workers equal treatment with respect to access to social security, public services, and the possibility of transferring pensions abroad have been calculated on the basis of Member State specific data on the expenditure on specific benefits, the administration costs of social security, and the expenditure on education and health care. Actual administrative costs are included in the administration costs.<sup>186</sup> In a number of areas, it proved impossible to define specific activities and to find the required quantitative information with which to produce a reliable estimate. This involves academic education, the recognition and assessment of foreign diplomas and certificates, the possibility of the reimbursement of public social security contributions, the transfer to other pension schemes, and the export of pensions, and placement services and other services of general economic interest.

The following assumptions have been made to arrive at estimates:

- Additional costs will only be incurred in those Member States where equal treatment for third country workers has not yet been established. This criterion has been applied to each individual right (e.g. unemployment benefits, education, etc.) and it implies that all estimates have to be made on the basis of data on each individual Member State.
- The relative level of administration costs (as a percentage of total expenditure) in continuing vocational education, education, and health care were equal to that in social security. These costs include actual administrative costs (information obligations). Although it is not possible to determine the relative importance of actual administrative costs, it is safe to assume that they will be significantly lower than the total administration costs.
- Current limitations to the rights concerned in each Member State –as they apply to nationals and long-term residents– have been applied, using data from the US Social

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<sup>186</sup> Although we have no data on the share of administrative costs in this total, it seems reasonable to assume that information obligations are much less important than management costs, financial administration, and other organisational expenses.

Security Administration.<sup>187</sup> For example, if national legislation requires a worker to have worked at least 12 months before being eligible for an unemployment benefit, the new rights granted to third country workers will not apply to those in the EU for less than 12 months. In that instance, we have included 80% of the additional costs, assuming a maximum duration of stay of 5 years.

- third country workers receive the average level of per capita expenditure on social protection, health care, housing and education.

The following table presents a summary of the estimates. In short, granting third country workers equal treatment in social security, education, health care, and housing results in an additional outlay of c. **€4.9 billion**. This includes administration costs of c. **€150 million**; actual administrative costs will be significantly lower.

**Summary of the estimated additional administration and implementation costs (€million)**

	<i>total additional expenditure</i>	<i>administrati on costs</i>	<i>implementati on costs</i>
social security	4,154.8	136.2	4,018.6
education	584.9	11.7	573.2
health care	181.8	5.1	176.7
housing	3.6	0.1	3.6
<b>total</b>	<b>4,925.1</b>	<b>153.1</b>	<b>4,772.1</b>

The single application procedure

The introduction of a single application procedure will not change its entire working process. Applicants (third-country workers and their employers) will have to provide the same evidence; and national immigration services will have to perform the same assessments.<sup>188</sup> The main improvements concern a concentration of activities, resulting in shorter processing times, and the elimination of communications and information flows between different services.

We have estimated three variables:

- *Implementation cost savings*: The value of a reduction in labour input involved in the processing of initial permit applications (for work and residence) and applications for the renewal of permits.

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<sup>187</sup> US Social Security Administration, Social Security Programs Throughout the World: Europe, 2006 (September 2006) [<http://www.ssa.gov/policy/docs/progdsc/ssptw/2006-2007/europe/index.html>]

<sup>188</sup> We assume that the costs of document verification and authentication as well as other costs will not be affected.

- *Economic cost savings*: The value of the time saved by third country workers and potential employers in waiting for the decision on an application, resulting from a reduction in the processing time of applications.
- *Public revenues*: Additional tax revenues and social security contributions generated by third country workers, resulting from a reduction in the processing time of applications, which allows third country workers to start working earlier.

A number of countries has already introduced a single application procedure (CY, DE, EE, EL, ES, FI, FR, IT, NL, PT, and SE). In our calculations we have assumed that those countries use this procedure and will consequently not be affected by the introduction of an EU-wide single application procedure. We consequently assume that any cost-savings associated with a single application procedure will only be realised in countries without such a procedure (AT, BG, BE, CZ, IE, LT, LV, RO, SI, SK, and UK).

The calculations were based on information on processing times, the level of fees for residence and work permits, and the number of migrants who apply for (a renewal of) permits. We have based our estimates on two assumptions, namely:

- 1.2 million initial permits in 2008 (the estimated number of third-country immigrants).
- 1 million renewals in 2008 (20% of the estimated stock of non-EU nationals).

#### Implementation cost savings

In our estimates we have assessed the impact of a reduction in labour input in the application procedure using two scenarios:

- A reduction of **2** working days (FTE) per application for an initial permit or a renewal.
- A reduction of **4** working days (FTE) per application for an initial permit or a renewal.

The resulting cost savings amount to between **€820 million** and **€1,640 million**.

#### Economic cost savings and additional public revenues

The introduction of a single application procedure and a single residence/work permit may in time result in shorter (legal) processing times. Currently, the legal deadline for a decision on an application varies between 50 and 65 days. If this deadline is shortened, say by 15 days, third country workers would be able to start working earlier, resulting in additional earnings for employers as well as additional tax revenues and social security contributions.

We can estimate the additional gross earnings of third country workers and the additional tax revenues and social security contributions associated with a reduction in the legal deadline. We have used data on earnings, tax rates, and social protection in each Member State of the EU27. However, in addition to data availability issues, there is one major obstacle to such estimates. Third country workers are concentrated in lower-skilled, manual occupations that generate less value added than the high-skill and medium-skill occupations in which they are relatively underrepresented. We do not know the industrial distribution of third country workers, which is needed to make a rough estimate of the average value added per third-country worker. Aggregate data on per capita GDP, gross earnings, tax rates, and social security contributions may overstate the impact of third country workers on the economy and public finance.

In the estimates two wage levels have been consequently used, namely the minimum wage (using data for Member State that have a statutory minimum wage) and a wage equal to 2/3 of the average gross earnings.

The following table summarises the outcomes for two scenarios, both assuming that 54.4% of all applicants will be employed - taking the percentage of employed third country workers in the 2005 LFS – one assuming a minimum wage level and the other a 2/3 of average gross earnings.

**Additional earnings, tax revenues and social security contributions in 2008, €millions**

	minimum wage level	2/3 of average wage level
total gross earnings	369	730
total taxes and social security contributions	131	258
of which paid by employees (44%)	58	114
taxes and social security contributions paid by employers (56%)	73	144
additional net earnings	312	616

On the assumption that the cost savings will apply to initial permits and not to renewals and that – as before – there will be 1.2 million initial permits in 2008, we can estimate the total additional gross earnings between €312 million and 616€ million and social security contributions at €131 million -€258 million, of which between €73 and €144million will be paid by employers.

Net earnings (€312 million and 616€million) can be considered as a proxy for the additional economic benefit to employers of a reduction in the legal deadline. It should however be noted that earnings do not necessarily reflect value added. A reduction in the legal deadline for a decision on an application by 30 days in 2008 would double the estimates of the above table.

These benefits are additional, considering that employers generally only resort to third country workers when the national labour market cannot offer the required supply, which implies that the employer’s demand for labour will not temporarily be met by national workers. As this is bound to happen regardless, the above estimates should be considered maximum estimates.

Basic data

For the estimates of the administrative burden of the general framework directive and the single application procedure, we will require basic information on labour costs and the number of third country workers in each Member State.

- *Labour costs*: Eurostat provides hourly and monthly labour costs and gross earnings per economic sector. However, for government (NACE section L, Public administration and

defence; compulsory social security) we only have information on the New Member States. Additional data were required to extend our information on labour costs to the entire EU27. Eurostat provides a number of possible indicators, namely average personnel costs in services in the EU27 in 2003 (NACE sections G, H, I, and K)<sup>189</sup>, median gross annual earnings in industry and services in the EU25 in 2002 (the outcome of the Structure of Earnings Survey 2002)<sup>190</sup>, and average hourly labour costs in industry and services of full-time employees in enterprises with 10 or more employees in 2002.<sup>191</sup> The relative differences between Member States in the level of labour costs in the NMS according to the various sources compares fairly well. OECD data were used to forecast the level of annual labour costs per Member State in 2008.<sup>192</sup> Information on the annual hours worked per employee in the total economy per Member State in 2005 were taken from the total economy database of the Groningen Growth and Development Centre.<sup>193</sup> The end result is an average hourly labour costs of employees in NACE section L (public administration and defence; compulsory social security) of **€24.30** in the EU27 in 2008, and **€23.30** excluding Denmark.

- *Number of migrants:* Migration data for the EU are incomplete and there are no consistent time series with which to forecast current trends into the (near) future. Data collected by Eurostat and DG JLS suggest that between 1997 and 2003 the number of third-country immigrants grew at an average annual rate of 13.4%.<sup>194</sup> On the basis of that growth rate, the immigration of third-country nationals into the EU27 would amount to c. 4.1 million in 2008.
- *Stock of third-country workers:* There is fairly robust information on the total number of non-EU nationals living in the EU, which amounts to c. 19 million (not including Romania and Bulgaria). We are, however, very poorly informed about the average duration of stay of non-EU nationals in EU Member States. The only available indication is that German data suggest that c. 20% of third-country nationals has lived in Germany for less than 5 years.<sup>195</sup> We have assumed that in all Member States third country workers account for 20% of the total number of non-EU nationals.

### Administrative costs and implementation costs of the extension of third country workers rights

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<sup>189</sup> Eurostat, “Main features of the services sector in the EU”, *Statistics in Focus – Industry, trade and services* 19/2007.

<sup>190</sup> Eurostat, “Earnings disparities across European countries and regions. A glance at regional results of the Structure of Earnings Survey 2002”, *Statistics in Focus – Population and social conditions* 7/2006.

<sup>191</sup> Eurostat, *Europe in Figures 2005*, p. 169.

<sup>192</sup> OECD Economic Outlook 81 database. The average increase in labour costs in Poland, Hungary, the Slovak Republic and the Czech Republic was applied to the New Member States that are not a member of the OECD.

<sup>193</sup> Groningen Growth and Development Centre and the Conference Board, Total Economy Database, January 2007, <http://www.ggdc.net>. The average annual number of hours worked in the New Member States was 1,855 hours per worker, while the Eurostat data on labour costs per hour and per month result in an annual number of hours worked in NACE section L of 1,800 hours, suggesting that the data match.

<sup>194</sup> Eurostat data collection. European Commission Annual Reports on Asylum and Migration.

<sup>195</sup> Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration in Zusammenarbeit mit dem Europäischen Forum für Migrationsstudien, Strukturdaten der ausländischen Bevölkerung Stand: 2004 (Berlin, January 2005).

The administrative costs of granting third country workers equal treatment with respect to access to social security, public services, and the possibility of transferring social security contributions and pensions abroad have been calculated on the basis of the following data:

- *Expenditure on specific benefits*: Eurostat provides good information on expenditure on social security in the Member States of the EU25 (although there are no data for Romania and Bulgaria), with a distinction between expenditure on benefits (in cash and kind), administrative costs, and other expenditure (e.g. interest on loans).<sup>196</sup> This source provides detailed data on the expenditure on benefits with respect to eight specific risks, namely sickness and health care, disability, old age, survivors, family and children, unemployment, housing, and other areas of social exclusion. The latter category (social exclusion not elsewhere classified) has been excluded from the calculations, since it includes non-contributory assistance in cash and kind for which third country workers will not be eligible.<sup>197</sup> We have calculated per capita expenditure on specific benefits in each Member State, which could then be applied to third country workers
- *Administration costs of social security*: The same source provides data on the administration costs of social security, which comprise the costs charged to a social protection scheme for its management and administration. These data can be used to estimate the average level of administration costs as a percentage of total expenditure on social security in individual Member States. Actual administrative costs are included in this category of expenditure. We have no data on the share of administrative costs in total administration costs. However, it seems reasonable to assume that information obligations are much less important than management costs, financial administration, and other organisational expenses.
- *Expenditure on education and health care*: We have also estimated the additional expenditure on continuing vocational education (CVT) and health care by means of Eurostat data at Member State level.<sup>198</sup> For health care, we have used total per capita expenditure on public health care in each Member State. The estimates for vocational education include the direct costs of CVT as well as the labour costs of third country workers participation.

In a number of areas, it proved impossible to define specific activities and to find the required quantitative information with which to produce a reliable estimate. The following areas were excluded from the calculations:

- *Academic education*: There is no information on the percentage of third country workers that would apply for access to an academic education, on the age distribution and on the time invested.
- *Recognition and assessment of foreign diplomas and certificates*: There is no information on the nature and extent of the activities involved or on the number of third country workers that currently experience difficulties and that would be affected by an extension of their rights in this area. The general framework directive is unlikely to significantly change the associated costs relative to the current situation.

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<sup>196</sup> Eurostat, *European social statistics: Social protection, expenditure and receipts, data 1996-2004* (2007).

<sup>197</sup> See Eurostat, *ESPROSS Manual 1996*.

<sup>198</sup> Based on data taken from the Eurostat data collection.



- Possibility of the reimbursement of public social security contributions, the transfer to other pension schemes, and the export of pensions: There is no information on the amounts transferred in general or by third country workers in particular. We have information on remittances, but these do not include such transfers. Moreover, the administrative costs involved may already be included in the estimates for social protection, since they are part of the same administrative system.
- *Placement services and other services of general economic interest*: There is no comparable, EU-wide information on the use of such services or on their costs.

### Implementation cost savings and other benefits of the single application procedure

The following information is available to estimate the implementation costs savings of the single application procedure:

- *Single application procedure*: A number of countries has already introduced a single application procedure (CY, DE, EE, EL, ES, FI, FR, IT, NL, PT, and SE). In our calculations we have assumed that those countries use this procedure and will consequently not be affected by the introduction of an EU-wide single application procedure. We consequently assume that any cost-savings associated with a single application procedure will only be realised in countries without such a procedure (AT, BG, BE, CZ, IE, LT, LV, RO, SI, SK, and UK).
- *Processing time*: We have information on the legal deadlines for processing applications. It seems possible to process an application within 30 to 60 days (see Table 16). This does not, however, imply that the application will require a full 30 to 60 working days. The average (legal) processing times are between 50 and 65 days; there does not appear to be a difference between the times of countries with a single application procedure and those without.

**Table. (Maximum) processing time of an application for a residence permit or work permit (days)**

Czech Republic	90-120
Latvia	30
Romania	10-30
Lithuania	30-60
Slovakia	90
Netherlands	35-90
Estonia	45
Italy	40
Germany	90
Finland	68

Greece	75
Portugal	30-60

- *Level of fees:* There is some information on the level of fees (see Table 17). These data show a considerable degree of variance between Member States. The actual costs of an application are unknown.

**Table - Data on the costs associated with residence and work permits (€)**

	<i>Austria</i>	<i>France</i>	<i>Ireland</i>	<i>Italy</i>	<i>Netherlands</i>	<i>Sweden</i>	<i>UK</i>
initial permit – work	18		1,000 <sup>199</sup>			96	211
initial permit – residence		203		46	262-821	96	
renewal permit – work	30			10		96	211
renewal permit – residence		51			262	96	167
document verification and authentication				10-33	10-126		

Sources: Clarke et al. 2004. Migrationsverket (Sweden). Irish Department of Enterprise, Trade and Employment

- *Number of migrants (applications and renewals of permits):* Data collected by Eurostat and DG JLS suggest that between 1997 and 2003 the number of third-country immigrants grew at an average annual rate of 13.4%.<sup>200</sup> On the basis of that growth rate, the immigration of third-country nationals would amount to c. 4.1 million in 2008. Countries without a single application procedure accounted for about 29% of total third-country immigration. If that percentage share remains constant, the number of third-country immigrants in those countries will amount to just under 1.2 million in 2008. The total stock of third-country nationals in countries without a single application procedure would amount to c. 5 million in 2008, which includes long-term residents; the precise number of third country workers is unknown.<sup>201</sup> We will base our estimates on two assumptions, namely:

1.2 million initial permits in 2008 (the estimated number of third-country immigrants).

1 million renewals in 2008 (20% of the estimated stock of non-EU nationals).

- *Labour input savings:* There is no information on the actual costs or labour input required to process an application for a residence or work permit. In the calculations, the impact of a reduction in labour input in the application procedure is assessed using two scenarios:
  - A reduction of **2** working days (FTE) per application for an initial permit or a renewal.
  - A reduction of **4** working days (FTE) per application for an initial permit or a renewal.

<sup>199</sup> For 24 months. Source: Irish Department of Enterprise, Trade and Employment.

<sup>200</sup> Eurostat data collection. European Commission Annual Reports on Asylum and Migration.

<sup>201</sup> German data suggest that c. 20% of third-country nationals has lived in Germany for less than 5 years. Source: Annex Table I.2.

- *Shorter legal processing times:* The introduction of a single application procedure and a single residence/work permit may in time result in short (legal) processing times. Currently, the legal deadline for a decision on an application varies between 50 and 65 days. If this deadline is shortened, say by **15 days**, third country workers would be able to start working earlier, resulting in additional earnings for employers as well as additional tax revenues and social security contributions.

The following data have been used to make an estimate of the value added and costs of additional third country workers labour due to a reduction in processing times.

- The number of third-country immigrants into countries without a single application procedure was estimated at just under **1.2 million** in 2008 (initial permits).
- Of all third country workers in the Labour Force Survey of 2005, **54.4%** was employed.<sup>202</sup> However, we can also assume that applicants for an initial permit (new immigrants) will all be employed.
- Hourly gross earnings have been estimated at **€13.97** in 2008, using a combination of data on annual gross earnings in industry and services in 2003 and 2004, the average number of hours worked per year, and the compound average growth rate in gross earnings between 2001 and 2004.<sup>203</sup>
- In 2005, the EU-27 (GDP-weighted) average implicit tax rate on labour stood at 36 1/2 %. Total taxes and social security contributions paid by both employers and employees thus equalled around 44 % of gross earnings, of which 19 percentage points or 44 % were paid by employers.<sup>204</sup>
- We assume an average working day of **8 hours**.

If all applicants are employed and third-country workers earn 2/3 of average gross earnings, a reduction in the legal deadline for a decision on an application by 15 days in 2008 will yield additional gross earnings of €1,118 per application; if only 54.4% is employed (as in the 2005 LFS) additional gross earnings will be €608 per application. At minimum wage level, these additional earnings amount to €566 and €308 per application.

Total additional gross earnings can be estimated on the basis of three assumptions:

- Tax rates and social security contributions will remain unchanged relative to earnings until 2008.
- The cost savings will apply to initial permits and not to renewals.
- There will be 1.2 million initial permits in 2008.

In 2005, the average implicit tax rate on labour was 36 1/2%, of which 19% percentage points were paid by employers. Assuming that tax rates and social security contributions will not

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<sup>202</sup> Eurostat, LFS data for 2005.

<sup>203</sup> Europe in figures, Eurostat Yearbook 2006-07. The Conference Board and Groningen Growth and Development Centre, Total Economy Database, January 2007, <http://www.ggdc.net>. Eurostat data collection. Unweighted average of hourly labour costs in individual Member States. The unweighted average number of hours worked per employee per year in the 27 Member States of the EU was 1,720.

<sup>204</sup> Eurostat data collection. European Commission, Taxation trends in the European Union. Data for the EU Member States and Norway, 2007 edition. The tax revenues and social security contributions have been related to gross earnings to facilitate the calculations.

change relative to earnings until 2008 we can estimate the total additional revenues in 2008 at between €300 and €600 in total additional revenues.

Areas in Member States where third country workers have not yet been granted equal treatment and where a single application procedure does not yet exist

	sicknesshealth care	disability	old age	survivors	family, children	unemployment	housing	single application procedure
Belgium		●			●			●
Bulgaria	●				●	●	●	●
Czech Republic						●	●	●
Denmark	●	●	●		●			
Germany					●	●		
Estonia								
Ireland								●
Greece								
Spain								
France						●		
Italy		●	●				●	
Cyprus						●	●	
Latvia					●	●	●	●
Lithuania						●	●	●
Luxembourg								
Hungary								●
Malta					●			●
Netherlands	●	●	●		●	●		
Austria						●		●
Poland								
Portugal								
Romania								●
Slovenia								●
Slovakia								●
Finland	●				●	●		
Sweden	●	●		●	●			
United Kingdom	●	●			●	●		●

Source: Annex.

Current limitations to the rights concerned (years without access)

	sickness, health care	disability	old age	survivors	family, children	unemployment housing
Belgium		0.5			0.5	
Bulgaria						
Czech Republic						1
Denmark	0.15	10	10		1	1
Germany						1
Estonia						
Ireland						
Greece						
Spain						
France						0.5
Italy		5	5	5		
Cyprus						0.5
Latvia						1
Lithuania						1.5
Luxembourg		1	5	1	0.5	0.5
Hungary			15			1
Malta	1	1	3	3		
Netherlands						0.5
Austria						1
Poland						
Portugal						
Romania						
Slovenia						
Slovakia						
Finland	0.25				0.5	0.83
Sweden		3		3		
United Kingdom	0.25				0.5	

Source: US Social Security Administration, *Social Security Programs Throughout the World: Europe, 2006* (September 2006).

## ANNEX 12 - STAKEHOLDER VIEWS

As part of the impact assessment, a number of relevant stakeholders have been interviewed by means of a written questionnaire. The following stakeholders have sent a response:

- Social Platform
- European Trade Union Confederation, ETUC (Catalene Passchier)
- Caritas Europe (Peter Verhaeghe)
- International Organization for Migration, IOM (Sophie Nonnenmacher)
- European Women's Lobby, EWL
- Di Stefano & Sedlo, law firm in Luxembourg (François Moyses)
- European Association of Craft, Small and Medium-sized Enterprises, UEAPME (Luc Hendrickx)

In addition, a number of experts voiced their opinion during an expert workshop on "Migrant Workers' Rights: The Framework Directive" on June 8, 2007.

### General views on the directive

During the expert workshop in June, an expert of the *King Baudouin Foundation* expressed her concern that immigrants might use national differences in the application of the equal treatment principle to select the destination country that grants more rights and benefits to immigrants (referred to as "asylum shopping"). However, the representative of DG JLS pointed out that the directive will not regulate admission conditions.

The expert of the *International Labour Organisation* (ILO) remarked that in the international context there has always been a trade-off between worker rights and labour market access: the fewer rights temporary migrants enjoy, the more access they have. In addition, he noted that the global objectives of the directive reflect the three core principles of international labour standards, namely equality of treatment of foreign workers, the application of fundamental human rights to all migrants workers, and the protection of working conditions to all workers regardless of their status. In his view, the three objectives should be inseparable and no particular priority should be given to one of them.

All stakeholders consider EU intervention useful –and in one instance essential– and prefer the legislative option. In addition, the key messages were:

#### *UEAPME:*

- The rights gap may encourage illegal work.
- They are positive vis-à-vis a legislative option and the single application procedure.
- With respect to the various rights, UEAPME's priorities are access to employment, working conditions, and access to education, health care and housing.

### *Social Platform*

- The Social Platform believes that the EU approach to migration should not only be driven by labour market considerations.
- The Social Platform believes that the EU approach to have different categories of migrants with different set of rights according to their status generates unnecessary limitation to migrants' rights.
- Linking work and residence permit would create a too big dependency of third country nationals vis-à-vis their employers.
- The Social Platform further raises the issue of undocumented migrants and the need to have a specific approach for migrant women.

### *EWL:*

- The rights gap would create or reinforce existing inequality patterns in society and have damaging effects on the integration of third country workers, in particular women.
- The EWL opposes using immigration policies and protective national policies to address the problem of cheap and exploited labour.
- A combined residence/work permit could imply that the residence permit depends on the employer, shifting the balance of power towards away from third country worker and towards employers.
- A legislative option that focuses on all rights would encourage employers to proactively ensure the integration of third country workers at work, provide EU employees with the benefit of diversity and absence of segregation, and give third country workers better living conditions and a better chance to integrate and participate actively in their host society.

### *Di Stefano & Sedlo, law firm from Luxembourg:*

- The rights gap hinders a smooth integration process.
- The legislative option would oblige employers to treat third country workers well and would allow employers to profit from labour market flexibility, while the single application procedure would ease administrative recruitment procedures for employers.

Di Stefano & Sedlo consider access to employment, working conditions, and social security issues as the core problems.

### *ETUC:*

- The rights gap artificially creates a cheaper foreign labour force, which:
- encourages bad employment practices among employers who seek to diminish the costs of production at the expense of wages and working conditions.
- contributes to xenophobia among working people who fear that their wages and working conditions are being undermined by third-country workers.



- undermines trade union activities to protect working conditions and wages by limiting the effectiveness of sectoral agreements where third country national workers are not provided equivalent protection.
- weakens social solidarity, which depends on workers participating equally in the benefits of such solidarity.
- Where third country national workers are tied to one employer the bargaining power of those workers is greatly diminished. Either they accept the wages and working conditions which that employer offers or they risk unemployment and expulsion as they have no right to take employment with another employer.
- Access to education and vocational training is especially important as a gain for temporary migrants and their countries of origin, to ensure that they are not just ‘used’ as an easy solution for EU labour market shortages, but can bring back valuable experience and qualifications to their home country.
- The recognition of diplomas is critical to maintaining standards in industry. If employers are able to engage third-country workers with diplomas that are similar to those of EU nationals but who must accept jobs at a lower level, employers will acquire highly-skilled third-country workers at a discount.

*IOM:*

- There should be some flexibility to change employer – within the same sector or after a short period of time– to avoid an unhealthy dependence of a TCW on his or her employer and to lower the risk of exploitation by unscrupulous employers.
- An EU measure with respect to working conditions would confirm the applicability of these rights to third country workers.
- Restrictions on access to education and vocational training hamper “brain circulation”. Migrants will be less able to support the development of their countries of origin.
- EU legislation will hopefully simplify procedures and lead to easier recruitment possibilities.

*Caritas Europe:*

- Caritas is strongly in favour of the single application procedure. It will take away existing barriers to the labour market.
- The right of family reunification should be extended to TCW. This will make Europe more attractive to third-country migrants and help to avoid unfair competition for EU workers.

*Specific views on SMEs*

The various stakeholder have not expressed specific views on the impact of the rights gap and the proposed directive on SMEs. One potential impact concerns the costs of an application for a residence/work permit. The price per permit is the same for all employers. However, large firms have an economy of scale in the coordination of their applications, whereas SMEs will generally not be able to afford dedicated staff. This implies that SMEs are faced with higher fixed costs with respect to permit applications. This possibility has not, however, been validated.